

Republic of Kenya

High Court, at Nairobi

Civil Suit No 1587 of 1984

Ndegwa

v

Kartar Singh Nyeri Ltd & Another

Cases

Civil Case No 1495 of 1980

October 24, 1985, Owuor J delivered the following

Judgment.

This matter has come before this court only for the assessment of general damages. On November 22, 1984 an interlocutory judgment was entered for the plaintiff for a special damages amounting to Kshs 2, 019 as prayed in paragraph (a) (b) (c) and (d) of the plaint. Plaintiff's testimony was supported by medical report from Dr J D Patel who examined the plaintiff on April 18, 1984. Mwangi Ndegwa's story is that on the November 21, 1981 he was a passenger in a motor vehicle Registration No KRW 138 being driven by the 2nd defendant Arjan. The vehicle overturned along Isiolo Archers Post Road. He as a result sustained several injuries including a broken shoulder and other injuries on the head amongst other injuries. He as a result of the injuries was unconscious for two days, stayed at Meru District Hospital for nine days. He was then transferred to Mathare Consolata Hospital where he stayed for forty one days. He was discharged on February 6, 1982 but still continued attending out-patient clinic.

Before this accident, he was a driver earning Kshs 1,119. For six months after the injury, he was paid his salary. After this he has not found any employment. At the time of giving evidence he still experienced a lot of pain in his right leg which still does not stretch out well. He is not able to walk for long distance without support. He still has headaches. He has not been able to get work as a truck driver but the court agrees with his counsel that he could very well find a job as a driver for small vehicles.

Dr Patel examined the plaintiff and according to his report the plaintiff had through this accident sustained a number of severe injuries namely cerebral concussion, minor multiple abrasions on the right scarp, fracture of the left side clavicle middle 1/3, fracture shaft right femur upper 1/3, bruise on the left side scapular region and multiple minor abrasions on the right knee. The complaints that the plaintiff had e g headaches were according to the Doctor because of post concussional effect and should improve in the future but as of present the plaintiff had no neurological deficit.

Other effects of the injuries were a shortening of the plaintiff's right leg by 2 cm. This is accompanied with a stiff and painful and flexion contractured knee joint. This causes some pain after walking for long distances. The plaintiff has a high chance of developing severe osteoarthric changes in the hip and knee. It is very likely that the plaintiff will have to undergo corrective surgery of the right shaft femur to get rid of the pain and discomfort. This of course on the part of the plaintiff is more expensive or prolonged suffering. For this injury I was referred to an assessment made in Civil Case No 1495 of 1980 where Brar (J) for a similar injury was of the view that a sum of 80,000 would have been sufficient compensation.

Taking into consideration the fact that the plaintiff was unconscious for two days, stayed in Hospital for 41 days and his leg is shortened by about 2 cm there is also the question of the plaintiff not being able to go out and drive trucks. His counsel conceded that the plaintiff is not wholly wasted sure he can go out

and work driving a small vehicle.

Secondly the plaintiff was the one who chose to leave work. May be if he stayed work on small vehicle could have been found.

Apart from the fracture of the femur and the pain that still goes with it. The plaintiff still also has problem, pain and stiffness of the left shoulder which according to the doctor makes his day to day activities very difficult for instance he is unable to till his shamba. There is no evidence that the plaintiff himself was doing this even before the accident. However, he is likely to develop a frozen shoulder resulting into chronic pain in future. All the other injuries the multiple abrasion on the knee and head had healed very well at the time the doctor was examining the plaintiff.

Taking into consideration the injuries sustained and the suffering the plaintiff underwent on the fractured femur resulting in the shortening of the leg by 2.5 cm injury on the right shoulder concussion. I am of the view that a total amount of 70,000 would be adequate compensation. As for loss of earnings plaintiff could do abit more by getting other job in his sphere apart from driving of big trucks. Secondly he is the one who left work on his own accord. Nevertheless it is in evidence that he has been out of work since 1981 when the accident happened.

If the plaintiff had taken on the driving of a small vehicle and earned a less salary of Kshs 600 as from January 1982 to the present day, his loss would have been Kshs 23,355. I view this is an adequate compensation for the plaintiff's loss of earnings.

I therefore assess the general damages for the plaintiff for the sum of 95,574 (ninety five thousand, five hundred and seventy four only) plus the special damages of Kshs 2,219. He will also have costs of this suit. Interest on the above amount of Kshs 95,574 at 12% rate as from to-days date. Costs and interests.

October 24, 1985

Owuor J