



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 829 OF 2003

GODFREY MWAURA KAGO.....PLAINTIFF

-VERSUS-

KENYA RAILWAYS CORPORATION.....DEFENDANT

JUDGMENT

1. Godfrey Mwaura Kago, the plaintiff herein, lodged a suit against the defendant by way of the plaint dated 11th August, 2003 in which he sought for the following reliefs:

- a) Special damages in the sum of Kshs.145,041/.*
- b) General damages.*
- c) Costs of the suit.*
- d) Interest on a), b) and c) above.*
- e) Any further or other relief that this Honourable Court may deem fit to grant.*

2. The defendant was sued in its capacity as the registered owner of motor vehicle registration numbers KAG 902F and KUV 506 (“the subject motor vehicles”) at all material times, which were involved in an accident with a separate motor vehicle registration number KAP 258D (“the third motor vehicle”) on the material date.

3. The plaintiff pleaded in his plaint that sometime on or about the 13th day of August, 2002 while he was lawfully travelling as a fare paying passenger aboard the third motor vehicle along Waiyaki Way at Westlands area, the defendant’s respective authorized drivers/employees negligently drove and/or controlled the subject motor vehicles, caused them to lose control and hit the third motor vehicle, resulting in serious injuries to the plaintiff. The particulars of negligence and the injuries sustained were set out under paragraphs 4 of the plaint.

4. Upon service of summons, the defendant entered appearance and filed its statement of defence on 21st May, 2004 to deny the plaintiff’s claim.

5. The defendant denied ownership of the subject motor vehicles or that the accident occurred in the manner pleaded in the plaint, pleading in the alternative that if the accident took place, then the same was the result of substantial or contributory negligence on the part of motor vehicle registration number KAP 258D.

6. When the suit came up for hearing, the advocate for the plaintiff brought to the attention of this court that the issue of liability had already been determined in the test suit (HIGH COURT CIVIL CASE NO. 828 OF 2003) whereby a finding of 100% liability was entered against the defendant.

7. The hearing therefore proceeded on quantum, with the plaintiff giving evidence as the sole witness. In his testimony, the plaintiff adopted his signed witness statement and produced his list and bundle of documents dated 21st February, 2011 as P. Exhibits 1-24.

8. In cross-examination, the plaintiff testified that immediately following the accident, he lost consciousness and was admitted at Aga Khan Hospital. The plaintiff also testified that he visited Kijabe Mission Hospital for check-ups subsequently and added that he has experienced back pains for some time following the accident. This marked the close of the plaintiff’s case.

9. The defendant closed its case without calling any witnesses.

10. At the close of the hearing, the parties filed and exchanged written submissions. I have considered the evidence tendered in court and the contending submissions together with the authorities relied upon. In view of the finding on liability entered in the test suit as mentioned hereinabove, this court is left to determine the pending issue of quantum to be addressed under the two (2) heads to follow.

a) General damages for pain and suffering and loss of amenities

11. Under this head, the plaintiff proposed the sum of

Kshs.2,000,000/ and relied on the following authorities *inter alia*:

a) **Edward Mzamili Katana v CMC Motors Group Ltd & Another [2006] eKLR** where the court awarded a sum of Kshs.2,000,000/ to a plaintiff who had sustained head injury leading to concussion, cut wound and bruises of the scalp, fracture of the left scapula, compound fracture dislocation of the left elbow, chest injury with multiple fractures of left 5th, 6th and 7th ribs and fracture of the left femur upper 1/3 shaft.

b) **Joseph Musee Mua v Julius Mbogo Mugi & 3 others [2013] eKLR** in which case a plaintiff who had suffered various injuries including injury to the left leg, on the head, and face; fractures to the left leg tibia and fibula; two broken upper jaw teeth; chest injury; right shoulder injury as well as bruises on the left elbow was awarded a sum of Kshs.1,300,000/.

c) **Mwaura Muiruri v Suera Flowers Limited & another [2014] eKLR**: in this case, the court awarded general damages in the sum of Kshs.1,450,000/ in the instance of a plaintiff who had sustained a variety of injuries including paralysis of the right hand, deformation of the right leg which is angulated medially and reduced ankle joints.

12. On its part, the defendant suggested a sum of Kshs.230,000/ under this head, with reliance on the case of **Joseph Kimani Gathaga & Blue Sky Outsourcing Ltd v Martin Njoroge Waceke [2019] eKLR** where an award of Kshs.400,000/ on general damages was substituted on appeal with an award of Kshs.200,000/ made to a plaintiff with facial cut wounds involving upper and lower lips, right cheek and forehead, laceration wound on right calf region and blunt chest trauma. The defendant also cited the cases of **Ruth Mosota Momanyi v Reuben Mosota Momanyi [2019] eKLR** in which the court upheld a sum of Kshs.250,000/ awarded to a plaintiff who had suffered fracture of the left tibia fibula, bruises on both hands, blunt trauma on the chest and bruises on the face; and **Richard Kerini Manyisa v YNO (Minor suing through her next friend and father) AAO [2019] eKLR** where a plaintiff with various bruises and blunt injuries was awarded a sum of Kshs.150,000/ on appeal.

13. The following are the injuries pleaded in the plaint:

i. Head injuries resulting in loss of consciousness

ii. Deep vein thrombosis

iii. Injuries to the neck

iv. Soft tissue injuries

v. Laceration of the right eyebrow

vi. Chest injuries

vii. Bruised calf and tendereis

14. Going by the evidence, the plaintiff received treatment at both The Aga Khan Hospital and Kijabe Hospital. The medical examination report dated 19th September, 2002 prepared by Dr. W.N. Khamala and the medical notes on record confirm the injuries sustained by the plaintiff as those pleaded in the plaint.

15. In the medical report, it was noted that the plaintiff was admitted in hospital on 13th August, 2002 and underwent a surgery before being discharged on 16th August, 2002. According to the medical evidence tendered in court, the plaintiff later developed deep vein thrombosis which led to a second admission at AIC Kijabe Hospital for treatment. The plaintiff thereafter attended hospital for reviews and was noted as fairing on well. Moreover, no permanent incapacity was assessed.

16. Upon considering the authorities quoted by the parties and which I have laid out hereinabove, I find that those cited by the plaintiff involve injuries of a more severe nature compared to those sustained by the plaintiff in the present instance. Concerning the authorities relied upon by the defendant, I similarly find that the injuries sustained therein were mostly of a less severe nature in comparison to those suffered by the plaintiff which would explain the lower awards made in those instances.

17. However, I find the injuries sustained in the case of **Joseph Kimani Gathaga & Blue Sky Outsourcing Ltd v Martin Njoroge Waceke [2019] eKLR** cited in the defendant's submissions to be comparable to those of the plaintiff. In that case, the court awarded a sum of Kshs.200,000/ for general damages on appeal to a plaintiff who had suffered a head concussion in addition to various blunt injuries and

