



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CIVIL SUIT 57 OF 2007

CHARLES MWAVITA MWANGOMEPLAINTIFF

VERSUS

GRACE ANYANGO.....DEFENDANT

JUDGMENT

Charles Mwavita Mwangome (the plaintiff) has filed this suit against Grace Anyango (defendant). The claim arises out of a Road Traffic Act which occurred on 29th April 2005 at Kobil Petrol Station along Uhuru Street, Malindi while the plaintiff was walking along the pavement as a pedestrian and was hit by motor vehicle registration number KAN 970X Nissan Urvan hereby sustaining injuries namely a crushed left leg. He blames the accident on the negligence of the defendant and/or her authorized driver, servant and negligence are pleaded as:

- (a) Driving at an excessive speed in the circumstances.
- (b) Driving without due regard and attention
- (c) Failing to exercise adequate and sufficient control over the said motor vehicle
- (d) Failing to stop, show, secure or in any other way manage the said motor vehicle so as to avoid the said accident.

He prays for general damages and special damages in the sum of Ksh 17,148/-.

The matter proceeded on formal proof interlocutory judgment having been entered on 2-11-07.

In his evidence, the plaintiff described how on 29-4-05 he left his place of work at around 6.30pm to escort someone to the bus station. Plaintiff was standing next to a parked motor vehicle on the pavement along Uhuru Street when motor vehicle KAN 970X which was being driven from the direction of Habib Bank towards the old market, lost control and veered off the road, people standing nearby scampered for safety but plaintiff got hit on the left leg which was amputated above the knee. He was taken to Malindi General Hospital and treated – the treatment notes are produced as exhibit 1.

He incurred medical expenses in the sum of Ksh 15748/- as per receipts produced as exhibit 2 – he was in

hospital for ten (10) days.

The road traffic accident was reported to police and the motor vehicle driver was arrested and charged in traffic case no. 610/05 for careless driving as per the police abstract form produced as exhibit 4.

It was his evidence that before the road traffic accident he worked as a court clerk with Muranje and Co. Advocates and also a process server – which function he could not execute aggressively and he felt that he could no longer remain in the office. He was earning Ksh. 10,000/- as per copy of the petty cash voucher produced as exhibit 7. He now claims for lost earnings as he is not able to execute his duties saying at the time of the accident, he was 41 years, meaning he lost 14 (fourteen) years of service from the accident.

It is his contention that he cannot be blamed for the road traffic accident as he was just standing off the road.

Currently he works with Malindi Auctioneers, doing office work at a salary of about 5,000/- - 6000/-.

Dr. Arthus Mwanganyi (PW2) who examined the plaintiff found that he had a crushed left leg below the knee which was eventually amputated. He was subsequently put on physiotherapy and at the time of examination, he complained of “phantom limb” i.e the patient thought and felt that the limb was still intact. He suffered permanent incapacity as he was unable to perform his duties – the medical report is produced as Exhibit 6 and the doctor charged Ksh. 1500/- for it. The doctor also charged Ksh 3000/- for court attendance.

The evidence adduced clearly shows that the motor vehicle driver was to blame for the road traffic accident and must be held liable at 100%.

The plaintiff lost his left leg which was amputated at the knee.

Reference has been made to the decision in **Mohamed Mzee v Coast Bus HCC NO. 33 of 1983 Msa** where the plaintiff suffered a crush injury to the left leg which was eventually amputated at the knee level and the learned judge awarded general damages of 900,000/-. Mr. Muranje for the plaintiff suggests general damages of ksh. 1.5million. However in that case the plaintiff had severe complications after the accident and was hospitalized for two years- whereas in the present case plaintiff was in hospital for only 10 (ten) days.

Apart from that there were injuries on the left arm and a compound fracture of the right leg which also had multiple lacerations and bruises. In Mohammed’s case the healing was not complete as there were severe residual effects namely pain and swelling of the right leg, inability to lift right foot fully, inability to walk without the aid of crutches and even then he would be leaving foot drop on the right leg. That situation is certainly much more severe in terms of the extent and nature of injuries – it involved both limbs and the residual effects too. For the present case, plaintiff healed without any significant complications and I find that general damages of ksh. 400,000/- (four hundred thousands only) is sufficient compensation.

For special proved, I award ksh. 15,000/- as per receipts produced. There is no receipt issued by the doctor for the medical report and court attendance charges.

Plaintiff prays for loss of earning capacity which is a special head of damages and which must be pleaded – he can’t introduce it suddenly in his evidence and so I decline to award anything under that head.

I award costs of the suit to the plaintiff with interest at court rates from its date of judgment until payment in full.

Delivered and dated this 15th day of **July 2009** at Malindi.

H. A. Omondi

JUDGE

Mr. Otara holding brief for Bosire for plaintiff