



- 1) Running down cause
- 2) Minor aged 21/2 years old alighting with a parent from a vehicle
- 3) Motor vehicle/pedestrian accident to minor
- 4) Injuries, as per plaint
 - a) Close head injuries with brain damage
 - b) Convulsions and dysohagia
 - c) Right sided hemiparesis
 - d) Regression of milestones
 - e) Partial blindness
 - f) Generalised hypotonia (walks with support)Current

Improvement with slow retardation

- 5) Liability (agreed)
70% against the defendant 1 and 2 jointly and severally
30% against the plaintiff minor
- 6) Quantum
- A) General Damages

- a) Pain, suffering and loss of amenities

Ksh.500,000/-

- B) Special Damages (agreed)

- | | |
|---------------------|-------------|
| a) Medical report | Ksh 1,200/- |
| b) Police abstract | Ksh 100/- |
| c) Medical expenses | |
| Ksh.606,213.10 | |

Total

Ksh.1.107.513

Subject to apportionment

- 7) Case Law

- a) Omondi Nyerere Ambala v Nyakwengata Bus services & Another
Hccc 415/97, Ang'awa,J.
- b) Jane Wairimu Mungai v Joseph N. Njuguna
Hccc 152/98, Rawal ,J.
- c) Zacharia Nyabuti Onchiri v Tashrif Bus services Ltd.
Hccc No.226/98, Nambuye,J.

- 8) Advocates

A.W. Maina advocate for the plaintiff
A.N. Ngunjiri advocates for the defendant

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO.1174 OF 2001

F.K.G (Suing as next friend of

M.M) PLAINTIFF

VERSUS

ALICE NJOKI & ANOTHER DEFENDANTS

JUDGMENT

1) FACTS OF THE CASE

It was on the 10th day of December 1998 when Mrs. C.G alighted from off a vehicle together with her minor son, M.M, then aged 21/2 years old. This was along the busy Thika road at and near the Kahawa Sukari police post.

A motor vehicle owned by Alice Njoki (the 1st defendant herein) and driven by Jamlick Muriurki (the 2nd defendant herein) lost control and suddenly swept the minor child into the air. The minor child sustained injuries and was unconscious. A good Samaritan in a Dastun vehicle rushed Mrs. G and her son to the nearby Kenyatta University where first aid was administered. After waiting half an hour the minor child could not come round. The University kindly provided an ambulance which rushed the minor to the Aga Khan Hospital. First aid was administered and the child was unable to come round. The child was admitted to the Intensive Care Unit where he remained unconsciousness for two weeks.

F.K.G sued under order 31 r 1 CPR namely, by the next of friend the two defendants in tort for negligence and asked this court to award damages on behalf of the minor.

The two defendants entered appearance and filed defence jointly denying that infact an accident did occur.

On the day called out for on the 18.2.03 the parties conceded to liability which I will deal with later below. The parties wished for the minor to be examined again by a qualified doctor who is in the expert field of neurologist. This was with the view of a settlement in this matter being reached. The reasons why it has a year and 9 months for the suit to come again was the issue of representation as the plaintiffs advocate was elevated to be an acting High Court judge.

II) LIABILITY

The parties conceded to liability and entered into a consent judgment whereby the two defendants were liable for this accident at 70% liability and the plaintiff at 30%. The reasons disclosed to me of this apportionment is that the minor was in the care of his mother and caution on the part of the parent should have also been taken whilst on the highway.

The parties were unable to agree on quantum and the trial proceeded on formal proof.

III) QUANTUM

The minor was in court to give evidence. He said his names clearly as M.M aged 8 years old. His parents were called to court and he clearly identified them as his parents.

The court had an opportunity to observe the minor. The advocate for the defendant described him as a hyper child. The child was happy and would move all over the court room playing with his toy. (The court was in camera). He seems independent but his mother (PW3) lamented that he was mental to be in standard 2 but is only in pre unit nursery. The minor goes to the ordinary schools and not to any specialized schools.

The doctor who examined the minor was:-

Dr. Patrick Akuku Okoth

BSC,MB.,ChB M.Med (Sug)

Specialist neurosurgeon

(GL & EH, UK)

Lecturer Nairobi University

Date of report 27.04.04

He described the minor child as being aged 7 years at the time of examination and confirmed that he had a head injury at the time of the accident. The injuries sustained were:-

1) Close head injury with a deep at coma

The machine breathed for him (hypeventilated)

And he was on medication to control cerebral swelling

2) Dysphagis He was hard of hearing

3) Hemiparesis and cortical blindness Developed a squint and was unable to perceive objects well.

4) Psychomotor regression

The doctor observed that from the time of the accident there had been a great improvement. The minor had moderate conductive hearing loss. His squint left eye was operated on in January 2004. He no longer has convulsion although the possibility of it arising may still be there.

He was recommended to be taken to the normal schools with individualized education program session. These injuries though makes him to be behind school.

A CT scan showed a brain with a small haemorrhage in the region of basal cisterns, opacification in left lung field and clavicle right fracture had healed.

What award should the court give?. The advocate for the defendant relied on the same authorities of the plaintiff and prayed I award Ksh.500,000/- General Damages for pain and suffering. The authorities presented by the plaintiffs were all based on adults. There was none where a minor with similar injuries were being considered.

In the case law of:-

1) Omondi Nyerere Ambala

yakwengeta Bus services and Another

Ang'awa,J.

A male adult aged 29 years passenger sustained brain damage that effected his slurred speech so much he was not able to speak well.

An award of Ksh.500,000/0 was given noting that the doctor who prepared the medical report was not a neurosurgeon..

2) Jane Wairimu Mungai

V

Joseph N. Njuguna

Hccc 152/95 Rawal J.

A female adult who was a fare paying passenger involved in a road traffic accident sustained injuries on the head, leg, left arms and shoulder.

The injuries to the head was a closed injury with resultant hemiparesis on the right side. There was weakness on the left side of her body. An award of Ksh.600,000/- was made.

ii) Zacharia Nyabuti Onchiri

v

Tashrif Bus services Ltd.

Hccc No.226/98

R. Nambuyre,J.

A female African adult who was a fare paying passenger involved in a road traffic accident.

The injuries sustained was:-

Severe head injury with fractures of Right maxillary sinus and greater wing of the sphenoid on the right side He also had fractures to 7th clavical spine, left tibia and fibula loss of five teeth An award of Ksh.1.650.000 was made.

I find that the latter authority concerns injuries to the face as opposed to similar injuries as that of the minor. I will therefore disregard this authority which I am not bound by but in the other two authorities can in some way be used as persuasive. I find that when minors sustained injuries the rate of healing is much faster than adults. Indeed in observing the minor before me, one cannot tell that he had undergone an eye surgery. He seems to hear well and apart from the slow learning with other children, which would require specialized teaching. It seems as if this was never pleaded to as a special damage claim.

I hereby award a sum of ksh.500,000/- as fair in the circumstances.

I accordingly enter judgment for the plaintiff:-

In Summary:

- 1) Male minor aged 21/2 years old in 1998. Alighting with parent from a vehicle
- 2) Motor vehicle/pedestrian accident to minor
- 3) Injuries as per plaint
 - a) Close head injuries with brain damage
 - b) Convulsions and dysphasia
 - c) Right sided hemiparesis
 - d) Regression of milestones
 - e) Partial blindness
 - f) Generalised hypotonia, (walks with support)

Currently

- a) Improvement with slow retardation.
- 4) Liability (agreed)
 - i) 70% against the defendant 1 and 2 jointly and severally
 - ii) 30% against the plaintiffs minor

5) Quantum:

a) General Damages

I) Pain, suffering and loss of amenities Ksh.500,000/-

b) Special Damages (agreed)

i) Medical report Ksh 1,000/-

ii) Police abstract Ksh. 100/-

iii) Medical expenses Ksh .606,213.10

Total Ksh. 607,513.10

Total ksh.1.107.513.10

Less 30% Ksh. 332,253.93

70% Ksh. 775.259.17

I award the costs of this suit to the plaintiff. I award interest on Special Damages from, the date of filing suit. Interest on General Damages from the date of this judgment.

Dated this 30th day of September 2004 at Nairobi.

M.A. ANG'AWA

JUDGE

Muhanji Kasango advocates for the plaintiff

A.N. Ngunjiri & Co. Advocates for the defendant