



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(MILIMANI LAW COURTS)

CIVIL SUIT NO. 3873 OF 1987

BETWEEN

OPUNDA.....PLAINTIFF

AND

MARITHO & ANOTHER..... DEFENDANT

JUDGMENT

October 2, 1989, Joseph Butler-Sloss Judge, delivered the following judgment.

This claim arises out of a road accident that occurred on February 22, 1985. In paragraph 4 of the plaint, which was filed in court on September 30, 1987, it is alleged that on February 22, 1985, at about 9.40 pm the plaintiff was traveling in a motor vehicle along Maua Meru road. There was a collision between the vehicle in which the plaintiff was traveling and another vehicle which was being driven by the 1st defendant who, at the material time, was acting as the servant or agent of the second defendant. As a result of this collision, the plaintiff sustained various personal injuries, particulars of which appear in paragraph 6 of the plaint. In paragraph 4 of the plaint, it is alleged that the collision between the two vehicles and the consequent injuries sustained by the plaintiff were caused by negligence on the part of the 1st defendant. It is further alleged that the second defendant is vicariously liable in damages for the consequences of that negligence. The plaintiff claims special damages in the sum of Kshs 7,600 and general damages.

A defence was filed in court on June 16, 1987. In paragraph 3 of the defence the accident referred to in the plaint is admitted but negligence on the part of the 1st defendant is denied. It is further alleged that the accident was caused by negligence on the part of the driver of the plaintiff's vehicle or that that negligence contributed to causing the accident. The plaintiff's claim to have sustained personal injury and have incurred special damages are denied.

On February 18, 1988 the defendants issued a third party Notice against the attorney General alleging that the Attorney-General was vicariously liable for the negligence of the driver of the vehicle in which the plaintiff had been traveling.

On July 13, 1989 the parties appeared before the Hon Mr Justice Dugdale. Mrs Ameka appeared for the plaintiff. Mrs Mwaura appeared for the defendants, and Mrs Thuku appeared for the third party. By

consent interlocutory judgment was entered for the plaintiff against the 1st and 2nd defendants as to 95% of the plaintiff's loss and damages, and interlocutory judgment was entered for the defendants against the third party as to 10% of the defendant's liability to the plaintiff.

On the assessment of damages, Mr Kihara appeared for the plaintiff, Mrs Mwaura for the defendant and Mrs Thyuku for the third party.

The plaintiff himself gave evidence, and a medical report was put in evidence the plaintiff said that he held an appointment under Government as a District Environment Officer at Kisumu and was now thirty nine years of age. In his accident, he had damaged two upper teeth, and had lost his sense of smell. He had sustained a broken sinus and now suffered from attacks of sneezing and excessive watering of the eyes and as he put it problems with vision. His left eye kept tringling, and six months after the accident, tears were still passing through his nose. He had headaches, dizziness, chest pains and pain in his right hip. He had been treated in the Maua Methodist hospital in Meru District and in Meru District hospital, and finally in Kenyatta national Hospital where he remained for six weeks. The plaintiff gave evidence in support of his claim to special damages, and eventually this was agreed in the sum of Kshs 885.

The medical report was written by Dr L M Macharia, acting medical officer of health at Meru, it is dated September 25, 1987. It lists the plaintiff's injuries as follows:-

Bilateral pariorbital aedema; Loss of right upper incisor, and chipping of the left upper incisor teeth; A cut wound 7 cm long below the eye-brows and extending across the nasal bridge; tenderness in the right hip is the one of the greatest trochanter; Fracture of the nasal septum and frontal air sinus.

Dr Macharia conclusion is that the plaintiff had recovered well from his injuries but had sustained some permanent disability in the form of the depressed nasal bridge. This interfered with the nasal-lacrimal duct which drains tears from the eyes and was causing excessive watering of the eyes. He had also lost two upper incisor teeth and was dependant on artificial teeth. Dr Macharia found no permanent disability, in the rib cage, and considered that the plaintiff's chest pains might be subjective. In assessing damages, I take into account the hospital treatment and total treatment which the plaintiff had to undergo, and the fact that he has a permanent disability. He must now endure, as best he can, the inconvenience and embarrassment of losing his sense of smell and excessive propensity to sneeze. For these injuries I assess general damages in the sum of Kshs 100,000 95% of the Kshs 100,000 is 95,000. 95% of Kshs 885 or Kshs 841. These two figures Kshs 95,000 and Kshs 841 amount to Kshs 95,841.

Accordingly there will be final judgment for the plaintiff against the defendants in the sum of Kshs 95,841 special and general damages together with interest thereon calculated at court rates from the date hereof viz October 2, 1989 until the same are paid by the defendants to the plaintiff. And it is ordered that the defendants do pay to the plaintiff the costs of this suit such costs to be taxed if not agreed and to bear interest thereon calculated at court rates from the date of such taxation or agreement until the same are paid by the defendants to the plaintiff.

And there will be final judgment for the defendants against the third party in the sum of Kshs 9,584 being ten percent of the damages awarded against the defendants together with interest thereon calculated at court rates from the date hereof viz October 2, 1989 until the same are paid by the third party to the defendants.

And it is ordered that the third party do pay to the defendants the costs of the third party proceedings in this suit such costs to be taxed if not agreed and to bear interest thereon calculated at the court rates from the date of such taxation or agreement until the same are paid by the third party to the defendants.

Dated and delivered at Nairobi this 2nd day of October, 1989

JOSEPH BUTLER-SLOSS

JUDGE



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