



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1205 of 1998

CHARLES ORODI PLAINTIFF

VERSUS

GIDEON S. MANGU DEFENDANT

JUDGMENT

On the 3rd of September, 1996, Charles Orodi, the plaintiff in this case was travelling as a passenger in motor vehicle reg. KUU 700 a Mazda that was driven along the Thika road and heading towards Nairobi. Gideon S. Mangu (referred in the plaint as the plaintiff. I believe that this was an error and ought to read the defendant) is said to be the owner of the motor vehicle registration KYX 553, a Peugeot.

According to the amended plaint, the defendant and or his agent negligently drove the said motor vehicle by attempting to do a U-turn and in the process he was in the wrong lane thus causing a collision with the vehicle the plaintiff was travelling in.

As a result of the accident the plaintiff sustained injuries to forehead when his head went through the windscreen. He then sued Gideon S. Mangu on the 3.6.98 and prayed that this court awards him General and Special Damages together with the costs of this suit.

The trial was set down for hearing on the 3.5.2000 (after the pre-trial issues were dealt with by the registrar). Before the commencement of the hearing the parties entered into a consent whereby liability and Special damages was agreed.

The liability was agreed at a ratio of 85% against the defendant on negligence and against the plaintiff at 15% being contributory negligence.

Special Damages was agreed at Ksh.205,758/- subject to 15% contributory . There was still pending on this head of damages a sum of Ksh.50,040/- . Yet to be heard by this court.

There were six agreed issues as a result of the partial judgement entered by the parties, the first two issues have now been settled. (Issue No (a) on the aspect of negligence and issue No.(b)). (This should have read issue (b) but I believe it may have been an error by the plaintiff to refer it as issue (a) also dealing with negligence).

The issue pending for determination:-

“(c) Did the plaintiff suffer the injuries?”

(d) Did the plaintiff suffer loss and damages as claimed?

(c) 1st the plaintiff entitled to general damages and if so what is the quantum thereof?

(f) who should be condemned to pay the cost of this suit?

During the trial the plaintiff gave evidence as to how he sustained injuries to his face. This was caused as a result of the many glasses that had cut his face.

He said small pieces of glasses were being removed from his face.

One of his ribs was very painful. He was unable to sleep until given an injection.

His neck was mobilised with a hard collar.

He was examined by Mr. Baraza. He was admitted at the Nairobi hospital where he incurred a bill of Ksh.50,040/- and another bill for the report that the doctor charged in his invoice for his fee at Ksh.5,000/-.

Mr. Baraza gave evidence in court of the history of the

accident. He confirmed to court that Charles had

- 1) No brain injury
- 2) No neurological deficit
- 3) No broken bones no broken skull

He stated that Charles did have positive injuries to his face, forehead and skin cuts. There was a neck injury, a chest injury with pain in the lower chest.

The report he produced described the chest as:- “The trachea was central with good air entry bilateral”

Further Charles sustained abrasion to the knee, to the frontal scalp and face as well as soft tissue injuries.

An x-ray was taken of the skull, cervical spine, chest lumbo, sacral spine and nothing “unre markable” was found. Charles was given a hard collar to wear. The abrasions were cleared with Butadine and dressed. Pieces of glasses were later extracted from his forehead.

When cross examined by the defence that the injuries sustained by Charles were soft tissue injuries, Mr. Baraza stated that the injuries were slightly serious than soft tissue injuries.

I find that Charles sustained injuries as a result of the said accident. The extent of the said injuries I would hold is soft tissue injuries together with abrasion. There was no head injuries nor broken bones. He wore a hard cervical collar and pieces of glasses embedded in his forehead were removed.

As to whether the plaintiff suffered loss as a result of this injuries Mr. Adere for the plaintiff relied on the case law of:- John Cheborgei Chuma Vs. Joseph Onserio & Others Hccc 195/94

Injuries sustained by the plaintiff in the above case was

- 1) head injury with a loss of consciousness for 10 minutes
- 2) blunt injury to the neck and chest

- 3) Cut on forehead
- 4) Dislocation of the thumb
- 5) Multiple bruises on both legs
- 6) Headaches and lack of concentration
- 7) 5% chances of developing post traumatic epilepsy

An award of Ksh.120,000/- in general damages was given. The second case law is of :-

Michael Mutua Ndolo vs James Munene Thuo

Hcc No. 1859/89

The plaintiff sustained

- 1) Head injury
- 2) Fracture of the floor of the right eye
- 3) Laceration of the right arm

An award of Ksh.110,000/- was made.

The advocate for the defendant submitted no case law in support of his submission. He instead prayed that an award of Ksh.50,000/- be made as the injuries were soft tissue in nature.

I hold that the injuries sustained by the plaintiff are not severe as those in the two case law. I find that a fair and reasonable award for damages be Ksh.80,000/-.

As to the further amount of Special Damages to be proved of Ksh.50,040/- being medical expense claim. I find that the plaintiff was unable to prove it. The receipts of proof of payment were never produced. The maker of the documents attempted to be put in but rejected under Order 13 CPR was also not proved.
Special

As to the doctors legal/medical report fee of Ksh.5,000/- this amount was never pleaded under the heading of Special Damages. Even if it was pleaded, the doctor produced as an exhibit an invoice and claimed he was paid. What should have been produced was a receipt as proof of payment of the invoice. An invoice is only a demand note for payment. Proof of payment must be made.

I therefore hold that this head of damages amount to Ksh.50,040/- was never proved and dismiss it.

I also hold that the amount of Ksh.5,000/- claimed orally in court by the plaintiff cannot be awarded as it was never pleaded in the Plaintiff. The same is hereby dismissed.

In Conclusion

- 1) This is a case of an adult male. Passenger involved in a motor vehicle accident between two vehicles.
- 2) Liability

Agreed by consent between the parties at 85% ratio against the defendant and 15% ratio against the plaintiff.

3) Injuries:-

- frontal scalp and had abrasion
- cuts caused by glass from windscreen on forehead
- right knee abrasion
- neck on hard collar

4. Quantum

a) General Damages

a) Pain and suffering	Ksh.80,000/-
b) Special Damages agreed	<u>Ksh.205,758/-</u>
Gross total	Ksh.285,758/-
Less 15% contribution	Ksh. 42,758/-
Net Total	<u>Ksh.243,000/-</u>

I award costs of this suit to the plaintiff.

I award interest on Special damages to the plaintiff from the date of filing suit.

I award interest on General Damages from the date of this judgement.

Dated this 9th day of May, 2000 at Nairobi

M.A. ANG'AWA

JUDGE