



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO. 834 OF 1995

1.PHILLIS SAMMY

2.STELLA SAMMY

3.MUTINDA SAMMY.....PLAINTIFFS

V E R S U S

TAWFIQ BUS SERVICE.....DEFENDANT

J U D G M E N T

On 27/9/2000 the Plaintiffs amended the Plaint.

On 12/9/2001 the 3rd Plaintiff died and his case was discontinued leaving only the 1st and 2nd Plaintiffs in the suit.

The hearing of witnesses commenced on 25.4.2002. The 1st Plaintiff gave evidence on her behalf and on behalf of her daughter. She said she was sitting in front behind the driver with her two children. After reaching Maungu on Nairobi/Mombasa Road at Taru, accident happened. She said vehicle was traveling fast. She does not recollect what happened to cause the accident but she later found herself at the hospital. Her personal belongings had got lost. Her children were injured and had been taken to Pandya Hospital. She described her injuries in the head and in the toe. She produced her receipts for medical treatments. Her treatment notes were lost when she was robbed. A total sum of Kshs.181,295/- was spent on hospital expenses for 2nd Plaintiff, she produced receipts.

Both Plaintiffs were sent to Dr. Muthuuri. She produced 2 reports from this doctor. She blamed the driver for causing accident by driving too fast. The Plaintiff confirmed that she did not know how the accident occurred. It was 7.00 p.m. PW.2 proved the Hospital bills incurred at Pandya Hospital amounting to kshs.162,115/- for Stella Sammy.

PW.3 Insp. Ali Ngoni produced Police Abstract issued to the Plaintiffs. Dr. Muthuuri gave medical evidence and produced a report which described her injuries. He also examined 2nd Plaintiff and made a medical report both which were produced as exhibits.

The defence called Dr. Rasik Patel who examined Plaintiff on 19/11/94 and produced reports as exhibits. In his submissions Mr. Wachira conceded liability and special damages amounting to Kshs.17,670/-. The balance of special damages supported by PW.2 was not pleaded, he submitted.

On quantum of General Damages he proposed Kshs.300,000/-, relying on HCCC No.1599/98 and for 2nd Plaintiff, Kshs.400,000/-.

Regarding the issue of pleading special damages and amendment of Plaintiff, the Plaintiff first amended his Plaintiff without objections. When the suit came first for hearing the amendment involved the additional of Kshs.98,885/- for medical expenses. This amount was included in the award of damages in the judgment which was later set aside. However, the record shows that after the judgment was set aside the Plaintiff was amended. 26/9/2000 the amendment was not included.

It is my view that the omission on the second time was by oversight and the Defendant was aware of this amendment when he came to court to set aside that judgment. Evidence to support this claim was given by PW.2 credibility of which evidence was not disputed.

I therefore find that the total sum should be allowed.

In my opinion therefore and the issue of liability on 100% basis not being disputed, it is my view that the medical evidence called by the defence does not change the situation much. The medical reports made earlier to indicate the details of injuries more clearly. The doctor was able to examine the injuries physically while examination made afterwards, the doctor tends to rely on other medical notes and what the patient tells him.

It is agreed that the 1st Plaintiff has still implants in situ and it is causing her pain and should be removed as soon as possible. This will involve another operation. After considering the authorities cited and my opinion earlier, the sum of Kshs.850,000/- including Kshs.200,000/- for future surgery is adequate compensation for the 1st Plaintiff.

In the case of the 2nd Plaintiff I have examined the medical report made by Dr. Muthuuri in September 2003. This doctor has treated this Plaintiff since she was admitted after the accident. He was very conversant with her injuries and treatment. Stella suffered fracture of right femur, crushed right foot which was partially amputated except for one toe, depressed skull fracture, multiple facial and scalp lacerations. She has facial scars, large surgical scar on right thigh. She has a defective foot, implants in her right leg which require removal and has suffered overall permanent incapacity assessed at 20%.

For these injuries I am of the view that the award should be substantial to compensate her for the deformities that will be with her for the best part of her youthful life. A sum of Kshs.200,000/- for future surgery to remove the implants will be adequate compensation.

Special damages are awarded as stated above in the sum of Kshs.116,455/- medical expenses.

Judgment is therefore entered for the 1st Plaintiff in the

sum of :	Kshs.850,000.00
Special Damages	Kshs.116,455.00
	Kshs.966,455.00
	=====
For 2nd Plaintiff:	Kshs.950,000.00

Both awards carry costs and interest at court rates.

Dated this 9th day of July, 2004.

JOYCE KHAMINWA

J U D G E

9/7/04

Khaminwa, J.

Jason – Court Clerk

Mr. Wachira – for Defendan

N/A – for Plaintiffs

Judgment read in his presents to-day 9/8/2004.

JOYCE KHAMIWNA, J.

Mr. Wachira

I apply for certified copies of proceedings and Judgment for purposes of lodging appeal. I also apply for informal stay for 30 days pending making of a formal application.

Court

- (1) The proceedings shall be supplied upon payment of typing charges.
- (2) Temporary stay is granted for 30 days pending filing of formal application.

JOYCE KHAMINWA, J.