

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE NO 462 OF 1981

SHAH & 2 OTHERS.....APPELLANT

V

SACKAR & ANOTHER.....DEFENDANT

JUDGMENT

April 10, 1987, Rauf J delivered the following Judgment.

In this case I have to decide general damages for plaintiff 2 only as the claims of plaintiff 1 and plaintiff 3 have been settled.

The defendants have admitted liability for damages payable to plaintiff 2 in respect of the injuries she has sustained in a vehicle accident that took place on May 27, 1979 along Eldama-Ravine/Nakuru road. Plaintiff 2 was a passenger in motor vehicle No KSA 848 belonging to the first defendant and driven by the second defendant. The accident was admittedly caused by the negligent driving of the second defendant as stated in the plaint.

The second plaintiff's injuries are set out in the plaint and confirmed by not less than four doctors whose reports are produced by the plaintiff as Ex 1 in a bundle. The doctors are in agreement about the major injuries, but there is a substantial difference on the possibility of developing a vascular necrosis. Mr Hicks in his report puts the risk of this complication developing in this plaintiff's case as "small". Mr Patel in his report puts it as high as 70%. Mr Hicks, however, has given his reasons for the low risk in view of the plaintiff's age and other points that he listed under the heading "Opinion" on page 2 of the report. Mr Patel seems to rely on speculative statistics when he put the risk at 70% in his report dated March 19, 1982 in these words, "usually this happens in 70% of the cases". Since both reports were produced by the plaintiff, I am sure that the doctors were entirely guided by their professional judgment without any bias. Having read all other reports in the bundle and having considered the reasons set out by Mr. Hicks, I am inclined to accept Mr Hick's prognosis and find that the possibility of the onset of a vascular necrosis is small. I need not elaborate on other injuries on which there is consensus. The overall lasting impairment is negligible and most of the transient ones will hopefully disappear.

This plaintiff is growing satisfactorily and her educational prospects are not bad. Discomfort will not be severe.

None of the cases cited by Mr Gitau are helpful in my task of evaluating the general damages. The injuries and permanent disabilities in those cases were enormous. Luckily, the present case is not that bad.

The cases cited by Mr Patel are useful as a guide. Having compared the awards in all the cases cited by both counsel, I consider a global figure of Kshs 140,000 as reasonable. I, therefore, award Kshs 140,000 as general damages with interest thereon at court rates and costs of the suit.

April 10, 1987

RAUF J