



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL CASE NO. 163 OF 2001

JOEL TEKETI TIKANI.....PLAINTIFF

VERSUS

CHARLES MACHARIA KAMAU.....1ST DEFENDANT

SETTLERS ENGINEERING WORKS.....2ND DEFENDANT

JUDGMENT

The plaintiff's claim against the defendants is that on 8th November, 2000 he was lawfully walking along Oginga Odinga Road in Nakuru town when due to the negligence of the 1st defendant, he permitted the said vehicle to lose control and knock down the plaintiff seriously injuring him. According to the plaintiff, before the accident, he saw the vehicle being driven very fast and on reaching him, the same started going zigzag before knocking him down. After the accident, the plaintiff lost consciousness for 2 weeks.

On regaining consciousness, the plaintiff found himself at Nakuru Nursing Home. Due to the accident, the left leg of the plaintiff was broken and he also had a fracture of the skull. During treatment, the plaintiff's leg was plastered for 4 months. The plaintiff produced two medical reports by Dr. Mbatia and Dr. Malik – Exh.6 and 7. Upto the time of the trial, the plaintiff was still complaining of being unable to work properly and of feeling dizziness.

The plaintiff explained how he paid Kshs.59,545 for medical expenses. In his defense, the 1st defendant has denied the allegations that were leveled against him. According to the 1st defendant, it was the plaintiff who had knocked his windscreen on the left side.

Besides the above, he reckoned that by that time he was driving at 20 kilometres per hour and that he was on his right side of the road. Apart from the above, the 1st defendant also deposed that the plaintiff had covered himself with an umbrella since it was raining heavily on that day. The 1st defendant denied leaving the road since there were kiosks by the side of the road.

After both sides had presented their cases, the learned Counsels made submissions and quoted authorities to guide the Court on both liability and quantum of damages. This Court has carefully perused the above. In addition to the above, this Court had the benefit of perusing the manner and demeanour of all the witnesses carefully. I am convinced that the plaintiff told the court the truth. I find as a fact that the accident was caused by the 1st defendant who was driving at an excessive speed and without due care and attention. This Court rejects the explanation by the 1st defendant that it was the plaintiff who had knocked his vehicle due to the fact that he had covered himself with an umbrella. That explanation does not ring

true.

I find as a fact that the defendants are 100% liable for the accident. As far as the quantum of general damages are concerned, the plaintiff's Counsel relied on the following four authorities:

(a) Samuel Hure Murage Vs Moses Kiiru Kamau & Another

Civil Case No. 6779 of 1991.

(b) Livingstone Wendo Mutsotso Vs Onyango Ogwendo

Civil Case No. 4562 of 1991

(c) Daniel Gachau Vs Paul Kigima Kariuki

Civil Case No. 250 of 1990.

(d) Wilfred Ndumba Kirima Vs James Kiogora Mbogori & Another

Civil Case No. 147 of 1993.

In the above cases, the awards for general damages ranged from Kshs.300,000 to Kshs.450,000. On the other hand, the defendant's Counsel relied on the following cases:

(i) Martha Njeri Vs Josephat Wanyoike

Civil Case No. 5964 of 1990.

In this case, the plaintiff was awarded the sum of Kshs.150,000 for general damages.

(ii) George Mwashigadi & Others Vs Paul Musyoka Mutemi & Others

HCCC No. 451 of 1991 – Mombasa

In this case, the plaintiff was awarded the sum of Kshs.180,000 as general damages.

This Court has carefully perused all the above quoted authorities. It is apparent that the plaintiffs in the cases (a) and (b) suffered more injuries than the plaintiff in this case.

Besides the above, it is also apparent that the plaintiffs in the following cases suffered lesser injuries than the plaintiff in the present case:

(i) Martha Njeri Vs Josephat Wanyoike

(ii) George Mwashigadi Vs Paul Musyoka Mutemi & Others.

Apart from considering the above quoted authorities, the Court has taken cognisance of the general rate of inflation in the country since the above authorities were delivered. Doing the best that I can, I am of the considered opinion that an award of Kshs.500,000 would be reasonable and fair under the circumstances.

The upshot is that I find that the plaintiff has proved his case on a balance of probabilities and hence I hereby enter judgment in his favour on the following terms:

(a) General damages:

Kshs.500,000.00

(b) Special Damages:

Kshs.61,645.00

(c) Costs of this suit.

(d) Interest on (a), (b) and (c) at court rates.

Right of appeal explained.

MUGA APONDI

JUDGE

Judgment read, signed and delivered in open Court in the presence of M/s Omwenyo for plaintiff. Mr. Mbiyu for Mr. Ntabo for defendant.

MUGA APONDI

JUDGE

12TH MARCH, 2004