



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 1253 OF 94

PETER MAORE ITABARI PLAINTIFF

VERSUS

GODFREY THAIRU & ANO..... DEFENDANT

JUDGMENT

The Plaintiffs case, in this motor vehicle accident case, is that, on the 27th of November, 1992 he was lawfully travelling as a fare paying passenger in the 2nd defendants motor vehicle Reg Number KZY 516 near Kamirithu along the Limuru Naivasha Road. Due to the negligence of the 1st defendant of the said motor vehicle in managing the vehicle, it collided with motor vehicle registration No. KPY 897. As a result of this accident the Plaintiff was critically and seriously injured and suffered loss and damage.

The parties at the date of hearing entered into a consent whereby the liability was agreed at 100% against the defendants. There was judgement entered for the plaintiff on this aspect.

What remained was the issue of quantum on both General Damages and Special damages.

Before the trial began on the issue of assessment of damages the advocate for the plaintiff amended her Plaint orally to change the figure of Special Damages from Kshs.193,377.40 to Kshs.492,324/65. Although this was not strongly objected to by the defendant, he did bring up the question as to how this figure was computed. The earlier figure was duly computed but not this second figure.

Nonetheless the plaintiff gave evidence to show that he had sustained fractures of both legs, knee, cuts on left hand and had a cut on the cheek. He obtained no treatment at the hospital he was originally at but was transferred to the Aga Khan hospital and later was operated to have plates put in his legs.

The medical report of 1993 by Dr. Bodo suggested that the fractured bones were uniting well with slight various deformity. The angled plate was due to be removed and he stated there may be a further operation to correct the shortening in the right femur.

A second report was prepared in 1996 by Dr. Wambugu.

There is no indication as to whether he is a Medical Consultant. From his report whereby he stated the shortening of the right lower limb is permanent. The plaintiff would have impending arthritis. He stated he plaintiff would not require further operations.

The left femur reunited well.

It seems that the plate had not been removed.

The Plaintiff gave evidence of how he purchased drugs and medicine. How he hired a driver to ferry him around and paid him between Kshs.4,500/- and Kshs.5,000/- per month.

In her submission the advocate for the plaintiff stated that a sum of Ksh.1 million should be paid for Pain Suffering and Loss of Amenities as General Damages. She further requested the court to award Kshs.492,324/65 as Special Damages.

The advocate for the defendant noted that plaintiff did not seek for any prayers at all in his evidence. He nonetheless said that no award under Special Damages be awarded as nothing has been proved.

He commented on the case law relied on by the advocate for

the plaintiff of :-

J.M. Wambua v K.K. Patel

Hccc 3452/84

and Boniface Kamau Maiko

V

Charles Muriithi & 2 Others

Hccc 5232/90 (unreported)

Whereby the advocate for the plaintiff had informed the court that General Damages was awarded at 995,000/- and 600,000/- respectively.

The advocate state it was really Ksh.300,000 awarded for General damages or thereabouts.

He relied on his authorities of

Kalungu Mutua V KBS (Kenya Bus Services)

Hccc 4045/88

and Kromah Musa V Mapus Pall & Another

Hccc 5285/92 reported

Where an award for General damages for Pain, Suffering and loss of Amenities was given as Kshs.170,000/-. He prayed this be Kshs.190,000/- taking inflation into account.

I note that the only prayers the advocate for the plaintiff submitted on was Special Damages and General damages on the head of Pain, Suffering and Loss of Amenities.

When looking at the General Damages I note that after the accident the Plaintiff was unconscious, although none of the doctors mention this. I can safely say that he was in pain and had been transferred from Kijabe Mission Hospital to Aga Khan hospital.

He has proved that he sustained injuries resulting to the fracture of his left and right femur.

- ie. 1. "A fracture in the lower third of the left femur.
2. Intertrochanteric fracture the neck of the right femur.
3. Contusions over the left should and left forearm"

I would award General Damages for Pain, Suffering and loss of Amenities at Kshs.300,000/- as being reasonable.

As to the Special Damages the Plaintiff admitted that most of his bills were paid by his employer. It was the advocate who stated from the bar that the employer demanded refund of this amount from him. The plaintiff produced no letter to this effect nor proof that the amount as being deducted from his salary. It is his employer who ought to have come to claim any money paid.

Nonetheless the Plaintiff is bound by what he had pleaded in his Plaint. He is further required to proved Special Damages strictly.

I find that under the heading of police abstract report, the plaintiff talked of this but did not produce a receipt supporting this claim. He never spoke of replacing any spectacles.

He produced an invoice for a medical report. There was no proof that the doctor had even paid for the report.

He did not speak of the ambulance costs.

The damages sought medication and hire of transportation to hospital has to been proved.

I would agree with the advocate for the defendant on this position and would make no award on the prayer for Special damages. www.kenyalawreports.or.ke 7

I dismiss this claim.

In summary

General Damages

Pain, Suffering & Loss of Amenities Ksh.300,000

Special damages Nil.-

Kshs.300,000

I award cost and interest in his case at courts' rates as from the date of this judgment.

Dated this 27th day of April, 1999 at Nairobi.

M.A. ANG'AWA

JUDGE