



REPUBLIC OF KENYA

HIGH COURT AT ELDORET

Civil Case 28 of 1996

NJENGA KARANJA.....PLAINTIFF

versus

TRANS AMI TRANSPORTERS (K) LTD.....DEFENDANT

JUDGMENT

Liability herein was agreed upon by consent of the parties at 70% against the defendant and in favour of the plaintiff and 30% against the plaintiff and in favour of the plaintiff and thereafter parties proceeded by way of assessment of damages. The plaintiff narrated that he sustained injuries in an accident namely:-

1. Loss of consciousness
2. Cut on the upper side of the palm of the left hand. The scar is visible and it is keloid.
3. Fracture of the right leg below the knee, above the knee and in the thigh. The leg is shorter and the thigh bone bends outside.
4. Bruises on the left leg.

He produced the medical documents as exhibits. He feels pain when he walks.

When cross-examined he said that since 5th February 1996 he has not been in hospital again. The headaches and right leg are healed, he feels pain when he works.

Both parties filed written submissions. The plaintiff relies on the case of Solomon W. Njoroge v Anne W. Mwangi Nairobi HCCC No 4935 of 1991 where the plaintiff sustained fracture of the right hip, compound fracture of the right tibia and fibula, soft tissue injuries on the face and left elbow. General damages were assessed at Kshs 500,000/-.

The case of Francis Ngena Mutuli v John Kitheka Kwara and Another Nairobi HCCC No 3634/89 where the plaintiff's age is not stated suffered fracture of both femurs, tibia/fibula, head injury concussion, cut wounds on the head left hand chest, back and fractures of unspecified ribs. Hospitalized for 4 months and on complete bed rest for one year. Discharged on crutches and would use for life. The injuries healed with a permanent resultant right leg shortening 4" right foot drops shortening of left femur and restricted movement of the left and right ankle. General damages were assessed at Kshs 600,000/-.

The defence relied on the case of Benta Oyaga Oduwo v Keribigo General Stores Limited Nairobi HCCC No 4134 of 1990 where the plaintiff, a sales girl at the time of accident sustained injuries while traveling as a fare paying passenger in the defendant's motor vehicle. She sustained fracture of the left leg tibia and

fibula with a wound over the fracture site, cut over the forehead and concussion of the lumbar region, she was first admitted to the Kisii District Hospital and later transferred to Kenyatta National Hospital where she stayed for one week and remained in plaster for 4 months. The fracture in the left leg healed well, but there was shortening of the leg by ½ cm. As a result the plaintiff walked with a limp and there was restriction of movement in the left ankle joint. The left leg swells when plaintiff walks. Due to the injuries plaintiff was out of her work for a period of 2 years and 8 months and had not resumed duty. There was element of lost years and loss of earning capacity involved. General damages for pain, suffering and loss of amenities assessed at Kshs 200,000/- and cost of future medical expenses assessed at Kshs 134,000/-, lost earnings and loss of earning capacity at Kshs 116,000/-. Total general damages came to Kshs 478,550/-.

The case of Marco Nyagowa v Benson Mwangi Macharia Nairobi HCCC No 2812 of 1985 where the plaintiff sustained injuries when he was involved in a traffic accident. He sustained segmental fractures of the right tibia and a fracture of the right fibula, multiple lacerations on the right upper arm, left thigh and over the chin. He was in hospital for a total of 17 days and was discharged on crutches. There was muscle wasting or weakness assessed as 5” permanent incapacity in the leg. General damages for pain, suffering and loss of amenities assessed at Kshs 220,000/-.

The case of Makau Mulwa v Harriner Singh Kular Nairobi HCCC No 3277 of 1984 where the plaintiff sustained injuries while crossing a road. He was knocked down by the defendant and he sustained fractures of the clavicle (collar bone) and fractures of the tibia and fibula at its upper end (particular leg not specified). General damages for pain, suffering and loss of amenities assessed Kshs 150,000/-.

The case of Raphael Mutuku v Samuel Ngare and Another Mombasa HXXX No 116 of 1990 where the plaintiff age not stated, suffered injuries following a road traffic accident. He sustained fracture of the left tibia and fibula to which a plaster was applied for 4 weeks. The fracture however healed with malunion so plaintiff to be readmitted in hospital for surgery to correct the deformity. A subsequent medical report stated that the plaintiff had recovered from the injury and has no incapacity except for the scars on the leg. The long period of recuperation due to the malunion at the initial stages of treatment must have caused the plaintiff a lot of suffering and misery. General damages for pain, suffering and loss of amenities assessed at Kshs 185,000/-.

There are three medical reports. One by Dr J.K. Gichumo dated 14th December 1996 which lists fracture of left tibia and fibula and blunt head injury with concussion.

The second medical report by Dr Yusuf Kadwahala is dated 19th March 1997 and lists the fracture of the right thigh bone, fracture of the right leg with punctured skin, multiple small cuts on the scalp and the back of the left hand. For treatment he was placed on skeletal traction for his fractured thigh bone, which lasted for four weeks, his fractured tibia and plastered and screwed, his lacerations did not need stitching and were treated with full dressing. He was discharged on crutches with the leg encased in a plaster of paris. The cast was removed as an out patient and the crutches were discarded in June 1996.

In his findings the doctor found a 3 cm shortening of the right lower limb mainly confined to the thigh region, 2 cm wasting of the right thigh and 3 cm of the right leg, an operation scar on the right lower leg which is 20 cm long, clinical evidence of healed fractures of the right femur tibia and fibula, the united femur has left the thigh curved with convexity outside and therefore the right leg looks compensatorily drawn inside, walks with a limp, the lost 20 degrees flexion of his right knee is limited and painful, all movements of his right ankle are restricted by half and are painful beyond that range, multiple small cuts on the back of his left hand. Those on the scalp are covered by hair.

The x-rays done on that date showed consolidated base union at two fractured places in the femoral shaft with anterior lateral mild deformity. The lower femur and knee joint spaces and margins are normal. No osteophytes. Plated lower third fracture right tibia shows satisfactory position and healing. Fracture fibula at the same level has healed satisfactorily.

In his opinion the plaintiff sustained fractures at two places in his right femur. Both those fractures have

united but with a change in the curvature of the femur and shortening. They explain the distorted curve of the limb and his limp and pain. These are permanent. All these will strain his right knee and ankle joints and could easily degenerate changes in them. Is other fractures – that in the right tibia and fibula have healed nicely. The plates and screws will need removal. The restriction in the knee and ankle movements are as a result of these fractures and they are permanent too. The scars left behind by the laceration have no great functional or cosmetic significance. The pain in the left hip is unexplained as that area was not injured. He agrees long distance walking will leave discomfort though removal of metal might diminish it to some extent.

There was also an earlier report dated 8th May 1996 which I had overlooked, by Dr O.S. Bwomebgi and it is right that I append herewith its findings as well. It lists the injuries as head injury with cut wounds on the forehead and bi-parietal area, multiple laceration on the dorsum of the left hand, fracture of the right thigh bone, open fracture tibia and fibula right side.

On examination the doctor observed that the plaintiff walks with a limp involving the right lower limb, the head and neck are normal, the cardio respiratory system are normal, has three ragged scars over the dorsum aspects of the left hand measuring 0.2 x 2 cm. There is shortening of the right lower limb by 5 cm compared to the left, deformed thigh over mid-third surgical scar over the anterior aspect of the leg extending from the below knee up to the ankle region measuring 0.5 x 3 cm, the knee joint movements especially flexion is reduced by 30 degrees. The hip and knee joint movements are normal. The x-rays show segmental fracture involving the upper 1/3 and mid 1/3 right femur with butterfly fragment and shows transverse fracture distal 1/3 tibia fibula right.

The same doctor saw the patient 8 weeks later and observed fracture femur with minimum union, shows fracture tibia/fibula with no union and plated tibia on the right side.

In his diagnosis he diagnosed closed head injury, segmented fracture with butterfly fragment right femur, compound fracture tibia/fibula right. In his opinion, as a result of the injuries and healing the plaintiff has a deformed shortened right lower limb and he will require an operation to correct the malunioned femur in order to achieve the leg length and he will also undergo operation to remove the metals used. If the leg lengths are not achieved he will walk with difficulty and he is likely to suffer from osteoarthritis of the hip joint.

On assessment of damages, on the special damages the medical reports and abstract are proved vide production of the abstract and 2 reports. Abstracts usually cost Kshs 100/-. There is no receipt for Kshs 200/= less 30% contribution of Kshs 780/- leaving a balance of Kshs 1,820/-

As for general damages for the injuries sustained I find that the last reports note that apart from the shortening of the leg bowed or deformed thigh bone and pain when walking for a long distance the injury is virtually healed. The plaintiff said he has not been to hospital again since 1996, considering the injuries sustained the authorities cited and their ages and taking all the relevant circumstances into consideration I make the following assessment:

1. Head injury leading to concussion - KShs 30,000/-
2. Soft tissue injuries - Kshs 20,000/-
3. Fractured right tibia/fibula - Kshs 250,000/-
4. Fracture of the thigh bone less 30% contribution

Total Kshs 750,000/- less 30% contribution.

I therefore enter judgment for the plaintiff on the following terms:

1. Special damages of Kshs 2,600/- less 30% contribution of Kshs 780/- leaving a balance of Kshs

1,820/- with interest at court rates from the date of filing until payment in full.

2. General damages for pain suffering and loss of amenities:

(a) Head injury leading to concussion - Kshs 30,000/-

(b) Soft tissue injuries – Kshs 20,000/-

(c) Fractured right tibia/fibula – Kshs 250,000/-

(d) Fracture of the thigh bone – Kshs 450,000/-

Total Kshs 750,000/- less 30% contribution of Kshs 225,000/- leaving a balance of Kshs 525,000/- with interest at court rates from the date of judgment until payment in full.

3. Costs of the suit.

Dated at Eldoret this 19th day of August 1999.

Read and delivered at Eldoret this 4th day of October, 1999.

R NAMBUYE

JUDGE