



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE NO. 495 OF 1998

SAMUEL WANGURU NJOROGE.....PLAINTIFF

-VERSUS

KENYA BUS SERVICES LTD.....DEFENDANT

JUDGMENT

The Plaintiff has sued the Defendant for damages following an accident in which the plaintiff alleges that he was knocked by the defendants bus when he alighted where upon the bus ran over his leg which was crushed. In his evidence he said that when he was alighting from the bus, the driver moved away and he was hit by the door knocking him down. The defendant did not call evidence. It is therefore the plaintiff's case that the driver of the bus was negligent in moving the bus in haste which did not give the plaintiff adequate time to clear away from the purview of the door which knocked him down. In the absence of any evidence either from the driver or any other witness, I am bound to accept the plaintiff's evidence on how the accident happened. His explanation that he had alighted and that he was then hit by the door makes sense as against the allegation that he attempted to alight from a moving bus.

Having accepted the plaintiff's evidence I would come to the conclusion that the driver of the bus was negligent in that he moved the bus hastily without ensuring that the passenger had cleared from the area where he could be knocked by the door. For the defendant it was argued that since the driver was not a party to the suit he cannot be held negligent and therefore no liability attached to the defendant, the employer of the driver. As indicated earlier the defence did not call the driver to contradict the allegations, which are contained in the plaint. There are specific allegations of negligence attributed to the driver. In the agreed issue signed by both counsels and dated the 24th August 1998 do not include an issue as to whether the driver was driving the vehicle in question. The first of the agreed issues is whether the plaintiff sustained injuries consequent to the defendants negligence. The answer to this issue would be in the affirmative because the driver and employee of the defendant were negligent. The defendant had the opportunity in its defence and by calling the driver as a witness to challenge the plaintiff's allegations.

The defendant chose to rely on technicalities and failed to take steps to counter act the evidence put before the court. I consider that while the driver was negligent the plaintiff contributed towards the accident by not ensuring that he cleared from where the bus could have hit him with the door as fast as possible. To that extent I hold that the driver was 70% to blame and the Plaintiff 30%. Consequently, the Defendant is vacariously liable. Quantum

(a) General Damages

According to the doctors reports produced, the plaintiffs right leg had to be amputated. The two medical

reports compliment each other as far as the injuries are concerned. There is no contention on the injuries. He suffered greivous harm, pain, discomfort and permanent disability assessed at 35%. In assessing damages I have considered the cases cited and I have come to the conclusion that sum of shs.1,200,000 shall be adequate compensation.

(b) Future Earnings

According to his evidence the plaintiff said that he worked as a hawker earning about Shs.500/- per day. He did not work after the accident, as it was not possible to walk the distances he used to walk. It has to be acknowledged that it is not easy neither is it the practice that hawkers keep records of their business. I accept from the evidence of the plaintiff and that of his witness that the plaintiff was a hawker earning some income. It may not be exactly the shs.500/- but he was earning an income. On balance of probability I shall take it that he was earning Shs.200/- per day. This claim was objected to by the counsel for the defendant through a preliminary objection that the claim was time barred and therefore this claim should not be considered. What can be discerned from the evidence is that the plaintiff did apply for leave to amend the plaint as it was out of time. The leave was granted and the plaintiff did duly amend the plaint. I consider that the leave granted by the court was adequate to cover the claim in question.

The defendant did not appeal against the grant of this leave and I find that the attempt to have the claim thrown out is another attempt to rely on a technicality to resist the claim. I reject the objection, as I did not find evidence that the defendant was prejudiced by the amendment. In computing damages for loss of future earnings, I shall take into account that the plaintiff is not likely to do the job he was doing in future. He was 26 years old at the time of the accident. He could have therefore worked for another 24 years. I shall take his earning to be Shs.200 per day i.e. Shs.6,000/- per month. In 24 years he would earn $6,000 \times 12 \times 24 \times \frac{1}{2} = \text{Kshs. } 864,000/-$ There shall be judgement for plaintiff as follows:

(1) General Damages Kshs.1,200,000/-

(2) Loss of future earnings Kshs. 864,000/-

(3) Special damages kshs. 6,355/-

Kshs.2,070,355/-

Less 30% Kshs. 621,106.50

Total Kshs.1,449,248.50

The plaintiff shall be paid the costs of the suit and interest.

Delivered and dated this 27th day of July, 2000.

KASANGA MULWA

JUDGE