



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 1625 OF 98

MBARI NGANGA VERONICA PLAINTIFF

VERSUS

STANLEY WAMBUGU MACHARIA & ANO..... DEFENDANT

JUDGEMENT

Veronica Mbari recalls well the 27.11.97. She was a passenger in a Nissan vehicle. The said vehicle stopped for petrol at Nakuru. Veronica was travelling to go on the way to Nairobi.

She recalls the vehicle over speeding. The vehicle had an accident. Veronica was admitted to Kenyatta National Hospital. She was unable to recall anything until four days later.

She sustained injuries to herself. Her complaints are injuries to the back, left, arm. She now claims she has convulsions attributed to the said accident.

During the proceedings her advocate amended the plaint to include a further cause of injury namely epilepsy. He also included further medical costs amounting to Ksh.35,000/-.

The plaintiff had as a witness Dr. P.M. Kariuki. He gave evidence to describe the injuries sustained by the plaintiff. He was not a consultant nor was he a neurologist specialist. He relied on notes from Kenyatta hospital of consultants there. He then gave a report stating that a part from the soft tissue injuries, she the plaintiff has developed epilepsy. This was a result of the head injuries.

The plaintiff had spoken of attending the association for epilepsy. I do not seem to see any report from that said as such or doctor from there to confirm the allegation of epilepsy

. This issue of epilepsy was taken up by the advocate for the defendant. He stated if the report on the medical side would indicate the plaintiff had epilepsy as far back as 8.4.98 why was the plaint not amended then? I too would ask the same question?

I would find that the plaintiff was involved in an accident. I believe this aspect was not disputed. I would enter liability against the defendant and in favour of the plaintiff at 100%.

I would also state that the Main aspect on quantum is on General Damages for pain, suffering and loss of amenities. The advocate for the plaintiff requested I award Ksh.850,000/- the advocate for the defendant prayed that an award of Ksh.120,000/- be awarded. He relied on a case law for soft tissue injuries with chance of epileptic.

John Cheborgei Chuma vs Joseph Onserio Hcc. 195/94 I would hold that the plaintiff did suffer soft tissue injuries on her left shoulder pelvis and lower back. she also sustained a cut on her forehead.

I am nonetheless not convinced that the plaintiff has epilepsy as a result of the injury to her head. I find that the other aspect that was brought out in the trial was that the plaintiff has other ailments prior to this. One of these included high blood pressure.

It is not quite certain whether the epilepsy was there before or after the accident. This is difficult to know as the doctor in question is not a consultant nor a neurologist.

I have stated in other judgement that accident victims should be taken to doctor who are close as possible specialize in the injuries sustained. It would assist the court tremendously. The doctors should also be consultants.

Further the plaintiff's witness PW2 produced no X-ray of the head or stated and that he saw one or not. I hold that this aspect of injury cannot stand. I will therefore find that the case of:- G. Ngambi & another Vs Kamau Ndegwa & another Hccc No.236/93 is not applicable. I find that the injuries sustained are the blunt soft tissue injuries.

As to the medication said to amount to Ksh.35,000/- the Special Damages must be pleaded and particularised. This was not and all the bills for medicine was put in a lumpsum.

There is no proof of the receipts that the same was for the prescribed ailment or other ailment.

As to the bills from Kenyatta National Hospital these are invoices. There must be a receipt NOT INVOICE to confirm payment. As such I reject the claim of Ksh.35,000/- as not being proof of medication for injuries sustained which are further not told what type of drugs was required with the epileptic association. As to the other aspect of Special Damages namely the fee of Ksh.1,200/- as medical legal fee, I would accept this bill as having been proved and paid.

I have perused the authority of Kibet Chelagat a minor suing thro' his next friend Samuel Chelagat v Plan International Institute whereby the possibility of post traumatic epilepsy is said to may occur.

The advocate for the plaintiff stated that in case it has already occurred.

As stated earlier that I am not convinced from the evidence before me of this medical ailment by the plaintiff has been proved.

I nonetheless enter judgement for the plaintiff.

In summary:

1. Facts

Female adult aged 60 years

passenger involved in a car accident. 2. Liability.

Judgement be and is hereby entered on liability at 100% against the defendant jointly and severally. 3. Quantum

a) General Damages

Judgement be and is hereby entered for damages on pain suffering at Ksh.120,000/-.

b) Special Damages - medical report- Ksh. 1,200/- Total Ksh.121,200/-

I award costs to the plaintiff. I award interest on Special

Damages from the date of filing suit. Interest on General damages from the date of this judgement.

Dated this 12th day of April, 2000 at Nairobi.

M.A. ANG'AWA

JUDGE