



Kiniaru v Gatonye & Another

High Court, at Nairobi June 12, 1985

Amin J

Civil Case No 2869 of 1984

Cases

1. H C C C No 99/1974 Mama Komb v Hiram Mirathis Waweru

2. Elizabeth Mwithia Anah H C C C Nairobi 2938 of 1979

3. Camden v Lim Pjo Choo [1980] A C 174

4. Mohamed Juma v Kenya glass works Ltd C A 1 of 1980 (unreported)

Statutes

Civil Procedure Act section 27 (2)

June 12, 1985, Amin J delivered the following Judgment.

The plaintiff claim against the 2nd defendant is for damages arising out of a motor vehicle accident which occurred on February 21, 1983 at Nairobi/Limuru road.

The defendant's vehicle Registration number KPV 095, overturned and as a consequence of which the plaintiff was lawfully travelling as paying passenger suffered serious injuries for which he was hospitalized and received medical treatment over a long period of time.

On February 7, 1985 an interlocutory judgment was entered in favour of the plaintiff under the sum of Kshs 2,500 with interest and costs.

The issue before me is for my determination of the amount for general damages. A medical report from Mr M A Sheikh MBBS, FRCS, FICS, consultant Orthopaedic surgeon dated November 2, 1983 Ex 1 consists of two pages of a report of the detailed examination by the said surgeon, has been admitted in evidence at some length pertaining to his injuries, extent of his handicap and loss of amenities and other related matters which could adversely affect his future activities. I accept this evidence as correct.

The plaintiff suffered the following injuries:

- 1) Fracture of left bones (tibia fibula).
- 2) A deep transverse laceration (7cm over the fore-foot).

The plaintiff is a young man of twenty five years of age who was, prior to the said accident, in good

health and active in his work as a vegetable-potatoes vendor at the market place. He testified that he was earning about Kshs 1,000 and making a saving of Kshs 600 per month. As a consequence of the injuries sustained the plaintiff is now not able to carry out his former work and has changed over to tending cows and generating an income of Kshs 600 less a small amount for expense. I find that a small reduction has taken place in the earning capacity of the plaintiff.

The plaintiff underwent appropriate treatment and management of the above injuries suffered. The full plaster cast was applied to the left lower limb which was removed after three months of the application. During the period of three months the plaintiff was only mobile on non-weight bearing crutches. The laceration over the right forefoot underwent surgical toilet and suturing. The plaintiff remained an outpatient receiving treatment till August 30, 1983.

His present complaint is that:

1. his left lower leg is deformed
2. he cannot do the work as he was doing before, it hurts.
3. during the walking beyond 1km he feels pain, cannot lift heavy weight and the cold weather affects it adversely. The surgeon Mr M A Sheikh is of the opinion that the several injuries necessitated a prolonged treatment of over 6 months period.

The left leg fracture resulted in a mild deformity, pain, discomfort and swelling over the fracture site. Swelling appears towards the end of the day due to the prolonged defecency of the limb. These symptoms also precipitated during cold weather upon prolonged walking. The scar over the right fore foot has left an ugly scar formation. "the above mentioned have caused an obvious handicap with regard to the patients daily chores and routine in life at social, domestic and professional level. The wounds have completely healed."

From the evidence before me it is evident and cannot be denied that the plaintiff suffered serious injury. What shall then be the quantum of damages awarded to the plaintiff? Mr Mukuria for the plaintiff has referred me to a number of decisions.

The H C C C No 99/1974 Mama Komb v Hiram Mirathis Waweru, Kshs 30,000 was awarded for pain and suffering and losses of amenities. Where the plaintiff suffered fracture of tibia fibula.

In Elizabeth Mwithia Anah H C C C Nairobi 2938 of 1979 in a case of laceration of left leg an award of general damages in the sum of Kshs 5,000 was made.

In my view where some loss of earnings resulted and the future capacity to do so is also adversely affected a more convenient way to deal with all these matter is to take a global award for general damages. While the damaging effects of inflation the drop of value of money should be taken with consideration, such an award should be reasonable and must not be excessive overall.

Whilst an injured person must be fairly compensated in damages suffered by him as a result of the negligence of another but such an award in damages must also be taken into account the reality of the situation generally and must not get out of hand either. In arriving at my judgment as to the question of damages I have relied on the decision made in Camden v Lim Pjo Choo [1980] A C 174. The principle of the law, is that the compensation should be nearly as possible put the party who has suffered in the same position as he would have been if he had not sustained the wrong. This may only be achieved where the loss suffered can be ascertained with exactitude as loss of earning.

The non pecuniary loss e g pain and suffering, loss of amenities etc is difficult to asses.....beyond this there is no yardstick exist for measuring in money compensation to be awarded to a given amount of physical pain and mental suffering.

I have also taken note of the decision in Mohamed Juma v Kenya glass works Ltd C A 1 of 1980 (unreported). As per Madan A :

“I treat with respect award of general damages for injuries made in other jurisdictions as helpful indicators – but we have to reach our own measures on damages for different types and compensations for personal loss such as will fit with demands, the conditions exigencies, the circumstances and our own peculiarities so that they will groove with the pattern of life in Kenya.”

Having regard to all the circumstances of this case, and doing the best I can, I award the plaintiff against the defendant a sum of Kshs 75,000 as general damages for pain, suffering, loss of amenities and earning capacity, cost of medical care in future and all other eventualities. This award of general damages to carry interest from today at court rates , ie 12% until payment in full. The plaintiff is also awarded Kshs 2,500 as special damages which will carry an interest of 12% from the date of filing of this action.

The plaintiff must also have the costs of this action and interest on costs at the interest at court rates from the date of taxation until payment under section 27 (2) of the Civil Procedure Act.