

Kimadi v Mbuni Transport Co. Ltd

High Court, at Mombasa

January 10, 1992

Shields J

Civil Case No. 363 of 1989

January 10, 1992, **Shields J** delivered the following Judgment.

The Plaintiff is a school teacher. He was 32 years of age. He was driving his motor-car a Mazda saloon registration number KJU 509 on 28th June, 1987 from Mazaras to Mombasa. Between 6.30 and 7.00 p.m. his car was hit by a bus and he sustained injuries which led to his arm being amputated and he suffered whip-lash injury to his neck. He has lost his right arm, he suffers from dizziness and forgetfulness.

He owes the Mombasa Hospital Kshs.40,112/-. He paid shs.100/- for Police Abstract and he paid Mr. Hemant Patel shs.1000/-for his Medical Report.

His account of the accident is that the defendant's bus was coming from the opposite direction, overtook a vehicle and despite his flashing his headlights, the bus came upon him at high speed. He swerved to the left but his motor-car was hit and thereafter he lost consciousness.

The truthfulness of his evidence was not shaken by Mrs. Adogo's cross-examination. She did not call any eye witness to the accident. It was content to rely on the investigation of the police officer Peter Musyimi who gave evidence as DW.1 who blamed the Plaintiff for the accident. He was not present at the accident. He took statements from witnesses and made a rough sketch. According to his evidence, he caused the plaintiff to be prosecuted for careless driving. The Plaintiff was however acquitted.

In these circumstances, it appears to me that I must accept the Plaintiff's evidence unless it is unbelievable or inconsistent or it contradicts the account given by the Plaintiff to the police or it is inconsistent with some evidence which the investigating officer, has been able to observe with his own eyes. I could find nothing unbelievable, inconsistent or contradictory in the evidence of the Plaintiff and nothing in the Police File, to persuade me to disbelieve the Plaintiff's evidence.

I have been referred to a few cases. Mombasa HCCC. No.508 of 1987 and HCCC.No.298 of 1984. No evidence has been led as to the possibility that the Plaintiff's earning capacity has diminished. Nor has evidence been led as to the cost or necessity for a further medical treatment or as to the desirability or otherwise of fitting the Plaintiff with an artificial arm. No award consequently can be made on these items.

Guided by the cases referred to, I will award the Plaintiff shs.300,000/- general damages for pain, suffering and loss of amenities. To this should be added the Plaintiff's hospital expenses of about shs.40,112/-, costs of the Police Abstract and costs of the Medical Report making in all shs.341,212/- and costs of these proceedings.