



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE NO.2348 OF 1995

PETER NJANGARA KARANJA PLAINTIFF

VERSUS

GEORGE WAINAINA NJENGA 1ST DEFENDANT

SIMON GICHINA KAMAU 2ND DEFENDANT

JUDGMENT

I have before me an running down action. Peter Njangara Karanja (the plaintiff herein) was walking along the retail market in the afternoon of the 7.1.93. It was 3.30 p.m. He had gone to the various market to buy vegetables for his business. He sells vegetables and fruits. As he was going home with his goods, he reached the parking ard of the retail market. He looked to either side of the road before attempting to cross the road. A vehicle suddenly knocked him on his leg. He fell and all his goods scattered. He was rushed to Kenyatta National Hospital where he has undergone treatment since.

It is thereafter that the sued the two dependants for the claim before me for negligence and he prayed for damages both special and General.

A LIABILITY

On the 2nd of December, 1996 the parties appeared before my brother Juma J and recorded a consent on liability. This was at the ratio of 75% against the defendant and 25% against the plaintiff being the contributory negligence.

From 1996 this suit has been pending for the determination of assessment of damages. Namely issues 3,4, and 5.

B QUANTUM:- General damages for Pain and Suffering

The plaintiff stated he sustained injuries to his right leg. The particulars of injuries pleaded was an open fracture on the right tibia. He was said to have had serious bone injury and bone sepsis, the non-union of the bone; feverish; dead tissues pain soreness swelling of foot and ankle.

The advocate for the plaintiff subjected the plaintiff to another medical examination. The date on when it was done is unknown. The report is dated 18.1.02 which was prepared by one DR G.K. Mwaura. He is not a medical consultant.. He works in Kikuyu.

As this is a fairly old case it is admissible to always have the lastest medical report of the plaintiffs to know what his status is.

According to the report tendered, the injuries sustained was a compound fracture of the right tibia. The injuries healed poorly resulting to grafting of the bones and to a malunion there was a shortening of the right leg. I would accept that the plaintiff sustained injuries to his right leg. These injuries was in fact as a result of the road traffic accident.

None of the advocate referred me to case law on this matter.

I would find that for an award of pain and suffering a sum of Ksh.100,000/- would suffice.

The plaintiffs advocate did not do any discoveries with the documents nor did he have his documents which was to be relied on in Special Damages inspected by the other side. I further note from my file that the receipts are described as "various copies" of payments.

Special Damages must be pleaded specifically and proved. This was not. I therefore dismiss the claim under Special Damages for:-

- a) Medical reported Ksh.1,500/-
- b) Police abstract Ksh.100/-
- c) Medical expense Ksh.37,865/25.

None of the above claim was spoken of by the plaintiff nor evidence produced. I accordingly enter judgment for the plaintiff on General damages only.

In Summary:-

- 1) Running down Action
- 2) Male adult aged 41 years in 1993
- 3) Injuries: Compound Fracture of the right tibia
- 4) Liability:- 75% against the defendant 25% against the plaintiff.

Quantum:

- a) General Damages
- b) Pain Suffering and loss of Amenities Ksh.100,000/ Less 25% contributory negligence Ksh. 25,000/-

Net total

Ksh. 75,000/-

I award the costs of this suit to the plaintiff. I award interest from the date of this judgment.

Dated this 31st day of January, 2002 at Nairobi.

M.A. ANG'AWA

JUDGE