



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 53 OF 1998

SIMON GITHAIGA MUNYOKI PLAINTIFF

VERSUS

ANTON NYUNGUTO WACHIRA DEFENDANT

J U D G M E N T

This claim arises out of a road accident, which occurred on the 13.7.97 along Uhuru Highway involving motor vehicle registration No. KAC 240Q and a hand cart. The plaintiff was lawfully and prudently pushing his handcart along Uhuru Highway when he was hit from behind by the defendant's motor vehicle

As a result of the said accident the plaintiff sustained the following injuries:-

- I. Head injury (cerebral concussion)
- II. Soft tissue injury to the Chest
- III. Small cut wounds over the left forearm and both hands
- IV. Compound fracture of the right lower leg (tibia and fibula bones)

He filed this suit against the defendant for damages. The defendant was served entered appearance but failed to file defence. The plaintiff obtained interlocutory judgement and the suit proceeded by way of formal proof.

In his evidence the plaintiff told the court that on the material date he was pushing a trolley loaded with soda which he was going to sell at Uhuru Park. While he was along Uhuru Highway he was hit from behind by the defendant's motor vehicle as a result of which he sustained injuries as stated above and which were confirmed by Dr. Bhanji PW3. He was rushed to Kenyatta National Hospital where he was admitted for treatment for 3 days.

The accident was reported to the police who later issued him with police abstract which was produced as Exh.1. He incurred Kshs.28,610/= special damages which he proved by producing payment receipts. The plaintiff further said that he needed Kshs.400,000/= to insert a metal plate to correct deformity. The accident occurred in 1997 and the doctor PW2 examined him in 1999 but he does not explain how a metal plate would remedy the situation. The plaintiff further told the court that he was making about Kshs.1,000/= a day from his hawking business but he did not produce any documentary evidence to support the same.

PW2 MWANIA was with the plaintiff at the material time. He was also pushing his trolley with soda. He saw that vehicle of the defendant and he moved away to the pavement to avoid it but the plaintiff did not move away and he was hit. PW4 Kyalo said he used to supply the plaintiff with soda about 6 cases when it is cold and 12 cases when it is not but he did not know how he sold them.

The plaintiff had already obtained interlocutory judgement and the suit proceeded by way of formal proof. The plaintiff has proved his case on liability. I now proceed to assess damages. Counsel for the plaintiff suggested a figure of Kshs.700,000/= general damages for pain suffering and loss of amenities and cited various authorities.

I have considered the injuries sustained by the plaintiff and compared them with the injuries suffered by the plaintiff's in the cited authorities and the damages awarded and in my opinion a figure of **Kshs.450,000/=** would be adequate compensation for the plaintiff. On further medical care Counsel suggested a figure of **Kshs.450,000/=**. The accident occurred on 13.7.97 and Dr. Bhanji examined the plaintiff on 19.4.99. This is about 1 year and 8 months later. He is not the one who treated him. PW3 only states that during the plaintiff's visits to Kenyatta National Hospital X-Rays were done and the plaster was removed and it was found that the fractures had not yet united.

Internal fixation with the metal plate and screws was advised but this was not done out in the plaintiff's evidence nor was the doctor who attended him and who gave the said advise called to testify. The claim under this head has not been proved and therefore the same is dismissed. For loss and/or diminished earning capacity counsel suggested a figure of Kshs.150,000/=. The plaintiff stated that he used to make about Kshs.1,000/= commission per day but he did not produce any documentary evidence of prove the same. That notwithstanding at least be used to make some income in form of commission after he had sold some sodas. I award him Kshs.50,000/= under this heading.

Special damages were proved at Kshs.28,610/=. The figures may be brought forward as follows:-

(i) General damages for pain suffering and

Loss of amenities - Kshs.450,000/=

(ii) Loss and/or diminished earning capacity - Kshs. 50,000/=

(iii) Special damages - Kshs. 28,610/= -----

TOTAL Kshs.528,610/=

Accordingly there shall be judgement for the plaintiff and against the defendant for **Kshs.528,610/=** with costs and interest.

Dated and delivered at Nairobi this 23rd day of February 2000.

J.L.A OSIEMO
JUDGE