



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO 825 OF 1985

SARAH NAVISOI MUCIRI

..... **APPLICANT**

versus

JOHN THOMAS KAMAU

RESPONDENT

JUDGMENT

This is a claim by Sarah Navisio Muciri for special and general damages arising from an accident as a result of which she was seriously injured. The appellant alleges that the accident was caused by the negligence of the defendant John Thomas Kamau.

The defendant did not enter appearance or file defence within the time prescribed therefore and on application by the plaintiff, judgment was entered against the defendant for Kshs 1,800 by way of special damages. In the event, this matter came before me for assessment of general damages.

On January 8, 1984 at about 5.00 pm the plaintiff was travelling as a passenger in motor vehicle number KLZ 446 driven by the defendant along Nairobi/Nakuru road when the defendant managed the said motor vehicle so negligently, that he caused or permitted it to overturn. As a result the plaintiff was seriously injured. Following the accident the plaintiff became unconscious for 6 hours. She was admitted in Nakuru Hospital where she remained for 1½ months. The doctor who examined the plaintiff Mr G M Sande, Consultant Neurosurgeon reported as follows:-

“PERSONAL DATA:

NAME : Miss Sarah N Muciri

AGE : 22 Years

OCCUPATION : Student

HISTORY : (Obtained from herself on May 12, 1984)

Miss Muciri was injured when a car in which she was travelling as a back seat passenger burst a front wheel tyre and rolled a number of times. This happened at about 5.00 pm on January 8, 1984 near Gilgil on the Naivasha-Nakuru road.

She became unconscious and did not ‘come to’ until later that night when she found herself at the Nakuru Hospital. She remained in the hospital until February 27, 1984, when she was transferred to

the Kenyatta National Hospital for specialized surgery to enable her to open her mouth which she was unable to open due to fractures of the maxilla. She was finally discharged from hospital on April 16, 1984. She is still receiving physiotherapy treatment three times a week.

INJURIES SUSTAINED:

1. Head injury: She lost consciousness for about six hours and sustained multiple bruises on the forehead.
2. Fractures of the right maxilla and floor of the orbit on the same side.
3. Fracture of the lumbar spine vertebrae
4. Fracture of the right collar bone
5. Loss of six teeth – there is the upper jaw and three in the lower jaw. Another two in the lower jaw are loose and painful.

PRESENT SYMPTOMS:

1. Pain in the right jaw and face. This is worse on chewing. She also has difficulty opening the mouth because of pain.
2. An uneven appearance on the face.
3. Low back pain. She has low grade back pain virtually all the time. This is worsened by prolonged erect posture or sitting up.
4. Absence of six teeth and pain in the loose lower teeth.

EXAMINATION:

Miss Muciri gave a lucid history. She has no significant post-traumatic amnesia.

She has a right sides enophthalmos (the right eye appears smaller than the left) and an obvious asymmetry of the face – the right side is lower and a little back compared to the left side. There are multiple scars on the face.

She cannot open the mouth more than 75 per cent (75%) due to trismus (spasm of muscles of mastication – a result of pain). She is tender over the right maxilla.

She has a gap of three teeth in the upper and another gap of three teeth in the lower jaw, both on the left side. The two lower incisor teeth are loose and will have to be removed.

There is definite hypnosis (backward deformity) of the thoraco-lumbar spine. She is tender over the area.

When lying on her back, she cannot raise her legs with the knees extended beyond 30 degrees (30) on account of spasticity and weakness of her thigh muscles.

CONCLUSION

Miss Muciri suffered severe multiple injuries in the road traffic accident. The facial asymmetry is a result of fractures of the right maxilla. The resultant ugly appearance is something she will have to learn to live with. The pain (trismus) that restricts mouth opening is permanent; the pain will most likely get worse as osteoarthritis is certain to supervene in the right jaw joint.

This is a joint that has to move for mastication to occur; it is, therefore, going to require long term and regular use of analgesics (pain killing drugs).

The loose teeth will need to be removed and the gaps in the jaws filled.

The most severe long term complication will result from the back injury. Her ability to walk long distances or to remain on her feet for prolonged periods has been severely compromised. The deformity involves weight bearing joints and it can be accurately predicted that Miss Muciri will develop osteoarthritis (a painful degenerative joint condition) prematurely because of uneven weight distribution not only in the lumbar spine but also in the hip joints.

Miss Muciri is a young woman who may well want to bring up a family of her own. The abdominal distention associated with pregnancy will make her back condition worse. Her pregnancy will be more uncomfortable and her confinement more difficult because of the back injury.

The head injury she sustained was a mild one. It can be safely stated that she was recovered from this completely.”

As can be observed from the above report the plaintiff who was 22 years at the time of the accident suffered very grave injuries. She had fractures of the right maxilla and of the floor of the orbit on the right side. She had further fractures of the lumbar spine vertebrae and of the right collar bone. She lost six teeth immediately on the accident and two loose ones were later pulled. At the time of examination, four months after the accident, she was still complaining of pain in the right jaw and face which became worse when she was chewing. She had difficulty in opening her mouth and had an uneven appearance of the face. She was suffering a low back pain. Her right eye appeared smaller than the left one. She had a backward deformity of the thoracic lumbar spine and could not raise her legs (when lying on her back) with the knees extended beyond 30 degrees on account of spasticity and weakness of the thigh muscle.

The injuries have left the plaintiff with serious permanent disabilities. The worse of these are two:

1. The mouth and face injuries which have rendered her face asymmetrical. This gives her face an ugly appearance. For a young woman who would normally be expected to have looked forward to a happy marriage this must have been one of the worst effects of the accident. The ugly appearance of the face coupled with the multiplicity of scars thereon must have dismissed these prospects. In the case of Kemfro Africa Limited v A M Lubia Court of Appeal Civil Case No 21 of 1984) Nyarangi, JA observed that it was generally difficult if not impossible for girls with serious physical disability to contract happy normal marriages. In that case the Court of Appeal refused to interfere with an award of Kshs 150,000 to a minor female plaintiff who had sustained a fracture of the right side of the frontal bone and had suffered 100% loss of the right eye.

2. The back injuries which according to Mr Sande’s report will result in the most severe long term complications and have compromised the plaintiff’s ability to walk or to remain on her feet for prolonged periods. The deformity involves weight bearing joints and the report predicts that the plaintiff will develop osteoarthritis prematurely because of uneven weight distribution not only in the lumbar spine but also in the hip joints. The doctor states that the back condition will become worse should the plaintiff become pregnant. Such pregnancy would be more uncomfortable and confinement would be more difficult.

Now, what would be a reasonable and fair compensation in the circumstances of this case? In his argument, Mr Ouna quoted several cases which he said would assist the court in assessing general damage in this matter. One of these cases was that Kenfro Africa Limited referred to above. The others were:-

1. Rahime Tayab & Another v Anne Mary Kimanu

Civil Appeal No 29 of 1982

2. Ugenya Bus Services v James Gachohi

Criminal Appeal No 66 of 1981 – Nakuru

3. James Kamau & Another v The Ag and Another

Criminal Case No 3565 of 1982 – Nairobi

4. Bhogal v Bunbridge [1975] EA 285

5. Firozali Noor Mohamed Lalji v Elias Kapombe Toka & Another

Civil Appeal No 46 of 1980

I have perused all of them and in none, were the facts and the injuries sustained remotely similar to those in this case. Except in the case of James Kamau and Another v the AG and Another, where the court had to assess damages of the loss of 4 teeth, all the other cases do not provide any useful guidance in the assessment of general damages in this case. However, in considering the correct damages payable to the claimants in two of the above cases, the court made certain general observations regarding the principles to be applied in the assessment of general damages for personal injuries which I consider useful and I would be guided by them in assessing what is fair and reasonable compensation to the plaintiff in the circumstances of this case. In the case of Ugenya Bus Service v James Kongo Gachohi, Madam JA (as he then was), said:

“General damages for personal injuries are difficult to assess accurately so as to give satisfaction to both parties. There are so many incalculables. The imponderables vary enormously. It is a very heavy task. When I ponderingly struggle to seek a reasonable award I do not aim for precision.

I know I am placed in an inescapable situation for criticism by one party or the other, sometimes by both sides. I also therefore do not aim to give complete satisfaction but do the best I can.

I also know that the days of small and stingy awards are gone. They were decidedly misery in any event, like Kshs 20,000 for the loss of a forearm or Kshs 50,000 for the loss of an eye. Even without the curse of inflation they were niggardly.”

And in the case of Musembi Mbathi and Another v Vincenzo Vassallo, Sachdeva, J when considering the question of assessment of damages for female claimant quoted with approval the passage in Kemp & Kemp, 4th Edition Volume 2 at page 3651 where it is stated:

“It is extremely difficult to assess the probable award for facial disfigurement. Individual judges vary greatly in their awards in the class of case. It follows that a bracket within which appropriate awards will fall is a wide one. All that can be said with certainty is that facial disfigurement is much more generously compensated in the case of women than in the case of men.”

With the above principles in mind I must now proceed to determine what, in my view, is the correct award for the injuries the plaintiff suffered. While doing so I have to take into account the following factors: That the plaintiff was a young woman of 22 years. She suffered serious head and back injuries. Her face was disfigured and her prospects for a happy marriage greatly diminished. She has a multiplicity of scars on her face. She lost eight teeth and she is likely to develop osteoarthritis prematurely.

For the face and mouth injuries I would award Kshs 240,000 and for the back injuries Kshs 140,000. For the fracture to the collar bone and the loss of 8 teeth I would award her Kshs 20,000 and Kshs 40,000 respectively.

The plaintiff was at the time of accident a student. She was present in court at the hearing of this case but did not give evidence. Apart from the evidence contained in the medical report which was produced in

court by consent, there is no evidence to show what the plaintiff is doing. Mr Ouna for the plaintiff relied solely on the medical report. In my view, therefore, the plaintiff has not made any claim for loss of earnings and there is no basis for making any award in respect thereof.

In view of what is stated above there will be judgment for the plaintiff for Kshs 1,800 being the amount of special damages claimed. This sum will carry interest at court rates from the date of filing suit. There will also be judgment for the plaintiff for the sum of Kshs 440,000 being the total of the awards made in respect of general damages to carry interest from today.

The plaintiff will have the costs of this suit.

Dated this 4th day of June, 1986.

T MBALUTO

JUDGE