



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL CASE 1273 OF 1989

HANNAH NJERI WANJAU PLAINTIFF

VERSUS

1 THE DRIVER OF KWR 893

2. SAMUEL MWANGI KINGORI DEFENDANTS

JUDGMENT

There are two Plaintiffs in this case who filed suit jointly against the defendants.

The advocate for the Plaintiff informs me that the case for the Plaintiff No.1 has been settled and is therefore finalised out of court.

This is a running down case. The Plaint dated the 20.3.89 was filed on the 22.3.89. It was amended on 19.7.90 and filed on a date which is not legible on the Plaint.

The brief facts according to the Plaint is that the Plaintiff and the co-plaintiff were lawful fare paying passengers on motor vehicle KWR 893 belonging to the second defendant and driven by the first defendant.

The Plaintiff sustained injuries.

When the case came up for hearing before me on the 4th of May, 1999 the parties had entered into a consent whereby liability as admitted at 100% against the defendant and judgement duly entered.

The Plaintiff who has waited ten years for her case to be heard finally gave evidence whereby she stated that she was aged 95 years old. According to her ID card she was born in 1904 but was not sure.

On the material day of the 8.6.89 she was travelling in a motor vehicle. It had an accident. She did not recall what occurred.

It was because she had lost consciousness. She was admitted to hospital for 4-5 days. She had a cut across her forehead.

The advocate for the plaintiff prayed that this court award the plaintiff a sum of Ksh.200,000/- for Pain, suffering and loss of amenities. He relied on the cases of

Mary Wanjiru Mwangi v Charles Runo Nyaga & Another

Hccc 5304/91

Philip Nicholas Okaka V. /Anderson Njue & 3 Others

Hccc 2434 of 87 (unreported).

He nonetheless did admit that besides a head injury, the injuries sustained by the plaintiff in those cases included fracture.

He said that the plaintiff suffered headaches.

In a reply the advocate for the defendant relied on the authorities of Fredrick Hinga Barae V. Mrs. Kanniga Chaotakoongit

Hccc No.5634/1989

Kenneth Onyango & 4 Others v Hassan Genya Juma & Ano.

Hccc 3944/90

Which dealt with soft tissue injuries. Awards of Ksh.45,000/- and Ksh.30,000/- respectively were made.

The advocate for the plaintiff stated that decisions were made by one Judge and that the authorities was almost 10 years old.

I find that the plaintiff spoke of a cut over her forehead between her eye brows. She spoke of injuries to her legs and knees.

It was her advocate who stated that these were soft tissue injuries.

There was no doctor available to give evidence at the time of trial to confirm these injuries. No medical report to prove the same was produced.

In view of this I would find that there has been no evidence before the court to show that the plaintiff sustained injuries. I would therefore dismiss this suit.

In the event that I am called to make a finding. I would not award for soft tissue injuries more than Ksh.5,000/-.

One is bound by their pleadings. The plaintiff herein did not plead particulars of injuries. All that was stated was "to be adduced in court."

This is not particulars and as such the plaint falls short of its requirement.

There has been no Special Damages pleaded or spoken off. I decline to make any award under this heading.

See the case of

Coast Bus Service Ltd.

v

Sisco E. Murunga Nanyi & Others

CA 192 of 1992 court of appeal.

I hereby dismiss this suit with costs to the defendants.

Dated this 5th day of May, 1999 at Nairobi.

M.A. ANG'AWA

JUDGE