



- 1) Running Down Cause
- 2) Motor vehicle collision between vehicles
- 3) Four plaintiffs (family)
 - a) Passenger female aged 20 years in 1997
 - b) Passenger female minor aged 15 years in 1997
 - c) Driver adult male aged 66 years in 1997
 - d) Passenger female aged 40 in 1997
- 4) Injuries sustained
 - a) Plaintiff No.1- Head wounds
 - b) Plaintiff No.2 – cuts and bruises
 - c) Plaintiff No.3 – cuts on brow
 - d) Plaintiff No.4 – a) fracture of the right superior and inferior public ramii
 - b) Fracture of the 2nd and 3rd,4th,7th and 8th rib.
- 5) Quantum:-
 - I: General Damages
 - i) Pain and suffering
 - a) Plaintiff No.1 - Ksh.50,000/-
 - b) Plaintiff No.2 - Ksh.50,000/-
 - c) Plaintiff No.3 - Ksh.50,000/-
 - d) Plaintiff No. 4 - Ksh.250,000/-
 - II: General Damages
 - i) Pain and suffering
 - a) Plaintiff No.1 Ksh.50,000/-
 - b) Plaintiff No.2 Ksh.50,000/-
 - c) Plaintiff No.3 Ksh.50,000/-
 - d) Plaintiff No.4 Ksh.250,000/-
 - II: Special Damages – proved
 - a) Plaintiff No.1 Ksh.4,020/-
 - b) Plaintiff No.2 Ksh. 120/-
 - c) Plaintiff No.3 Ksh.3,100/-
 - d) Plaintiff No.4 Ksh.78,030 (85,805/- not pleaded)
 - Subject to proof of stamp duty penalty
 - Not pleaded doctors charges
 - 6) Case law
 - a) Moses Karenga Karuga v James Gicheru & Another Hccc 1064/98,Ang'awa,J
 - b) Zacharia Kiratu karanja & Another v Sameul G. Njeru Hcc No.5890/93, Kasanga Mulwa,J.
 - c) Esther Wambui Nderitu v Fancis Githinji & Another Hccc2498/88, Ang'awa,J.
 - 7) Advocates:
M. Savani Advocate for the plaintiff
F.O. Mege advocate for the defendant

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.1018 OF 1996

NEELAM MANSUKHLAL SHAH & OTHERS PLAINTIFF

VERSUS

DUNCAN LINSOTT..... DEFENDANT

JUDGMENT

At the junction of General Mathenge road and the Peponi road, a motor vehicle collision occurred between motor vehicle registration KTG 357 owned by Ranniklal Shah and motor vehicle Reg. KYZ 092 owned and driven by Duncan Linscott. As a result of the said accident that occurred on the 16th January 1994, Mr. Ranniklal Shah together with his wife and two daughters sustained injuries. They were rushed to the hospital at M.P. Shah for treatment.

Mr. R. Shah sued D. Linscott the defendant herein in damages.

I LIABILITY

On the 17th November 2004 when this suit came up for hearing before me, the parties conceded liability between the drivers as 30% against the plaintiff and 70% against the defendant. The parties then agreed to proceed to formal proof on the quantum. The effect of the liability agreed upon is that issues No.1,2 and 3 are now determined and finalized. I now look at the issues of quantum

II) QUANTUM

Issues 4, 5 and 6

- 4) Did the plaintiff sustain injuries alleged in the plaint?
- 5) Have the plaintiffs incurred the special damaged claimed in the plaint, if so, are the plaintiffs entitled to recover the same from the defendant?
- 6) Are the plaintiff's entitled to general damages for pain and suffering?

From the evidence before this court Rannikial Shah aged 66 years a passenger of his motor vehicle and the 2nd plaintiff herein was accompanied with his wife Tataben Masukhal Shah aged 40 years and their two children. Neelan Mansukhal Shah aged 20 years the driver and then a student. Hina Shah then a minor aged 15 years.

They were all examined by their doctor Mr. S.C. Patel, FRCS FICS, EITS

whose report is as follows:

Plaintiff No 1.

Neelan Mansakhal Shah

The doctor found Neelan having sustained:

- i) Bruising of the left side of head

ii) Laceration of the left side of scalp

iii) Bruising of the right hip Ten years later he found her with a scar over her forehead and hair loss.

His opinion is that she healed very well:

“The plaint reflects that she sustained head wounds. This is not correct. The doctor found lacerations and bruising.

Plaintiff No.2 Ramkbai Shah

A business man aged 66 years at the time of the accident.He was seated on the front seat of the vehicle was not the driver as earlier implied.

The injuries sustained was:-

a) Bruising of the ahead

b) Laceration of right side of forehead

c) Fracture of 7th and 8th ribs right side of the chest

d) Undisplaced fracture superior pubic arms right side of pelvis

The doctor was of the opinion that “Head injury and fracture of the two ribs on the right side of the chest have healed very well without any problem.”

The plaint pleaded only cuts on the brows

The 3rd plaintiff Mrs.

Tara Mansuki Shah

i) Sustained injuries of fractures to pubic bones

ii) Cerebral concussion fracture of six ribs on the left side of chest

iii) Fracture of ilio and ischio public rami on rights and multiple bruising on forehead

iv) Right elbow knee right foot an left hand

The plaintiff has problem in squatting and pain to right pelvis. The injuries have nonetheless healed well.

The 4th plaintiff (now adult) Hinal N. Shah

Injuries sustained are said to be

i) Cerebral concussion

ii) Bruising to the back

iii) Abrasion of both feet

The doctor was of the opinion that the injuries had healed well.

What was pleaded in the plaint was cut and bruises

It is seen from the fore goings that indeed the four plaintiff sustained injuries. Mr. S.C. Patel the doctor herein gave a conclusive description of the status of the four. Generally all 4 healed well.

I did notice that the injuries pleaded in the plaint were in fact at variance with the doctors report.

Thus, for Neelam the head wounds were in fact cuts and bruises. There was no loss of concussion.

With Hinal there were cuts and bruises sustained while with Mr. Ramkal Shah there was indeed no broken bones or fractures. His injuries sustained seems to be a description of injuries sustained by his wife. There may have been an error herein.

The injuries of Tarabe Shah was of a more serious nature.

I was referred to case law:- 1) Moses Karengo Karuga v James Gicheru & Another

Hccc1064/98, Ang'awa,J.

A fare paying passenger involved in an accident. Where a right hip bone fracture was sustained. An award of Ksh.175,000/- would have been given. The suit was dismissed due to lack of a medical doctor's evidence

2) Zacharia Kiratu Karanja & Another v Samuel G. Njeru Hccc 5890/93

Kasanga Mulwa,J.

Who awarded Ksh.200,000/- to the first plaintiff for soft tissue injuries and Ksh.50,000/- to the next plaintiff also for the same injuries.

The defendant relied on the decision of:

3) Esther Wambui Nderitu v Francis Githinji & Another

Hccc No.2498/88, Ang'awa,J

Where a cut over the right leg and injury to lower first teeth. I awarded a sum of Ksh.20,000/-

The injuries in the said case were slight and minor.

In this present case I would conclude that plaintiff 1, 2 and 4 sustained soft tissue injuries. I would make award as follows:-

Plaitnfif No.1 Neelan M. Shah Ksh.50,000/-

Plaintiff No.2 Ramklal Shah Ksh.50,000/-

Plaitnfif No.4 Hinal Shah Ksh.50,000/-

As to Plaitnfif No.3

Tataban M. Shah.

I concede that her injuries were indeed serious. She has now adequately healed according to the doctor as such I award her as fair damage due to her Ksh.250,000/-. I now turn to the issue of Special Damages II: Special Damages

Special Damages must not only be pleaded but it must be particularized.

The plaintiffs have established the following special damages but this is subject to the stamp duty compliance under section 20 of the Stamp Duty Act. Section 19 makes the said documents put forward as inadmissible in evidence.

I also recognized that any other claim over from the sum pleaded cannot be made and or awarded by the court. A party is bound by their pleading. I hereby would note the following Special Damages have been established, namely

Plaintiff No.1 Ksh.4,020/-

Plaintiff No.2 Ksh 120/-

Plaintiff No.3 Ksh.3,100/-

Plaintiff No.4 Ksh.78,030/-

(The sum of Ksh.85,805 having not been pleaded by plaintiff No.4)

I accordingly enter judgment on the proved sum.

In Summary

- 1) Motor vehicle collision between two vehicles
- 2) Four plaintiff (family)
 - a) Passenger /driver female aged 20 years in 1997
 - b) Passenger female aged 15 years in 1997
 - c) Driver/passenger male aged 60 years in 1997
 - d) Passenger female aged 40 years in 1997
- 3) Injuries pleaded
 - a) Plaintiff No.1 - head wounds
 - b) Plaintiff No.2 cuts and bruises
 - c) Plaintiff No.4 cut on bows
 - d) Plaintiff No.3
 - i) Fracture at the right superior and inferior pubic ramii
 - ii) Fracture of the 2nd,3rd,4th,7th and 8th ribs.
- 4) Liability agreed 30% against plaintiff

5) Quantum:

I: General Damages

i) Pain and suffering

- a) Plaintiff No.1 Ksh. 50,000/-
- b) Plaintiff No.2 Ksh. 50,000/-
- c) Plaintiff No.3 Ksh.250,000/-
- d) Plaintiff No.4 Ksh. 50,000/

- II: Special damages – proved

- a) Plaintiff No. 1 Ksh.4020/-
- b) Plaintiff No.4 Ksh. 120/-
- c) Plaintiff No.2 Ksh. 3100/-
- d) Plaintiff No.3 Ksh.78,030/-

Special Damages is not to be awarded until there is compliance with section 20 of the Stamp Duty Act on penalties to be paid at the collector of stamp duty, Adhi House, Ministry of Lands.

I award the costs of this suit to the plaintiff. I award interest on General Damages from the date of this judgment. Further orders on Special damages would await finalization on stamp duty.

Dated this 24th day of November, 2004.

M.A. ANGA'WA

JUDGE

Rayani, Rach & Sevany advocates for the plaintiff

Muchui & Co. Advocates for the defendant