



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL SUIT NO. 215 OF 2010

MARTHA KARUU KOBIA.....PLAINTIFF

VERSUS

CHINA ZHONGXING CONSTRUCUTION CO. LTD

MBATI JOHN

COMBO DVD COACH LTD.....DEFENDANTS

JUDGEMENT

1. The Plaintiff herein filed this suit seeking recovery of damages from an accident alleged to have occurred on 26th June, 2010. The plaintiff was alleged to have been a passenger in motor vehicle registration number KBH 101V when motor vehicle registration number KBJ 043 D crushed into KBH 101V. As a result of the said crush, the plaintiff suffered head concussion, fracture of the C4 and C5 vertebral, cervical spine 4 and 5 spondyloses, spinal cord compression, bed sores, generalized body pain and complete paraplegia of the body from the neck downwards to the legs. She averred that she incurred damages of Kshs. 113, 972 for medical expenses and sought general and special damages and costs of this suit.

2. The Defendants filed their statements of defence wherein they denied the plaintiff's claim. When the matter came up for hearing on 6th April, 2017, the parties entered into a consent to adopt judgment of Hon. Lady Justice Nyamweya of 1st February, 2016 on liability as apportioned in the test suit, Machakos High Court Civil Appeal No. 201 A of 2011. The liability was therein apportioned at the ration of 80:20 between the 1st defendant and 2nd and 3rd defendants. It was further agreed that the issue of quantum be dispensed with by way of written submissions.

3. It was submitted for the Plaintiff that the pain and psychological trauma undergone by the plaintiff for the last seven (7) years since the occurrence of the accident is unmeasurable and her condition will never change. That a broken frame can never be repaired and no money can replace it. The plaintiff therefore asked Kshs. 10,000,000/= for pain and suffering and cited **Dorothy Kanyua Mbaka & another v. P.S. In charge of department of defence in the officer of the President & another [2014] eKLR** where the plaintiffs therein were each awarded Kshs. 10,000,000/=. For loss of consortium, it was argued that this being a case of paraplegia from the neck downwards to the lower limbs, the plaintiff's sexual efficacy was lost. That Dr. Kimani Mwaura confirmed that she cannot control her stool and urine. In this regard a sum of Kshs. 400,000/= was suggested and **Nicholas Njue Njoki v. Eliud M. Kahuro [2014] eKLR** was cited in support thereof. Under the head of future medical expenses, it was submitted that the plaintiff explained in her evidence that she needs a house-help at a salary of Kshs. 12,000/= per month, wheel chair and special toilet at Kshs. 120,000/= and check-up at a cost of Kshs. 2,500/= per month. That the above claim was not challenged in any way by the Defendants. That Dr. Kimani Mwaura in his medical report confirmed that the plaintiff will need an orthopaedic bed which costs between Kshs. 260,000/= to 500,000/=. That the plaintiff will require regular check-up for urine infection. The Doctor's opinion was that the paraplegic chair would cost Kshs. 35,000/=. That the plaintiff's ages were 60 years at the time of examination. That the plaintiff is now 67 years and is likely to live another 10 years. The court was urged to use a multiplier of 17 years from the date of injuries.

4. The Plaintiff's general damages was thereby said to work as hereunder:

House-help	Kshs. 12,000 × 12×17 =	2,448,000/=
Wheel chair	Kshs. 85,000/= both	120,000/=
Paraplegic toilet	Kshs. 35,000/=	
Check-ups &		

medical care	Kshs. 2,500/=×12×17 =	510,000/=
Orthopaedic bed & mattress		500,000/=
Diapers and uridomes (Kshs. 300×12×17) =		61,200/=
Total		<u>Kshs. 3,639,200/=</u>

The case of **Nicholas Njue Njoki (supra) and Ezekiel Nzuki Mumo v. John Kinuthia & another [2016] eKLR** was cited in reliance.

On special damages, the court was urged to award a sum of Kshs. 254,203/= as per the receipts admitted herein.

5. The 1st Defendant on the other hand submitted that the essence of civil suits is to compensate and not punish either party. That awards should not be intent on unjustly enriching the plaintiff but should be commensurate with the injuries suffered. It was submitted that an award of Kshs. 500,000/= will adequately compensate the plaintiff. The 1st defendant relied on **John Kamore & another v. Simon Irungu Ngugi [2014] eKLR** where a plaintiff who suffered a blunt injury to the posterior part of neck which resulted to a fracture of the cervical spine and consequently weakness and partial paralysis was awarded Kshs. 500,000/=; **Joseph Mavulu Mutua v. Samuel Njoroge Mwangi [2003] eKLR** where a plaintiff sustained fracture of the right clavicle, fracture of all right ribs and fracture in the right hip bone was awarded KShs. 320,000/ and **Gabriel Kariuki Kigathi & another v. Monica Wangui Wangechi [2016] eKLR** where the plaintiff suffered fracture of the neck, bilateral rib fractures, bilateral lung contusion, injuries to both hands, injuries to both legs, fracture C2, fracture cervical spine and fracture of right ankle was awarded Kshs. 800,000/= by the lower court and on appeal reduced to Kshs. 400,000/=. On the issue of special damages, the court was urged to award on damages specifically pleaded and proved.

6. The 2nd and 3rd Defendants cited **Regina Mwikali Wilson v. Stephen M. Gichuhi & another [2015] eKLR** in which the court discussed the essence of awarding damages and **Isaiah Oduor Ochanda v. The Attorney General [2011] eKLR** where a soldier who suffered among other injuries paraplegia was awarded Kshs. 1,000,000/=. It was submitted that taking into account inflation over the past 6 years, Kshs. 1,500,000/= suffices as general damages. For special damages, it was submitted that the sum proven is Kshs. 132,696/=.

7. In considering this issue, I am guided by **H. West & Sons Ltd –v. Shepherd (1964) AC 326 at Page 364**, where the court stated:

“The court has to perform the difficult task of converting into monetary damages the physical injury and deprivation and pain to give judgment for what it considers to be a reasonable sum. It does not look beyond the judgment to the spending of damages... Money cannot renew a physical frame that has been battered and shattered. All that Judges can do is to award sums which must be regarded as giving reasonable compensation.”

8. In **Jackline Syombua v. BOG & Ekalakala Secondary School Embu HCCC No. 118 of 2006 (UR)** the court held as follows:

“The task of assessing damages in a case such as this is a difficult one. The court must nonetheless be guided by relevant precedent.....In assessing compensatory damages the court will always bear in mind that the purpose of awarding damages is not to pay as it were for the loss or injury the plaintiff has suffered. Damages only assuage the pain or loss suffered by the Plaintiff because no amount of money can replace a lost limb.”

9. I have duly considered the authorities cited by the defendants and nature of the Plaintiff’s injuries. It is clear to me that the cases cited by the defendants are very distinguishable from the case herein. It is noteworthy that the injuries suffered in the cases stated are not as severe as those suffered by the plaintiff in this case and I find them to be of no relevance. Guided by the Court of Appeal decision of **Mbaka Nguru & Another v. James George Rakwar [1998] eKLR**, I find and hold that Kshs. 5,000,000/= suffices.

10. On loss of consortium as established herein above it was clear that the plaintiff had not fully recovered. The Plaintiff as noted above is now reported to be aged 67 years and still has the determination to live and hence a multiplier of 17 years is found to be reasonable. The Doctor in fact opined that she will need a wheel chair and orthopaedic bed. She was also said to need to attend hospital for regular check-up. In that regard, I award the Plaintiff Kshs. 3,639,200/= as worked out herein above. This is bearing in mind the vicitudes of life.

Special damages is awarded at Kshs. 132,696/= pleaded and proved.

11. In the end, the plaintiff’s damages work as hereunder:

- a. General damages for pain and suffering -Kshs. 5,000,000/=
- b. Loss of consortium worked out as:-
 - House-help - Kshs. 12,000 × 12×17 = Kshs.2,448,000/=
 - Wheel chairKshs. 85,000/=
 - Paraplegic toilet Kshs. 35,000/=

Check-ups & medical

care - Kshs. 2,500/=×12×17 = Kshs. 510,000/=

Orthopaedic bed & mattress..... Kshs. 500,000/=

Diapers and

uridomes (Kshs. 300×12×17) = Kshs. 61,200/=

TotalKshs. 3,639,200/=

c. special damages.....Kshs. 132,696/=

TotalKshs. 8,771,896/=

Less 20% contribution Kshs. 1,754,379.20

NET GENERAL DAMAGESKshs.7,017,516.80

The Plaintiff is awarded costs of the suit plus interest on the general damages at court rates from the date of judgement while interest on special damages shall be at court rates from the date of filing suit.

It is so ordered.

Dated and Delivered and Machakos this 26th day of February, 2018.

D. K. KEMEI

JUDGE

In the presence of:-

Muindi - for the Plaintiff

Muriithi - for the 1st Defendant

Muchiri - for Mc court - for the 2nd and 3rd Defendants

Kituva .Court Assistant