



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 154 OF 2000

AWADH AHMED BASADIQ: PLAINTIFF

V E R S U S

ELIJAH MERU MANGALA..... DEFENDANT

JUDGMENT

In this case interlocutory judgment was entered against the defendant on 20.12.2000 by Deputy Registrar in default of appearance. Formal proof was set down for 5.2.02. Medical evidence was given by Dr. Frank Bowed who examined the plaintiff. He said he relied on medical notes (exhibit 1). He was requested to examine the plaintiff in the year 2001 and made a report on 26.2.2001 (exhibit 11). Accident was on 9.6.1997. P3 form was completed on 30.2.98. Medical reports show that the plaintiff suffered injuries; multiple contusions on head neck and chest and abdomen, fracture of femur, compound fracture, fracture of left tibia and fibula. He has developed osteoarthritis and implants are still insitu, the knee may have to be replaced. The doctor said that the plaintiff cannot engage in heavy duties and that the injuries are permanent. The plaintiff himself gave evidence and explained how the accident occurred. He was employed as a driver by Private Safaris Ltd. The vehicle he was driving was hit by the lorry KAE 182 K driven by John Maina Mukuha and registered in the name of Elijah Meru Mangala. The said lorry was approaching from the opposite direction and the driver was overtaking 5 small cars on his side. In traffic case no. 1496 of 1997 the said driver, John Maina Mukuha, was charged with the offence of careless driving contrary to Section 49 (1) of the Traffic Act Cap. 403. The particulars of which are that on 9.6.97 at about 3.00 p.m along Nairobi Mombasa Road at Mariakani being the driver of vehicle no. KAE 182K lorry drove the said vehicle on the said road without due care and attention to the other road users and caused an accident with motor vehicle KAE 758 E Toyota which was extensively damaged and 8 passengers seriously injured. The said John Maina Mukuha pleaded guilty and was convicted and sentenced to pay a fine of Shs.5,000/-. The proceedings were produced as evidence.

The defendant was served but failed to enter appearance. There is no defence to the plaintiffs case. I, therefore, find him guilty as pleaded by the plaintiff on 100% basis. On the issue of quantum the plaintiff counsel submitted that on the head of loss of earning the award should be calculated at Shs.6000/- for 19 years of working. The plaintiff is now aged 41 years but at the time of accident was aged 37. Counsel relied on Kemp and Kemp on General Principles and Heads of damages. In this case the plaintiff was a qualified driver. He can no longer drive due to the injuries suffered. The medical evidence shows he can only do light work and definitely not driving or sitting for long periods. The multiplier propose of 19 years is on the high side the opportunities of employment is much less in the country when everything is said and done no guarantee that his employment would have continued particularly in this day of massive retrenchment.

I therefore find a multiplier of 15 years to be more appropriate. The award would therefore be calculated thus: Monthly salary X 15 years = 600 X 12 X 15 X 1,080.00/-

On the head of general damages for claim suffering and loss amenities there is medical evidence that the plaintiff has developed complications due to the injuries he has developed oestroathritis on the knee and he will eventually have to replace the knee cap. He is suffering pain and implants have to be removed sometime. He has suffered permanent incapacity. Considering the authorities relied on by counsel, I have to say that injuries are never similar and each case has to be looked at separately an award of Shs. 400,000/- is appropriate plus Shs.100,000/- for future treatment. The special damages pleaded amounting to Shs.84,267/- was proved including :-

Police Abstract	shs. 100
Receipted copy of proceedings	shs. 200
Receipted copy of medical expenses	<u>81,167.00</u>

The total award is therefore:

Loss of earning capacity	Sh.1.080.000
General damages`	Sh. 400.000
Future Medical Expenses	Sh. 100.000
Special Damages	Sh. 84.267
Total	1.664.267

The plaintiff shall have interest and costs.

Dated this 7th day of June, 2002

J. KHAMINWA

COMMISSIONER OF ASSIZE

Read in the presence of Mr. Kibaara.

Supply certified copies of proceedings.

Order granted as prayed

J. KHAMINWA

COMMISSIONER OF ASSIZE