



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL NO. 2610 OF 1993

HARRISON MBOGO.PLAINTIFF

VERSUS

THE ATTORNEY GENERALDEFENDANT

JUDGEMENT

Harrison Mbogo, the Plaintiff herein filed suit against the Attorney General in tort on the 28.3.93. Between 1993 when the defence was filed and January 2002 – there had been no explanation on the file why no hearing dates had been taken or no action on this file. When the suit was fixed for hearing and confirmed at the call over for 27.4.04, the plaintiff appeared to court.

His evidence was that in 1992 he was a school student. He was lawfully traveling in a motor vehicle owned by the Ministry of Health when an accident occurred. He prayed that he be compensated for damages as a result of serious injuries sustained to him.

The defendants denied liability and claimed in their written defence that the accident was inevitable.

I. Liability

The Defendant called no witness from the Health Department. What we have on record is the evidence of the plaintiff only.

In his evidence, the plaintiff was unable to produce a police abstract form commonly known as form P10A.

The advocate stated that a police abstract report was not important to the case.

From the foregoing, where an accident occurs there requires to be a police abstract form. I find that in the absence of such an abstract report liability cannot be proved.

The Plaintiff in evidence had described how the vehicle was travelling at a high speed that it lost control and plunged to the side of the road into the river.

The issue before court is whether the driver was negligence in the manner of his driving. I would find that the driver indeed was over speeding. As such he was negligent and as such find that due to the over speeding that the vehicle had a self-accident. This recklessness was inevitably due to the driver's negligence according to the plaintiff's evidence.

As there has been no production of the police abstract to prove indeed that an accident occurred and

was reported to the police, I am inclined in not allowing a claim on liability.

Quantum – possible

I: General damages

a) Pain and suffering

The Plaintiff was examined by:-

Dr. S.M. Kimuhu M.B. Ch. B. M. Med.(paed.).

Date of examination 10.08.2000.

The doctor found the injuries sustained as:-

Head injury (concussions)

Five days unconscious,

Multiple cut wounds on left hand and scalp

Soft tissue injuries in multiple site

The Doctor a paediatric by profession was able go through photocopies of clinical notes which in his opinion he confirmed the said injuries. He examined the plaintiff after 7 years and came to court to produce the same report after 16 years.

It would be advisable if there indeed was a latest report produced by the Doctor of a recent examination of the plaintiff.

The advocate for the plaintiff relied on two authorities by Juma J.

1. Peter S. Kilimu

V

Solomon Njau Wahinya

HCC 1035/94 (unreported)

Where the plaintiff had driven his vehicle into the back of a stationary lorry that was not lit on the 19.3.91 at 10.30 p.m.

The plaintiff was unconscious. He has lost teeth, cut on his eyelid, upper lip, right knee with bleeding on his socket. An award of 800,000/= was given.

2. Dr. James Ng'ang'a Mungai

V

Alex Ndungutse

HCC 401/96 Juma J.

Interlocutory Judgment was entered against the defendant. No details was given of the facts of the

case save that the plaintiff was injured in a road traffic accident.

He had a loss of memory due to a head injury, an award of Kshs.450,000/= was given. The advocate for the plaintiff prayed that an award of Kshs600,000/= be given.

From the evidence of the doctor he stated that the plaintiff's head injury was in fact one by which there was no injury to the brain, no neurological defect – but was just a concussion with 5 days being unconscious. Injuries sustained, he said, were soft tissues. I would have awarded a sum of Kshs60,000/- for the injuries sustained as there were soft tissue only.

II. The Special Damages

Only the sum of 100/= was pleaded for the police abstract fee. I would note that no receipt was produced to court to prove this. I would have made no award and dismiss this claim.

The other claim for a medical fee (“which is to be stated later”) means that the claim was never specifically particularised.

I hereby find that the words “to be stated later” ought not to be used without there being an amendment to the Plaint. I would have accordingly dismissed this claim.

In Summary

1. Motor vehicle self accident
2. Male adult aged 25 years old in 1992

3. Injuries

i) Head injuries Concussion.

Loss of consciousness for 5 days

ii) Multiple Cut wounds on left hand and scalp

iii) Liability - Nil.

iv) Quantum possible

General Damages

a) Pain and suffering Kshs.60,000/=

b) Special Damages nil

Not proved.

Suit dismissed.

I make award as to costs through the State Counsel to the Attorney General.

Dated this 29th day of April 2004 at Nairobi.

M. Ang'awa

Judge

Wadaka Gathaara & Co. Advocates for the plaintiff

J.W. Mwaniki State counsel for Attorney -General