



Katua v Muasya

High Court, at Nairobi June 12, 1985

O’Kubasu J

Civil Case No 24 of 1985

Cases

Moniben Makanji v RVP Services Limited- NBI HCCC 931 of 1971 – unreported

June 12, 1985, O’Kubasu J delivered the following Judgment.

The plaintiff Winfred Mueni Katua brings this suit against the defendant J K Muasya seeking judgment for general and special damages arising out of an accident which took place on January 30, 1982 along Jogoo Road in Nairobi.

As no appearance was entered nor a defence filed this suit proceeded by way of formal proof. The plaintiff testified that on January 30, 1982 she was a passenger in the defendant’s car along Jogoo Road. They were travelling towards Maringo but the defendant was driving very fast. The plaintiff and other passengers told him not to drive too fast but the defendant paid no heed to these pleas. When they reached near St Stephen’s Church the defendant tried to overtake another car and as he was too fast he lost control ending up by hitting electricity post. The vehicle was damaged on the side that the plaintiff was. Police came to the scene and made arrangements for the plaintiff to be taken to hospital. She was taken to Nairobi Hospital. She had injuries on the head, left arm, leg and dislocation of the ankle. She was in plaster for two weeks but when the plaster was removed the ankle become swollen again after only a week. Another plaster had to be put.

The plaintiff paid Kshs 4,000 at Nairobi Hospital and took the receipt to the defendant. The defendant said that he would take the receipt to his insurance company so that he could refund the plaintiff. But the defendant never refunded this money. The plaintiff was examined Dr G K Mulunga who prepared a medical report (Exhibit 1) for which the plaintiff paid Kshs 750 and she produced the receipt (Exhibit 2). She also obtained a Police abstract (Exhibit 3) for which she paid Kshs 100.

The plaintiff was a sales agent with the Kenya National Assurance Company but due to this accident she lost her job as she could not walk for long distance after this accident. She was being paid on commission basis and so she was not bringing any business due to injuries received in this accident.

In his report dated February 1, 1985 Dr G K Mulunga stated inter alia

“The above named was seen in our orthopaedic clinic in April, 1982 after having been involved in Road Traffic Accident in January same year. She had been treated as an out-patient in another hospital without much improvement.

On examination, she was found to have healed superficial bruise on lateral aspect of left leg, left forearm and elbow and left parietal scalp. The left leg was swollen and painful around the skin and ankle joint.

There was no fractured bones.

She was treated with pain killers, physiotherapy and a course of short-wave diatherapy.

Since then she has had recurrent swelling pain and paraesthesia (pins & needles) over lateral aspect of left leg and ankle –joint. These get worse everytime she attempts to play games or walks for long periods and forces her to rest and take medications.

It is likely that the trauma caused some damage to nerve and muscle tissue which is bound to give her the recurrence or symptoms in the future”.

The above sets out in full the degree of injury that the plaintiff sustained as a result of this accident.

In *Moniben Makanji v RVP Services Limited - NBI HCCC 931 of 1971* – unreported Madan J (as he then was) awarded Kshs 62,000 as general damages for pain and suffering to a girl who had suffered injuries almost similar to–the injuries suffered by the plaintiff in this case. Mr Malonza has cited two unreported cases in which the awards were Ksh 120,000 and Kshs 150,000.

I have carefully considered the injuries sustained by the plaintiff in this case and having regard to the medical report (Exhibit 1) I would say that the plaintiff was lucky as she escaped with only minor injuries which have healed. In view of what I have said I award her Kshs 80,000 as general damages for pain and suffering as a result of this accident. There is the element of her job which she lost as a result. In my view a figure of Kshs 20,000 would be fair and reasonable compensation since she was not rendered unemployable. Hence this brings the figure of general damages to Kshs 100,000.

As regards special damages she has proved Kshs 4,000 paid to Nairobi Hospital Kshs 750 for medical report and Kshs 100 for police abstract. Hence special damages come to Kshs 4,850.

There will be judgment in favour of the plaintiff against the defendant as follows:

i) general damages Kshs 100,000

ii) special damages Kshs 4,850

Total Kshs 104,850

These figures will attract interest at court rates and the plaintiff is also awarded costs of this suit. Order accordingly.