



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL CASE NO. 236 OF 2010

J J (A minor suing through J K

G and J M J;

father and mother as next friends).....1st PLAINTIFF

F J (A minor suing through J K

G And J M J;

Father and mother as next friends).....2nd PLAINTIFF

VERSUS

AKAMBA PUBLIC ROAD SERVICES LIMITED.....1ST DEFENDANT

BENEDICT KATETU KIMEU.....2ND DEFENDANT

JUDGMENT

J J and F J are both minors who were injured in a road traffic accident that took place on 5th May, 2007 along Nairobi – Arusha Road. They were both fare paying passengers in a bus registration No. KAT 240C owned by the 1st defendant and driven by the 2nd defendant at the time of the accident.

By a plaint dated 3rd May, 2010 they brought this suit through J K G and J M J being their father and mother respectfully as their next friends. In their pleadings they blamed the accident on the part of the 2nd defendant particulars of which have been set out therein.

The 1st defendant being the owner and employer of the 2nd defendant would be held vicariously liable in the event the 2nd defendant were found to blame. At some stage in the record, liability was apportioned at 85 % on the part of the defendants and 15% on the part of plaintiffs which agreement was later withdrawn due to non cooperation of the defendants.

This matter was part heard by Waweru J, who recorded the statement of P.W. 1 J M J the mother of the two minor plaintiffs before he was transferred out of the station. I then took up the matter under Order 18 Rule 8 of the Civil Procedure Rules. I heard the evidence of P.W. 2 Dr. Maina Ruga who produced the medical reports relating to the two plaintiffs.

The defendants did not call any evidence and considering the fact that the plaintiffs were passengers in the said motor vehicle the defendants are liable at 100% jointly and severally. Indeed the record would show there is an interlocutory judgment on liability at 100% entered against the defendants on 19th July, 2010. What remains therefore is the issue of quantum payable to the two plaintiffs.

The plaintiffs have proved by way of production of documents special damages amounting to Kshs. 443,416/=. On general damages I am guided by the medical reports produced by the doctor on the two plaintiffs. The first plaintiff J J was born on 17th April, 2004, while F J was born on 20th December, 2002.

I am required to address general damages, future medical expenses and loss of earning capacity. The 1st plaintiff John Junior going by the evidence of Dr. Maina Ruga sustained the following injuries,

- a. Open fracture of frontal skull
- b. Deep scalp lacerations
- c. Traumatic amputation of the right lower limb
- d. Crush injuries with wounds on the left hand
- e. Multiple fractures of the fingers
- f. Crush injuries and wounds on the left foot
- g. Abdominal injuries with urinary bladder contusion

When the doctor examined him he noted that the 1st plaintiff had disfiguring scars on the head and left hand. He also had slurred speech leading to slow learning. The doctor also noted deformities on the left hand; the ring finger and small finger were amputated and the index and middle finger were seriously deformed. The right lower limb was amputated above the knee and he was using an artificial limb. On the left leg, the big toe was deformed and the rest of the toes (four) were amputated. He assessed permanent incapacity of the 1st plaintiff at 100%.

There is no doubt that the injuries set out above and confirmed in the medical report produced by the doctor were extremely serious and considering the age of the plaintiff, he is going to live with these for the rest of his life. The trauma he went through and which may continue for a long time to come will not be easy to overcome. The learned counsel for the plaintiffs has cited the case of **EVERLINE SHIVACHI VS. THARA TRADING COMPANY LIMITED (2013) e KLR**

In that case the plaintiff suffered extensive cuts and abrasions on the left forearm followed by extensive skin and muscle loss. She also had fracture of the bones of the left forearm close to the wrist joint. She had severe crush injuries to both legs leading to amputation of both legs. She was awarded 5 million shilling as general damages for pain suffering and loss of amenities. See also – **SIMON TAVETA VERSUS MERCY MUTITU NJERU (2014) eKLR and EVA MWENI WAMBUGU VS. SIMON PETER GITHAE & ANOTHER (MACHAKOS HCCC. NO. 202 OF 2009)**

On general damages for pain and suffering, considering the nature of injuries and going by comparable decided cases an award of Ksh. 10 Million commends itself. The 1st plaintiff will require the change or replacement of the prosthetic leg after every five years and I agree with the learned counsel for the plaintiff that a sum of 120,000/= at the cost of 30,000/= after every five years is reasonable.

The 1st plaintiff also will require nursing care or a helper having suffered 100% incapacity. The period of ten years proposed by the learned counsel for the plaintiff at minimum wage of Kshs. 13,000/= per month is reasonable. –See **CHRISTINE NANDOKA LUSWETI VS. KENYA BUS SERVICES LIMITED**

(2012) eKLR and also ROSEMARY WANJIRU KUNGU VS ELIJAH MACHARIA GITHINJI & ANOTHER. (2014) eKLR.

Under this head I award Kshs. 1,560,000/=.

The 1st plaintiff also requires plastic surgery to correct disfiguring scars and follow up orthopedic surgeries estimated to costs 400,000/=. He is also entitled to that.

Another head of damages is loss of earning capacity. Again using the minimum wage of 13,592/= I accept the proposal that a multiplier of 30 years should be applied. The total sum adds up to Kshs. 4,893,120/= in that regard.

The 2nd plaintiff suffered disfiguring scars on the lower face extending to the mouth, lips and chin. She had a scar on the right cheek which extended to right angle of the mouth and upper lip. She also had a scar on the right mandibular area which also extended to the chin. She also had several scars on the left temporal cheek and both wrists.

Although the wounds have now healed the doctor noted that the resultant disfiguring scars and keloids are of great cosmetic concern to a young girl who shall now require further plastic surgery. She underwent three operations to repair the wounds and will undergo further cosmetic surgery to correct the disfiguring scars on her face.

On general damages for pain and suffering I make an award of Kshs. 2,500,000/= - See **JOSPEH MUSEE MUA VS. JULIUS MBOGO MUGI & 3 OTHERS (2013) e KLR.** She shall also require plastic surgery to correct scaring deformities at the cost of 520,000/= which is also hereby awarded. For the avoidance of any doubt the awards are as follows.

1st Plaintiff: J J

1. General Damages Kshs. 10,000,000/=
2. Costs of prosthesis Kshs. 120,000/=
3. Nursing care – Kshs. 1,560,000/=
4. Future medical care Kshs. 400,000/=
5. Loss of earnings capacity – Kshs. 4,893,230

2nd Plaintiff: F J

1. General damages Kshs. 2,500,000/=
2. Future medical expenses Kshs. 520,000/=
3. Special damages Kshs. 443,416/=

In making the above awards I am guided by the nature of injuries sustained by the plaintiffs and also the value of the Kenya shilling which has been considerably eroded by inflation. The plaintiffs shall also have the costs of this suit and interest at courts rates.

Noting that both plaintiffs are still of tender age I direct that when the awards are eventually paid 1/3 thereof shall be paid to the parents to ensure continuity in the maintenance of the plaintiffs, and the balance thereof shall be invested in an interest earning account in the names of the parents and the Registrar of the High Court until the plaintiffs attain the age of majority.

Orders accordingly.

Dated and delivered at Nairobi this 3rd Day of December, 2015.

A.MBOGHOLI MSAGHA

JUDGE