

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1469 OF 2000

JOSEPH KAMEE GATONGA.....PLAINTIFF
Versus
MBO-I-KAMITI FARMERS LTD.....DEFENDANT

JUDGMENT

Joseph Kamau Gatonga (hereinafter called 'the plaintiff'), claims both special and general damages against Mbo-i-Kamiti Farmers Ltd. (hereinafter called 'the defendants'). The defendants failed to enter appearance, and on 16th November 1998, he obtained an interlocutory judgment, after which the matter came up before me for formal proof.

The facts of the case are briefly that, on 25th June 1995 the plaintiff was seriously injured by a tractor registration number KGR 115, which was at the material time owned by the defendant, and driven by their employee. The plaintiff was also an employee of the defendant. He claims that the driver drove the said tractor recklessly, negligently and carelessly. He therefore claims to have suffered loss and damage and has for that reason filed this suit.

It was the plaintiff's testimony that on the material day, and whilst in the course of his employment, he required to collect his masonry tools from his house. That he boarded the said for the journey from his place of work to his house. He contends that he was thus lawfully traveling on said tractor. He stated that upon embarking to open the gates of his compound the tractor moved and knocked him down at which point he lost consciousness. He blames the driver for the accident.

Having taken his evidence into consideration, I cannot attribute any negligence to him. I find that the defendant's driver in his recklessness and negligence was wholly to blame for the accident. The defendant is therefore vicariously liable for the negligent and recklessness act of their driver.

The plaintiff was aged 43 years at the time of the accident. Although he testified that he is unable to continue with his work, he would appear to have abandoned his claim for loss of earnings prior hereto and in the circumstances I am not obliged to determine that particular issue.

That being the case then, I shall limit my findings to his claim for both the special other general damage.

After the accident he was admitted in various hospitals over a period of five and a half months during which time, he underwent treatment of his bone, the pelvis and urethra. The latter was also operated on but has not fully recovered. He gave further evidence that he cannot pass urine through the normal channel but through a channel near his anus, and that his urine flows freely. He is unable to sit up properly or for long hours due to dislocation of his pelvic bone, and that he is unable to walk comfortably without crutches. He requires to undergo further surgery at an estimated cost of Shs.150,000.00.

His evidence was corroborated by Mr. Wokabi, a consultant surgeon whom he had consulted and whose medical report indicated that the plaintiff had sustained the above-mentioned injuries, and that the fractured pelvis complicated urethral injury for which the plaintiff had undergone multiple procedures to correct the narrowing of the urethra. He had also sustained the dislocation of the left illiac joint. Mr. Wokabi's report also indicates that the plaintiff runs the risk of obstructions of urinary flow and that further dilation of the urethra would be a common recurrent procedure. He estimates that the procedure and future treatments would cost a sum of Shs.150,000.00.

I have taken into account the pleadings before me, the plaintiff's evidence and Mr. Wokabi's report and I am satisfied that the plaintiff has proved his case on a balance of probability.

Under the claim for special damages, which were not only specially pleaded but have been specifically proven, I award a sum of Shs.2239.00 as follows:

For the medical report and the medical bills shs 2139.00. Though he did not produce a receipt for the Police Abstract form I would be safe in assuming that he paid the sum of shs. 100.00 which I do also award, the total sum under special damages, thus being shs.2239.00.

I noted that while in court, the plaintiff could hardly sit up properly. It was his testimony that he continues to suffer from the free flow of urine. Sadly, I the smell of urine was very detectable. He appeared very uncomfortable and looked rather embarrassed about it. In my humble opinion, for him it does create a social stigma, which is likely to haunt for a long time. Further, he cannot walk for long without crutches, this would affect his mobility, which would hamper his employment or gainful engagement as a mason who for all practical purposes is required to be on his feet for long periods of time, that being the only way he can work.

The plaintiffs counsel relied on the case of Pius Kegancha v. Anyieni and another, where the plaintiff had sustained serious injuries in a motor accident, and was awarded the sum of shs. 600,000.00. He had sustained a fractured right femur, three broken ribs, blunt injury to the abdomen with tears to the mesentry, the liver and lacerations on the right wrist joint. It was his doctors report that after operations and treatment especially to his abdominal area would become a cause of, on and off abdominal pains and discomfort and may even cause intestinal obstruction. That plaintiff would also continue to suffer disability which would limit him in all strenuous and demanding activities of the leg.

I award him shs.550,000.00 for pain and suffering. Interest shall accrue on the above sums at court rates from the date of filing suit till payment in full.

Secondly, it having been confirmed that he would require future medical treatment, I do award him shs 150,000.00 being estimated cost for such treatment. I also award him the costs of this suit. Interest shall accrue thereon at court rates until payment in full.

Dated and delivered this 22nd day of May 2001.

JEANNE W. GACHECHE

COMMISSIONER OF ASSIZE

Delivered in the presence of:
Mr. Kagia for the plaintiff
No appearance for the defendant