



REPUBLIC OF KENYA

High Court, at Nairobi

Civil Suit No 1745 of 1984

Okallo

v

Attorney General

November 28, 1985, Owuor J delivered the following

Judgment.

On June 26, 1984 the plaintiff Omende Okallo filed a suit against the Attorney General as 1st Defendant and one Peter Oyaro 2nd defendant the driver of 5 KAF 75 owned by the Ministry of Defence and the one that allegedly knocked down the plaintiff along Juja road in Nairobi.

On August 7, 1984 Chief State Counsel Mr Shields filed a memorandum of appearance.

There being no defence filed on the November, 14, 1984 Owegi for the plaintiff filed a chamber summons seeking for leave of the court for judgment to be entered against the Attorney General. Para (3) of the supporting affidavit, Owegi averred that he had furthermore written to the Attorney General on August 3, 1984 requesting him about what action he the Attorney General intended to take. No reply was forthcoming. On May 14, 1985 an interlocutory judgment was entered against both the defendants with a sum of Kshs 450 together with interest for special damages.

This matter is therefore before me only for the assessment of general damages. The applicant gave evidence as to how he came to sustain the injuries that he now seeks to be compensated for. According to his testimony on October 14, 1981 just after he had crossed Juja Road and standing on the right side of the road, on the pavement he was hit by Kenya Air Force vehicle Reg No 5.KAF 75. He was knocked on the right foot. The foot got broken. He suffered pain for which he wants to be compensated. As up to the time of giving evidence, he still experienced headaches. When the weather is cold, he cannot stand straight nor is he able to walk for long distance. He has been advised by his doctor that he needs another operation on the leg.

Doctor's report on the plaintiff was produced as Ex1. Par (2) of the report about the injuries the plaintiff sustained:

“He had injuries on the right thigh where he sustained double fracture of the right femur. There was no communication of the bone with any outside wound. His general condition was not bad. He had no evidence of head injury. The systematic examination never revealed any other significant injury.”

The plaintiff was admitted into hospital on the same day of the accident and discharged on November 16,

1981 after an operation. From the doctors evidence it is clear that the plaintiff sustained no head injuries. The plaintiff's complaint about headaches cannot therefore be automatically attributed to the accident.

However, the doctor upon examining the plaintiff as far back as June 22, 1982 found that the plaintiff was walking with a right tilt on a dipping gait. The plaintiff's pelvis was tilted low on the right side by 1 cm. This corresponded with shortening of the right femur by 1 cm. This corresponded with shortening of the right femur by 1 cm. He should have sometime in 1983 gone for an operation to remove the implant. According to the plaintiff's evidence, he has not. It would appear this is an operation that can be done at no expense or very little if any on the part of the plaintiff.

The damages that I am required to assess are therefore only in respect of pain and suffering and the injury of the double fracture of the right femur. Mr Owegi has urged the court to reach a sum of Kshs 300,000 and in support of his argument he cited Nakuru Case 192 of 1976. This is a case that is very easily distinguishable from the present case.

In the present case, we are talking about fracture of the femur only which according to the doctor "showed a good alignment, a stable union with the metal implant in position".

There were no other injuries whatsoever. There has been no evidence of any loss of earnings if any. No evidence of the age of the plaintiff. Considering all the circumstances of this case, material fracture of the femur without any other injury, I am inclined to award a sum of Kshs 40,000.

I therefore enter judgment for the plaintiff in the following terms:

- a) General damages Kshs 40,000
- b) Specific damages Kshs 450
- c) Costs of the suit
- d) Interest on the above at 12% as from the date of the judgment.

November 28, 1985

Owuor J