



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 950 OF 98

HABIBA ABDI MOHAMED.....PLAINTIFF

-VERSUS

PETER MALEVE.....DEFENDANT

JUDGMENT

The plaintiff who was a passenger in the defendant's vehicle sustained injuries, which necessitated her undergoing treatment.

There is no dispute about the accident and that the plaintiff was a passenger in the said vehicle. It is also agreed that she received injuries.

From her evidence, the plaintiff was admitted at Medina Nursing Home on 16th February 1997 and discharged on 15th March 1997.

She paid the sum of Shs.136,570, which the defendants do not dispute. The plaintiff explained that she comes from Mandera and that on the occasions she comes to Nairobi she stays in lodgings.

After she was discharged from the nursing home which, was mainly to cut expenses, she had to stay in her nearby place to continue the treatment. She stayed at Al-Haramain Lodge to be able to be reporting to the doctor at Medina. She incurred the expenses of Shs.26,400/- as in Exhibit 5.

The defendant's issue is taken with the claim of Shs.25,000/- regarding the payment to Alkarama Medical Clinic & Laboratory Services. The receipt issued is dated 28th March, 1997 and it is indicated it is for surgery fees and follow up since the invoice from Madina had contained charges for Professional Services and Consultancy fees. It was argued that the amount of Shs.25,000 could not be for professional services and consultancy. With regard to Shs.26,400 it was said that since there is no supporting evidence and that if she was in the lodge, it was not for treatment as claimed by the plaintiff.

At the beginning of the hearing both counsels agreed to have the doctors reports by consent and dispensed with the doctors appearance. The expenses, which are disputed, relate to the period after the plaintiff left the nursing home. I accept her evidence that she stayed in a lodging to continue with treatment as an outpatient after discharge from the nursing home. There was no evidence that when she left the nursing home she had completely recovered to the extent that she needed no further treatment. She explained that the move was to cut down expenses. This makes sense and I accept this evidence. The doubts raised by

the defendant suggesting that the doctors receipt for Shs.25,000/- is not genuine and that the stay in the lodging was for other purposes other than for treatment is purely speculative and is not backed by any evidence.

If the defendant wanted to challenge that the plaintiff continued with treatment after the nursing home he could have called the doctors to give evidence. There is absolutely no grounds for doubting the genuiness of the receipt for Shs.25,000/- from Alkarama Medical Clinic and such insinuations cannot be justified by small discrepancies in the plaintiffs evidence as to whether the payments were for x-rays or treatment. It was not clear whether the defendant is saying that the plaintiff made up the receipt. Examination of the documents in Exhibit 2 from the nursing home shows that the surgeon fees are not included and these are the charges in the receipt dated 28th March, 1997. These medical reports show that treatment continued after she let the nursing home and this supports the evidence that she stayed in the lodge. I therefore find the two expenses of Shs.25,000/- and Shs.26,400/- are relevant to the claim and are admitted.

General Damages

The plaintiff suffered injuries on her left arm and her head and face.

I have considered the case, which has been cited in support of the amount of Shs.450,000/- I have also considered the medical reports.

For General damages I shall award Shs.400,000/-

Judgment

There will be judgment for the plaintiff as follows:

(1) General damages Shs.400,000/-

(2) Special damages Shs.200,270/-

Total Shs. 600,270/-

The plaintiff shall have the costs of the suit and interest.

Delivered and dated at Nairobi this 21st day of July, 2000.

KASANGA MULWA

JUDGE