



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 1536 OF 96

ZEBED KARIUKI IRERI PLAINTIFF

VERSUS

CHARLES NGA'NGA' WAIRIA DEFENDANT

JUDGMENT

This case was originally a part heard of Hon. Justice Mbiti. He recorded the evidence of two witnesses before he left the station from Nairobi High Court (1997).

I proceeded with the trial as permitted under Order 17 r 10 CPR and heard the evidence of the remaining plaintiff witnesses and the defence witnesses.

According to the evidence of PW1 and from the proceedings produced in court as an exhibit of the trial in the subordinate court, the plaintiff was on the night of the 4.3.95 at 10.00 p.m., at a shopping centre.

He was alone. He crossed the road from right to left facing Kiambaa. He took two paces when he was knocked by a vehicle that had no lights on. He lost consciousness and was rushed to the hospital. He later learnt that he had been taken to the Nazareth Hospital and later to Government Hospitals the last being Kenyatta National Hospital. He was informed he was paralysed from the neck downwards. This was caused as a result of a broken neck that he sustained as injuries.

The plaintiff sued the defendant for negligence and prayed for Special and General Damages.

From the evidence of an eye witness, it was seen that the vehicle had come at a high speed. It was on a road going through the shopping centre.

There were pot holes. The said vehicle had no lights. It narrowly missed the said witness and went to knock the plaintiff.

The defendant's vehicle was known as he was a resident within the area.

Later the police had visited the area and taken sketch maps and plans of the scene.

The defendant in his evidence had notified the court that he saw the plaintiff with two other persons. One was a woman. The woman tried to stop him from crossing. He then hooted but the plaintiff failed to get off the road. This was 50 yards away. He then knocked the plaintiff. He put the plaintiff in his vehicle

and took him to the hospital. There, first aid was administered. This was because no bed was available at the Nazareth hospital and according to the defendant, the plaintiff was drunk. This allegation was strongly objected to by the said advocate for the defendant.

It was also denied by the plaintiff in cross examination during the subordinate court trial.

The magistrate in the subordinate court convicted the defendant after finding him guilty as charged. He was fined. It was thus, on being asked why he didn't appeal against this conviction and sentence that he stated that he was advised by his advocate not to appeal.

The plaintiff called a medical doctor who informed the court that he had examined the plaintiff on the 20.3.1992. That the plaintiff had been taken to Nazareth hospital, Kiambu, and the Kenyatta hospital. He was finally transferred to the Spinal Injury Unit.

On examining the plaintiff first at the Spinal Injury Unit, he found that the plaintiff had a fracture of the cervical vertebrae No.6 and 7. This led to the paralysis of the body from the neck downwards. This meant that the plaintiff had no sensation and motion (ie. the ability to move from the neck downwards)

The plaintiff had bed sores. His treatment as a whole would be one of occupation and physiotherapy. He had a painful muscular pains which was treated. He was not able to control his urine motion.

The doctors was of the opinion that the plaintiff has suffered grievous pain from the traffic accident.

The plaintiff is said to be confined to a wheel chair all his life and would never be able to work or use his hands. The incapacity was assessed at 100%.

He further stated that the needs of the plaintiff as a result of the accident would be:-

- a) A wheel chair at a cost of 80,000/- in 1996.
- b) Urine bags of 2 per week at 100/- each.
- c) Unidoms two per week at 100/- each.
- d) Strapping to dress wounds one per week at 200/- each.
- e) a modified toilet waster type at Kshs.8,000/-.
- f) Modified toilet commode for travelling at Kshs.6,000/- portable.
- g) Modified bathroom 8,000/-
- h) Modified house Kshs.50,000/-
- i) hospital visitation
- j) Orthopaedic bed and Mattress - for spinal injury of 500,000/-
- k) Nursing care at 6,000/-

His evidence was corroborated by the social worker PW4 who gave evidence of the needs of the plaintiff. He made recommendation that the house be modified. He visited the home as his duty required him to do.

PW4 is a worker attached to the Spinal Injury Unit hospital as a medical social worker.

He too outlined the needs of the medical equipment.

The plaintiffs wife PW3, also confirmed the requirements of the nursing equipment such as Unidom and strapping that she brings for the plaintiff.

The defendants advocate tried to imply in their cross examination the instruments that the head lamps of the motor vehicle was working.

They also implied that the amount of the said claim were high and exaggerated.

They recommended that this be reduced at a lower figure.

In their submission the two advocate recommended the loss of earning be Kshs.9.600/- less the income tax. That a multiplier of 5 years be taken total 124,801.

That the authopeadic bed be 230,000/- and not Kshs.500,000/-. That pain suffering and loss of amenities be Kshs.1 million. That further medical care be 124,810. The modified toilet be Kshs.6000/-.

That the bags for medical care be at Ksh.230,000/-.

This they said to be a total of Kshs. 1,360,000/-

The plaintiffs on the other hand prayed for an addition wheel chair at a costs of 160,000/-.

The urine bags to be supplied for 15 year at 144,000/-.

Future medical care at Kshs.250,000/-.

Travel at 180,000/- nursing care.

The loss of earning at 1.7 million.

I find that the accident was caused as of the negligence of the defendant. I noted that he was approaching a busy area whereby there were people along the road side. He hooted because of this. There is nonetheless evidence to show that he was travelling at a high speed. I hereby find that the defendant is found liable of this accident by way of negligence at 100%.

As to quantum I find that the plaintiff did not wish for himself to have been injured. He did not go out to look for the accident. As such he should not be made to concede to a cheap treatment in order for him to live the rest of his life. He now has to use a special toilet. The defendant injuries the ones given is too expensive.

I nonetheless note that the plaintiff relied on the ground for General Damages in their case.

On Special Damages, I find that there was no receipt produced to support the proof that Ksh.100/- was paid for the abstract report except proof of Kshs.5,000/- was paid for the medical report by the doctor.

It is important that claims should be supported by cash receipt.

The prayers for transport and medical expenses have not been supported by receipt. I decline to award this claim. (Only Kshs.5,000/- for the doctors report will be allowed.)

As to General damages, the prayers for loss of earnings has not been proved as the crucial letter from the employee hand never been produced. I disallow this claim. It thus mean that loss of future earnings cannot be relied on and the said prayer is hereby refused.

As to the prayer for Pain Suffering and Loss of Amenities I find that the plaintiff has undergone and considerable hardship and suffering since the accident. He has been in a comma and underwent treatment.

I would grant General damages on this at Kshs.2.5 million.

I grant the cost of future medical care inclusive of a nurse, travel to and from the hospital and modification of the house at kshs.400,000/-.

I have noted the authorities referred to. In summary I award General Damages

1. Pain Suffering and loss of amenities	Kshs.2.500.00/-
2. Costs of future medical care inclusive of incidentals	Kshs.400,000
3. Special Damages	Kshs. 5,000/-
	Kshs.2,905,000

I award interest on the above from to-days date.

I also award costs fo this suit to the plaintiff.

Dated this 15th day of April 1999 at Nairobi.

M.A. ANG'AWA

JUDGE

15.4.99