



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NARIOBI
CIVIL CASE NO. 554 OF 1999

JACKSON MAKAU TUNGAPLAINTIFF

VERSUS

STAR TRANSPORT CO. LTD. & ANOTHER.....DEFENDANTS

Road Traffic accident

Turn boy – 27 years old

Defective lorry

Onetimed

Paraplegic

Urinary & stool, incontinence

JUDGMENT

Jackson Makau Tunga, is a male adult aged 27 years old. He was in the employment of the 1st defendant M/s Star Transport Co. Ltd as a turn boy. The 2nd defendant Ngala Chupaa Kenya was the driver of the motor vehicle lorry registration KTT 119/ZA 7060 (Mercedes Benz Lorry) owned by the 1st defendant.

Whilst on duty, as a turn boy, on the 14th of May 1997, the said lorry, traveling along the Nairobi/Machakos road swerved off the road and rolled. It caused to Jackson Makau Tunga, severe injuries. He was then admitted at the Machakos hospital. He was later transferred to Kenyatta National Hospital. He was at first admitted in the private wing and later transferred to the general ward.

It seems that since the accident he had never left the hospital, in particular Kenyatta National Hospital. The reason being that his bills had not yet been paid. He is therefore detained at the hospital.

Later during the trial the defence conceded to the costs of a wheel chair at Kshs.35,000/=.

The only issue left for me to decide is:-

“1) Did the plaintiff sustain injuries as pleaded and what is the quantum of damages?

2) Who should clear the cost of this suit?”

Issue No.1 (first part)

Did the plaintiff sustain injuries as pleaded?

The particulars of injuries were pleaded in the plaint as:-

- (i) Fracture of the left femur mid-shaft
- (ii) Fracture of the left proximal humerus
- (iii) Fracture of the left Clavicle
- (iv) Fracture of the left distal ulna with laceration of the left forearm
- (v) Injuries to the SPINE leading to Spinal Cord injury with loss of sensation up to the level leading to Paraplegia with URINE and STOOL INCONTINENCE

The parties put in by consent the medical reports prepared by each of their respective doctors.

Dr. Kamau Mwanga, a surgeon (there is nothing to indicate to me that he is a consultant) stated on oath and in his report that the plaintiff has sustained injuries. This was described as above and as in the plaint.

The doctor engaged by the defendants, Mr. M.M. Quresh, a consultant neuro surgeon examined the plaintiff and prepared a medical report dated the 1st November 1999. He did not come to court to give evidence.

Mrs. Stauss nonethless stated that the report is similar to that submitted by the doctor for the plaintiff.

What Mr. Quresh stated was that the plaintiff was

- (i) a paraplegic from the waist down
- (ii) stiff lumbo – sacral area preventing adequate spine flexion and was therefore unable to sit. His higher function was intact. He was alert oriented and had coherent speech.
- (iii) He is incontinent catheter in place.
- (iv) He is incontinent of stool
- (v) Pressure sores over sacral area and hip areas had healed.
- (vi) Perineal (anal) fistula also healed
- (vii) Legs revealed healing blisters.

FRACTURES

- viii Fracture of left femoral shaft
- ix fracture of left humerus Both above fractures healed with deformation
- x AP Lumber spine X-ray only a fracture of T11.

This opinion was that Jackson Tunga, had a T 11 spinal injury with complete paraplegia with urinary and stool incontinent. A malunited left humerus and femoral fracture. Healed pressure sores and perineal fistula. Stiff lumbosacral spine preventing adequate flexion.

He went on to add that early rehabilitation may have prevented some of the above condition.

Dr. Kimani Mwangi's opinion was that the injuries were serious, debilitating and permanent. Both psychological and physical suffering by the plaintiff had been rendered due to the injuries. The injuries rendered him paralysed. All his life he would have to be in a wheel chair. There were wounds and scars that were fully not healed.

I had the opportunity of physically seeing the plaintiff in court. I noted the sores on his lower limbs (legs).

Both the two doctors' reports have been accurate.

I find that the plaintiff did sustain injuries as described in the plaint and in the two doctors' reports.

The injuries are permanent. Mr. M. Qureshi described them as being only 60% disability whilst Dr. Kimani Mwangi described the disability as 100%.

The plaintiff suffered fractures to his arm. It seems that his upper limb though injured may be able to be still active and alert.

This would depend on the rehabilitation he would have.

The fact remains that he is still paraplegic and would, for most of his life, be dependant.

Issue No.1 (last part)

What is the quantum of damages?

The parties requested me to make a finding on the

General Damages

1. Pain and suffering
2. Loss of earnings
3. Future loss of earnings

Special Damages

1. Wheel chair
2. Future medical care and equipments.

During the trial the parties came to a consensus on loss of earnings and as stated earlier the cost of the wheel chair. I shall not mention anything further on the wheel chair but I would comment on the loss of earnings.

Both parties agreed by consent and through proof of their documentation that the plaintiff's salary was Kshs.2,800/= per month.

Mrs. Onyango for the plaintiff argued that the plaintiff has been in hospital and will still be there for another six months (at the spinal injury hospital). She prayed the court award Kshs.86,800/= made up of Kshs.2,800 x 31 months. This was not disputed.

The points not agreed to concern the assessment of damages on:

1. Pain and suffering
2. Loss of earnings
3. Future medical care

1. Pain and suffering and loss of amenities.

Mrs. N Onyango submitted that for this head of damages this court should award Kshs.2 million. She relied on this figure using the case of:-

William Siglai

Vs

B. A Bagero

Francis Kiprotich HCCC 1463/88

This is a judgment of Shields, J delivered in 1994. He awarded the plaintiff under the damages of pain, suffering and loss of amenities Kshs.1,500,000/=. The plaintiff in that case was 25 years old. He was a student and had to miss a considerable part of his schooling. Nonetheless he was on clutches and in later life has since become a medical doctor.

The plaintiff in this case is 2 years older. The impression I got from him is that he now would no longer return as his employment of a turn boy. He plans in future to be a shopkeeper.

Mrs. Stausie stated that she would rather rely on her authorities which awarded Kshs.850,000/= in 1988 and Kshs.800,000/= in 1985. Unfortunately these the authorities which I have not cited had no full text and therefore I am unable to comment on them. The defendant recommended Kshs.1,000,000/= under this heading.

I hold that the plaintiff has proved his case under this heading. I would award Kshs.1.5 million.

2. Loss of future earnings capacity

Mrs. Stausai for the defendant relied on the case submitted by the plaintiff namely William Siglai (supra). She recommended a multiplier of six years as being sufficient.

In the Siglai case (supra) Shield, J had used 6 years as being a reasonable figure which would be when the plaintiff would be able to gain his status as a medical consultant (The plaintiff was a medical student). The salary he would earn would have been Kshs.10,000/=.

The defendant's advocates Mrs. Stausi did not fully explain to me her basis of the 6 years. Nonetheless she recommended Kshs.201,600/= (made up of Kshs.2,800 x 12 x 6).

Mrs. Onyango for the plaintiff prayed for an award of Kshs.504,000/= (made up of Kshs.2,000 x 6 months x 15 years).

She relied on the multiplier of 15 years using the defendants authority of Peter Kimani v D. Silgai Supra

In this case before me the plaintiff was employed as a turn boy.

He does not see his future in that the due to his state. His wound was physical and not mental. He seems to have a great lapse that one day he may be able to manage his business. These are only dreams. He may

require training to begin a new career that requires use of the upper tasso only.

I would find that a multiplier of 15 years would be reasonable in all circumstances for loss of future earning capacity.

I would accept the plaintiff figure of Kshs.504,000/=.

3. Future Medical Care

Mrs. Staussi for the defendant organized that this court should sum up the whole total of the plaintiff's future medical care at Kshs.2,000/=. Using the same multiplier of 6 years the court should award Kshs.144,000/= (Kshs.2,000/= x 6 (multiplier x 12)).

She further argued that the court should decline to accept any other prayers as these have not been proved. For instance, she was certain the plaintiff required physiotherapy uthera cathias, neuslogist care and medicine. Indeed, Mr. Qureshi the doctor engaged by the defendants stated in his report these very recommendation as to the future treatment required.

Mrs. Stassi argues that no concrete proof had been made out for these prayers and it should be disallowed.

It thus meant that only Kshs.144,000 should be allowed under this heading.

I again received the impression that Dr. Mwangi, a doctor engaged by the plaintiffs on being cross examined by Mrs. Staussi was not able to substantiate where he obtained his figures for future medical care. Perhaps this could be the reasons for this line of argument by her on disallowing the paid figures.

Mrs. Staussi further submitted that the anthropedic bed should be disallowed as it was unnecessary. That a normal he should suffice. I believe Dr. Qureshi in fact stated in his report that the electronic Othopedic beds are not essential but a modified bed made in a similar manner to those in the spinal injury hospital can be made instead. It would have helped the court if she had thought counter questions.

Mrs. Onyango on the other hand argued that future medical care was required. She stated that this would be for life but relied on the earlier multiplier given of 15 years. Her figures of costs of the treatment were obtained from her doctor and that of quotation obtained from companies specializing in hospital equipments.

This she submitted that the plaintiff should be provided with physiotherapy at Kshs.500/= per month Kshs.1,000,080/=. Urine Catheter at Kshs.500/= to be used 203 times a week Kshs.720,000/= for 15 years, neurologist once a month for life Kshs.180,000/= for 15 years.

For the equipment she relied on the quotation of Kshs.254,000/= and toilet comode Kshs.28.500/=

A helper, once provided at the minimum wage of Kshs.2,000/= would require Kshs.360,000/=

Mrs. Onyango also spoke of medication and gave an amount of Kshs.95,700/=. I am unable to know how this figure was arrived at.

There is nowhere that the doctors mentions this medication and its costs. It was not specifically pleaded although a mention of drugs was made.

The pleadings indicate all the above items as a whole, namely purchase of drugs, physiotherapy, rehabilitation and purchase of urocodons at Kshs.1,000/= per day.

Latron was never pleaded.

From the foregoing I would compute future medical care as follows

Treatment

Physiotherapy

Neurologist

Including purchase of condoms Kshs.1,000,000/=

Equipment

Othopradic bed Kshs. 185,000/=

Toilet comrade Kshs. 28,500/=

In summary

(A) Injuries

(a) Paralegic from the waist down

(b) Incontinent catheter urinary

(c) Incontinent of stool

(d) Legs with healing blisters

(e) Fracture of femoral shaft

(f) Fracture of left humerus

Both fractures healed with deformity

(g) Fracture of T11

(B) Liability

100% liability for the plaintiff against the defendants jointly and severally.

(C) Multiplier 15 years

(D) Damages

(i) General Damages

* Pain suffering and loss of amenities	Kshs1,500,000/=
* Loss of earning capacity	Kshs. 86,800/=
* Loss of future earning capacity	Kshs. 504,000/=
	Kshs2,090,800/=

(ii) Special Damages

· Hospital bills and costs of treatment

To date (agreed)	Kshs. 490,521/=
* Medical report (agreed)	Kshs. 5,000/=
* Police abstract (agreed)	Kshs. 100/=
* Wheel chair (conceded)	Kshs. 35,000/=
	Kshs. 530,621/=

(iii) Future Medical Care

Treatment

Physiotherapy	Kshs1,000,000/=
Nerologist	Kshs. 180,000/=
Including the purchase of Uno-condons	Kshs1,180,000/=

Equipment

Othopedic bed	Kshs. 185,000/=
Toilet Comrade	Kshs. 28,000/=
	Kshs. 213,000/=
	Kshs.4,014,420/=

Say Kshs.4,000,000/=

Namely:-

General Damages -	Kshs.2,090,800/=
Special Damages	- Kshs.1,923,621/=
	- Kshs.4,014,421/=
Say	- Kshs.4,000,000/=

I award interest on general damages from the date of this judgment and interest on special damages from the date filing suit. I award costs to the plaintiff

Dated this 17th day of December, 1999 at Nairobi.

M. A. ANG'AWA

JUDGE