



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL CASE NO. 2118 OF 1992

PETER MTHIRIGI PLAINTIFF

VERSUS

JAMES G. WACHIRA DEFENDANT

JUDGEMENT

Peter Thiringi, was walking on the side of a road when a vehicle came and knocked him from behind. According to the Plaintiff, this was on the 10th of August, 1991 along a road of Huruma Estate Nairobi. The vehicle said to have knocked him is registration number KZQ 58.

As a result of the said accident, the Plaintiff sustained injuries. He was taken to Kenyatta National Hospital where he was admitted with blunt injury to the right thigh and bruises on the chest and shoulders. An X-ray of the right thigh showed a fracture of the femur. The thigh was unable to unite at the point of fracture after four weeks. A plate and screw was then fixed on the fractured femur - a plaster of Paris was then applied to the limb for 3 months. According to the medical report produced by consent the plaintiff as on crutches for four years and had been hospitalised before then for more weeks.

The Plaintiff sued the Defendant on the 21st April 1992 for negligence on the part of the Defendant and prayed for General and Special Damages.

The case came up for trial numerous occasions but was not able to be reached. I believe this may have been the cause of delay in hearing the matter.

Nonetheless on the 18.5.99 the parties entered into a consent on the issue of liability at the ratio of 30% to 70%. Judgement was duly entered for in favour of the plaintiff against the defendant.

Special Damages was agreed between the parties at Ksh.100/-.

The case proceeded to formal proof on the issue of quantum.

The Plaintiff was able to walk in court without any crutches or walking stick. He told the court how he had been knocked from behind by a motor vehicle. That to date he is still in pain at the area of the fracture. He had no other complaints. The two medical reports produced by consent of the parties were prepared on the 9.8.97 and 11.12.98 respectively by Dr. C.K. Munene and Dr. J.M.M. Njokah respectively.

It is recommended that medical reports should be prepared at the earliest opportunity from the date of the accident and by a consultant.

The medical report by Dr. J.M. M. Njokah a Consultant Surgeon stated that the Plaintiff sustained a fracture to his right thigh bone. There was still pain the fractured site and this was due to the soft tissue injuries surrounding the site of fracture. He also confirmed that the right leg is now shorter by 1” (one inch), as a result the Plaintiff would require a shoe with a raised heel so that he would walk without limping. He assessed the plaintiff as having 15% residual disability due to the shortening of the leg scar and pain (slight) at the fracture site. He made no mention of the removal of the union plate injuries were 7 years 4 months and 1 day old at the time of examination.

The opinion of the medical practitioner, doctor for the plaintiff was that he confirmed there was a fracture of the right femur. An operation to place the screw with the iron plate was done. He stated that osteoarthritis may develop in the right hip.

In submission the advocate for the plaintiff relied on the case of

Meshak Allan Olang Vs. Erick Gowi Hccc 2317/90 Stephen Njoroge Vs. Standard Bakers Limited Hccc No.256/87. Edward Milango Owaho Bs. Sandeep Construction Company Ltd. & Another Hccc 4301/87 where awards for a fractured left femur was given at 220,000/- and right femur at 400,000/- and 250,000/- respectively.

The advocate for the defendant relied on two of my decision in the case of Francis Karanja Vs. Bakhtawar Singh Hccc 682/92 and Francis Njenga Mbugua Vs. Priscilla Wanjiru Kamunya Hccc No. 3684/91

where injuries was assessed for Ksh.100,000/- in the latter case of a broken left femur. In the former decision no case law was tendered and ought not to be relied on.

I find in this case that the plaintiff sustained injuries on the right femur. I would make award fo Ksh.150,000/- as being reasonable. This amount to be approved at the ration of 30%:70% giving a sum of Ksh.45,000/-.

I hereby enter judgement for the plaintiff against the defendant for General damages on

Pain Suffering and Loss of Amenities at Ksh.150,000/-.

Special Damages (agreed) Ksh. 100/-

Ksh.150,100/-

The defendant is liable to 70% which comes to Ksh.105,070/-.

I award costs to the plaintiff. I also award interest from the date of this judgement on the General damages and interest on Special Damages from the date of filing suit.

Dated this 19th day of may, 1999 at Nairobi.

M.A. ANG’AWA

JUDGE