



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL CASE NO. 1571 OF 1998

ALEX OKELLO ODIANYA PLAINTIFF

VERSUS

KENYA BUS SERVICES LTD. DEFENDANTS

JUDGMENT

Alex Okello Odianya was lawfully travelling in a motor vehicle Bus registration No. KAD 075J. On the 22.6.1997. He reached his destination in Kariobangi along the Outer Ring Road at a place commonly known as the Hilton Bus Stage.

The passengers alighted. The Plaintiff was the last to alight. Before he placed his foot on the ground the bus drove off. The Plaintiff fell and the bus ran over his leg.

The very same bus drove him to the Kenyatta National Hospital where he was duly admitted with injuries that was described as a crushed right leg with extensive soft tissue injuries and fractures tibia and fibula.

Because his leg developed severe sepsis wounds, the plaintiff underwent an amputation of the femur.

He was discharged from the hospital on the 18.7.97.

On the 24.4.98 PW1 the Consultant Orthopaedic Surgeon - Prof. B.S. Mbinyo examined the plaintiff. He found that the plaintiff had disability from the amputation and complained of discharging sinus from the amputated limb. His opinion was that the plaintiff besides being disabled in activities such as sporting, social and pleasures, the Plaintiff would need an artificial lower limb to improve his mobility. The costs of this limb being Kshs.350,000/-. The plaintiff would require to undergo further surgical treatment to contest the osteomyelitis before the artificial limb is fitted at a costs of Ksh.100,000/-.

The permanent disability has been arosed by him at 70%.

The plaintiff filed suit against the defendant company on the 11.7.98.

The defendants entered appearance and filed defence on the 3.9.98. The defence denied there was any negligence on their part. The defence stated that the accident was solely caused or substantially contributed by the Plaintiffs negligence.

When this case came up for hearing on the 10.5.99, the advocate for the defendant stated he did not

bring his witnesses to court. The reasons being that the parties were negotiating on out of court settlement.

The advocate for the plaintiff denied any knowledge of such settlement or any at all.

The parties were given time to verify their facts and to return to court to either record a settlement or to continue with hearing.

After adjournment the hearing proceeded on 10.5.99 and adjourned to 11.5.99. In all this time the defendant failed to bring his witnesses.

From the agreed issues I have found the following facts.

That the defendants driver was negligent as alleged in the Plaint. The driver should have taken due and reasonable care to ensure that all the passengers had alighted from the bus and were clear from the bus.

I also find that if the driver was pulling out the bus at a slow and gradual pace the plaintiff who had fallen down would not have sustained such severe injuries.

I find that the defendants driver drove off in an excessive speed the impact being that the plaintiffs leg was crushed. This was to such an extent that dirt went inside the wound and an infection was found to cause the plaintiffs leg to be amputated.

I do not find that the plaintiff was negligent. He had a right to get off the bus which right the defendant should have ensured that he waited long enough for him to alight.

The doctrine of Res Ipsa Loquitor does apply in this case.

I find that the plaintiff sustained injuries as described above.

I would compute the injures for pain, Suffering and loss of Amenities at Kshs.200,000/-.

I would award costs of future medical care at Ksh.350,000/- for the artificial bone and Kshs.100,000/- for the costs of treatment.

Special Damages had not been proved.

None of the advocates relied on any case law before me to prove their case.

In summary

General damages

Pain, Suffering and Loss of Amenities Ksh.200,000/-

Future Medical treatment Kshs.450,000

Total Kshs.650,000/-

I hereby enter judgment of the plaintiff for General Damages at 100% liability at Kshs.650,000/- inclusive of future medical treatment.

I make no awards of the Special Damages of 1,600/- as this has not been proved.

I award costs of this suit and interest from the date of this judgement.

Dated this 13th day of May 1999 at Nairobi.

M..A ANG'AWA

JUDGE