



1. Motor vehicle accident
2. Pedestrian
3. Injuries
4. Quantum
5. Special Damages

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 4150 OF 1991**

LOISE NYAMBEKI OYUGI PLAINTIFF

VERSUS

OMAR HAJI HASSAN DEFENDANT

J U D G M E N T

The plaintiff narrated how she was standing at a pavement with the intention of crossing the road when there came a vehicle that knocked her down.

She was injured on her hand (indicated her left elbow). She stated she was rushed to hospital.

She sued the defendants in tort and prayed that she be awarded damages. The advocate for the plaintiff stated that an award of Ksh. 150,000/- be awarded as per the case law of James

Gichuru Kamau

v.

Joseph Muambi HCCC

596/87 unreported.

The advocate for the defendant stated that no award be given as liability had not been proved. That the plaintiff if awarded be given Ksh. 20,000/-.

In his case law of Simon v. Jones M. Ithau HCCC 2462/87. The high court awarded Ksh. 400,000/- for bruises on cheeks, hip and bones. That the amount was less 40% as to liability.

I have before me agreed issues:-

Whether the accident occurred by the negligent driving of the defendant?

The defendant in his para 3 of the defence admits “that an accident occurred on the date and place specified in the plaint”.

The advocate for the defendant submitted at length that the plaintiff did not ever know the vehicle that knocked her nor saw the defendant?. That was not the issue as the defendant admits that the accident occurred as stated in the plaint.

what the major issue is whether the defendant was negligent or was it attributed to the plaintiff's negligence. The plaintiff stated she was on the pavement and was knocked whilst on the pavement. It is the defendant who alleged that she was walking on the road. No evidence as such was deduced by them. I hereby find that the defendant is liable for this accident at 100%.

As to the quantum before the court, the plaintiff stated she was injured on her hand and included her elbow. The plaint described the injuries as:-

- 1) Traumatic osteothesis of the elbow
- 2) Multiple limbs of right elbow.
- 3) stiffness and pain of left elbow
- 4) Trauma shock

The advocate for the plaintiff was unable to trace the doctor who examined to attend court.

Nonetheless both advocates admit that the plaintiff sustained soft tissue injuries. The advocate for the defendant stated in his submissions that those injuries were as minor that she was not admitted to hospital. In fact there was no records to show that she had been admitted.

I would agree that the injuries in this case were extremely minor. the plaintiff was in fact able to describe injuries on her right elbow. She did not mention the other elbows. there was nothing in the pleadings to show she lost consciousness.

I would award damages for soft tissue injuries for pain and suffering at Ksh. 20,000/- as resolved by the advocate for the defendant.

I would dismiss the claim of Ksh. 1,100/- of special damages as having not been proved. I award costs of this suit to the plaintiff. I award interest from the date of this judgment to the plaintiff.

Dated this 7th day of February, 2001 at Nairobi.

M. A. ANG'AWA

JUDGE