



Gituku v Kihui

High Court, at Nairobi January 31, 1985

Abdallah J

Civil Case No 1527 of 1982

Advocates

Odero for Plaintiff

Kagiri for Defendant

CC: J Kamau

January 31, 1985, Abdallah J delivered the following Judgment.

The plaintiff who was probably enjoying a drink at an off – licence bar in the late evening of October 30, 1981 was hit by the defendant on his mouth with a bottle of beer, as a result of which he sustained injuries. He claims special and general damages for such unlawful assault. On 18th April, 1982, the parties appeared before late Brar J and recorded a consent whereby the defendant admitted liability for assault to the extent of 70 per cent of the special and general damages. The case was then set down for hearing to prove the quantum of damages.

The plaintiff has testified that he incurred the following expenditure as a result of the assault and suffered loss of earnings for 2 months.

(a) Transport charges to and from the hospital Kshs 600.00

(b) Medical expenses Kshs 18,750.00

(c) Loss of earning at Kshs 1,500 per month for 2 months

Kshs 3, 000.00

Total Kshs 22,350.00

The above not being disputed, judgment in terms of seventy percent for special damages will be entered against the defendant.

The parties, by consent dispensed with oral testimony of the doctor who examined the plaintiff and instead relied on medical reports which were admitted in evidence by consent.

Reading the medical evidence in conjunction with the plaintiff’s testimony, it would appear that in consequence of the defendant’s assault, the plaintiff suffered laceration of the face and he still has not very visible small scar on the right side of the lower lip. Moreover, seven of the teeth of the plaintiff were

removed and replaced by a denture. According to the medical report, in spite of the replacement of such teeth, the plaintiff “will still have a physiologic as well as aesthetic disability of approximately 60% in the Oral cavity”. According to the plaintiff he is still not able to chew hard meals like meat, maize, and yam, all his favourite foods. He says that he sometimes stammers and his speech is affected. Moreover, he spits a lot of saliva. He has pain in the front teeth. All these problems of the plaintiff may be attributed to the replacement by denture.

In assuming general damages for pain and suffering as well as discomfort, I have taken into consideration all the above, which is not in serious dispute. Counsel for both parties have referred me to Kemp and Kemp where general damages have varied from £3,500 at the highest to £ 250 at the lowest. It may be mentioned that most of these cases arise out of motor accidents where insurance companies will ultimately pay out the damages awarded. In the instant case the incident happened at a bar, at the end of month and late in the evening. Parties have agreed that the liability of the defendant is to the extent of 70%. The medical report indicates physiologic and aesthetic disability to the extent of 60%. In assessing damages, one may not over-look the inability of the plaintiff to chew his favourite foods and the continuing discomforts due to replacement by dentures. It is not shown that there is likelihood of future dental work.

Taking into account all the above as well as the rising trend of inflation, which has considerably reduced the purchasing power of the shilling, doing the best I can and realising that it is well nigh impossible to assess damages to any degree of accuracy. I am of the opinion that justice of the case will be met by awarding general damages at Kshs 40,000. I do so award the general damages.

In the event, there will be judgment for the plaintiff being 70% of the above as follows:

Special damages Kshs 15,645

General damages Kshs 28,000

Total Kshs 43,645

Judgment is for Kshs 43,645 together with costs and interest.