



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 495 OF 2013

S L B.....PLAINTIFF

VERSUS

ALI RAMADHANI.....1ST DEFENDANT

MODERN COAST EXPRESS LTD.....2ND DEFENDANT

J U D G M E N T

By a plaint dated the 25th November, 2013 and filed in court the same day, the Plaintiff lodged a claim against the Defendants claiming general damages, special damages of Ksh.762,647.87, daily and weekly medical expenses, costs of the suit, interest on both general and special damages at court rates and any other or further reliefs or remedy deemed appropriate.

The cause of action herein arose out of a Road Traffic Accident that is alleged to have occurred on or about the 25th day of April, 2011 along Nairobi-Nakuru road near a place called Kiambaa.

The Plaintiff in paragraph 5 of the Plaint pleads that on the said date the 1st Defendant who at all material times relevant to this case was driving the 2nd Defendant's motor vehicle Registration Number KBF 667H, so negligently controlled the said vehicle that he squeezed the Plaintiff against the road wall demarcating the road lanes thus causing him to sustain grave injuries. The particulars of negligence against the 1st Defendant are set out in paragraph 5 of the plaint as follows: -

- a) Driving the said vehicle while reversing with the aid of the Plaintiff at a speed which was too excessive in the circumstances.***
- b) Failing to have proper look out by the use of rear view mirrors to see how he was reversing the said vehicle so as to avoid squeezing the Plaintiff.***
- c) Driving the said vehicle dangerously and without due care and attention.***
- d) Failing to hear the cries and shouts of the Plaintiff whom he had asked to assist him in reversing the said vehicle.***

It is further pleaded that by reason of the aforesaid negligence, the Plaintiff sustained injury which lead to pain, loss of amenities and special damages. He suffered the following injuries: -

- a) Fractures of the pelvic bones.

b) Urethral injuries

And special damages as shown hereunder.

i) Medical expenses (as at that date of filing of the plaint Ksh.762,647.87cts.

ii) Drugs at the rate of Ksh.500/- per day.

iii) Fluids and checkups at the rate of Ksh.4,500/- per week

All of which he has claimed against the two defendants.

The Defendants filed a joint statement of defence on the 18th December, 2013 in which the 2nd Defendant has denied ownership of Motor vehicle registration Number KBF 667H and denies the occurrence of the accident, all the allegations and particulars of negligence as set out in paragraph 5 of the plaint and put the Plaintiff to strict proof.

The Defendants further pleads that in the alternative, if the accident is proved, it was caused and/or substantially contributed to by the negligence on the part of the Plaintiff and they have set out the particulars of such negligence in paragraph 4 of the Defence as follows: -

a) Walking behind the Bus with heavy traffic without taking care of himself and without notifying the 1st Defendant.

b) Failing to hear warning or hooting from the 1st Defendant's approaching motor vehicle.

c) Failing to mind his safety while behind the Bus.

d) Failing to observe Traffic Rules.

e) Failure to use common sense while on duty.

The particulars of negligence, injuries and special damages are also denied.

When the matter came up in court on the 25th February, 2016, parties through their advocates recorded a consent on liability in the ratio of 80%:20% in favour of the Plaintiff.

In view of the foregoing, the judgment herein only relates to the quantum of damages which the parties could not agree on and they have invited the court to assess. Submissions were filed to assist the court in arriving at the quantum of damages. The Plaintiff was first examined by Dr. Wathena Githiaka on 12th February, 2013 and according to the said Doctor, the Plaintiff sustained fractures of the pelvic bones and urethral injury. On the treatment given to him, he was temporarily put on suprapubic catheter. He underwent several urethroplasty procedures to try and treat the urethral structures. All these operations were unsuccessful and finally he was taken to theater for urinary diversions i.e. his urine was diverted to the umbilicus (Mitrafanoff catheterisable pouch).

The Doctor has noted that the Plaintiff lost his ability to pass urine normally via the urethra due to the injuries sustained from the traffic road accident. He will have to catheterize himself every 2-4 hours for the rest of his life. His chances of getting children are slim probably impossible. This has interfered with his sexual function and definitely his self esteem. His quality of life was reduced due to the accident. He will have to be heavily compensated to try and bridge the deficit in his quality of life.

At the request of the Defendants, the Plaintiff underwent a second medical examination at Westlands Medical Centre by Dr. Kimanthi who in his report has confirmed the fracture to the pelvic bone and the urethral injury resulting too complicated urethral structures. According to Dr. Kimathi, the present

complaints are: -

- 1) Inability to pass urine.
- 2) Catheterizing himself 2-4 hours for life.
- 3) Inability of getting children since he cannot function sexually
- 4) Low esteem
- 5) Being on medication especially antibiotics on and off.
- 6) Pelvic pains radiating to the back and left leg.
- 7) Follow ups at S. O. P. C. and Urologist clinic.

In Dr. Kimathi's opinion the Plaintiff suffered a lot of pain and blood loss during the accident. His current complaints and injuries sustained were as a result of the accident. He requires future medical attention as regards the accident due to pre-deposition to recurrent bacterial infections, for psychological counseling and follow-ups at S.O.P.C. and an Urologist. He classified the decree of injury as grievous harm.

In his submissions, counsel for the Plaintiff has suggested a total figure of Ksh.20,567,550.40 after contribution of 20% made up as follows: -

a) General damages **Kshs.8,000,000/-**

b) Cost of Self Catheterizing daily cream ointment

At an average cost of Ksh.500 for day for a period of 30 years – **Kshs.5,475,000/-**

c) Check-up average cost of Ksh.4,500/= per week

For 30 years – **Kshs.7,800,000/-**

Lost income 30 Years X 12 months x 10000/- - **Ksh.3,600,000/-**

e) Special Damages (Up to the time of filing the plaint – **Ksh.767,138/-**

f) Special damages as at 16/3/2016 – **Ksh.67,300/-**

Total Kshs.25,709,438/-

Less 20%

Balance Ksh.20,567,550.40cts

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The Plaintiff has relied on the cases of **Duncan Vs Ross Harper 1993 SLT 105** wherein a casual farm worker aged 19 years at the date of accident sustained severe pelvic injury with diastasis of the pubic symphysis, a transverse ideal fracture and a longitudinal displaced fracture through the right wing of the sacrum which damaged the sacral nerve roots on the right side. He also had a disfunctioning colostomy and a suprapubic catheterization. He was initially impotent and permanently sterile. He was awarded £27,000/- as general damages for pain and suffering and a sum of £8,000/- making a total £35,000/-.

The Plaintiff also relied on the case of **Rosemary Wanjiru Kungu Vs Elijah Macharia Githinji &**

Another (Nairobi HCCC No. 145/2010) (Unreported) where the Plaintiff was awarded the following damages: -

a) General damages	Ksh.3,000,000/-
b) Cost of Wheel chair	Ksh.150,000/-
c) Cost of diapers	Ksh.750,000/-
d) Cost of Mattress	Ksh.150,000/-
e) Cost of helper	Ksh.1,800,000/-
Weekly transport	Ksh.4,680,000/-
Physiotherapy	Ksh.3,510,000/-
Daily skin care	Ksh.180,000/-

On the part of the Defendants, it is submitted that: -

1. None of the Doctors who examined the Plaintiff has given any costs for daily Catheterization and therefore the same is not payable.
2. The weekly check-ups have also not been given and hence not payable.
3. None of the Doctors have said that the Plaintiff cannot work hence the issue of lost income is not payable.
4. Lost income has not been prayed for in the plaint hence not payable.
5. The amounts in respect of daily drugs and weekly check-ups have not been quantified and the period for the same and for that reason, it would not be awarded.

The Defendants have relied on the following cases: -

- a) **Auto Selection Kenya ltd & Caroline Waweru Vs Charity Wanja Kagiri** HCCA 150 of 2013 (Machakos) where a sum of Ksh.800,000/- was awarded as general damages.
- b) **George Okewe Osawa vs Sukari Industries Ltd** HCCA 66 of 2015 where an award of Ksh.400,000/- was made for general damages.
- c) **Antony Keriga Mogesi Vs Florence Nyomande Tumbo** HCCC No. 147 of 2012 in which the court awarded Ksh.600,000/- as general damages.

Counsel for the Defendants asked the court to award Ksh.2,000,000/- for general damages.

This court has carefully perused all the material before it including the submissions by the two learned counsels for the respective parties.

- (i) On general damages the court has noted the suggested quantum. The figure suggested by the plaintiff of Ksh.8,000,000/- is too much on the higher side considering the injuries sustained by the Plaintiff while the figure of Ksh.2,000,000/- suggested by the defendant is on the lower side. Taking into account the opinion by Dr. Kimathi, I find that a sum of Ksh.6,000,000/- is reasonable to compensate the Plaintiff for the injuries that he sustained. No doubt the Plaintiff suffered serious injuries that will affect him the rest of his life.

(ii) For special damages a sum of Ksh.590,226/- was proved through the receipts produced as exhibits.

(iii) As for the daily and future medical expenses, the law requires that the same be pleaded and proved for it to be awarded. I make no award under this head.

(iv) The claim of loss of income was also neither pleaded nor claimed, similarly I made no award under this head.

It is also noted that none of the doctors has stated in their medical reports that the Plaintiff will not be able to earn a living in future and though his earning capacity has been diminished, there is no claim for diminished earning.

Regarding the contention by the Defendant that the receipts for special damages do not have an official revenue stamp and therefore inadmissible, I find that the contention does not have any force in law and in so stating, this court makes reliance to the case of **Gopal Das Vs Sri Thankurji (2) (1943) A.I.R.PC. 83**, quoted by the Plaintiff.

In conclusion, the Plaintiff herein is awarded a total of Ksh.6,590,226/- less contribution by 20% leaving a total of Ksh.5,272,180.80cts plus the costs of the suit. Special damages shall attract interest from the date of filing and general damages from the date of this judgment.

Dated, signed and delivered at Nairobi this 15th day of September, 2016.

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L NJUGUNA

JUDGE

In the presence of

..... ***for the Plaintiff***

..... ***for the Defendants.***