



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 343 OF 2000

PETER GICHURU MWANGI.....PLAINTIFF

VERSUS

JAMES KABATHI MWANGI..... DEFENDANT

JUDGMENT

The Plaintiff has brought this suit against the Defendant for special and general damages for injuries sustained following an accident that occurred on the 17th August, 1997.

The Plaintiff's claim is that on the said dates, he was lawfully travelling as a fare-paying passenger in motor vehicle registration number KAB 025L, along Nairobi – Murang'a road when motor vehicle registration number KXR 795 was so negligently driven by the defendant, his duly authorised driver, servant and/or agent as to cause it to crash into the said motor vehicle registration number KAB 025L as a result of which the plaintiff sustained severe bodily injuries.

The Plaintiff obtained interlocutory judgement on 4th August, 2000. He is thereby held liable for the accident. This court is now asked to assess damages.

The Plaintiff sustained the following injuries:

- (a) Head injury
- (b) Ophthalmic injury to the right eye
- (c) Severe face injuries
- (d) Right Zygomatic complex fractures
- (e) Orbital fractures
- (f) Nasoethmoidal complex fracture
- (g) Comminuted palatal fractures with evidence of bone loss
on the left side
- (h) Compound comminuted lefort II fracture
- (i) Complex dentoalveolar injuries
- (j) Compound mandibular fracture

(k) Complex extra oral soft tissue injuries

Two medical reports prepared by PW1 and Dr. Masinde dated 7th January, 1999 and 3rd February, 1999 were produced in evidence as exhibit 1 and 2 respectively. They both confirm these injuries.

Dr. Masinde an ophthalmologist opines in his report that the Plaintiff's right eye had lost complete vision and assessed the Plaintiff's visual disability at 30%. PW1, on his part, opined that the Plaintiff had residual deformities to the right orbit, had lost dentition and facial scars that may require revision. He assessed disability at 40%.

The Plaintiff's Counsel in his written submissions urged the court to award kshs.800,000/- as general damages. The following authorities were relied on.

(a) **Jane Elsa Oyoo vs. Lochas Brothers and Company Nairobi HCCC No. 5733 of 1991** – Githinji J. 19-11-1993 Where the injuries sustained were: Fracture of the skull, fracture of the maxillary bone resulting to concession and total blindness. An award of Ksh.1,000,000 as general damages for pain, suffering and loss of amenities was made.

(b) **Frankle Ray Vs. Paul M. Kahara & 3 others Mombasa HCCC No. 579 of 1989 – Wambilyangah J. 23-3-1991** For fracture of the mandible and severe facial disfigurement an award of Kshs.540,000 for general damages for pain and suffering was made.

I find that while the injuries sustained in Jane E. Oyoo vs. Lochas Brothers & Co. (supra) are more severe and extensive than those suffered by the Plaintiff herein, in the Franke Ray Vs. Paul M. Kahara case (supra) the injuries are slightly severe and extensive. Nevertheless I have considered them and taking into account all circumstances of this case, I assess general damages at kshs.600,000.

The Plaintiff pleaded general damages in the sum of kshs.1,352,100. However, at the hearing the plaintiff produced receipts for medical expenses which were marked as exhibits 3 for the sum of Kshs. 694,000/- only and a further receipt marked exhibit 4 for Kshs.100. Special damages must be specifically pleaded and proved. I will only award special damages that have been specifically proved of Kshs. 694,500/-

Accordingly, there will be judgement for the Plaintiff as follows:

(a) General damages of Kshs. 600,000

(b) Special damages of Kshs. 694,500 Kshs.1,294,500

The Plaintiff shall have the costs of the suit and interest.

Delivered and dated this 8th day of February, 2001

KASANGA MULWA

JUDGE