



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL SUIT NO. 1492 OF 2005

MARY MUKAMI MWANGANGI.....PLAINTIFF

-VERSUS-

COMMERCIAL TRANSPORTERS CO. LTD..... DEFENDANT

JUDGEMENT

1. The late **Mary Mukami Mwangangi**, the plaintiff herein, filed a compensatory suit against **Commercial Transporters Co. Ltd**, the defendant herein, for the injuries she sustained from the accident which occurred on 28.3.2003 along Mombasa Road near Emali vide the plaint dated 28.11.2005.
2. Alex Makali Mwangangi, Rosetta Ngusye Makali and Isidore Mwangangi Makali, took out letters of administration in respect of the estate of Mary Mukami Mwangangi, deceased whereof the trio had this suit revived.
3. The defendant entered appearance and filed a statement of defence to deny liability and pleaded contributory negligence on the part of the plaintiff.
4. When this suit came up for hearing, the plaintiff summoned Lt Colonel Alex Makali Mwangangi (PW1) to testify in support of her case while the defendant closed its case without summoning any witness.
5. PW1 told this court that the plaintiff suffered serious injuries as a result of the accident involving motor vehicle registration no. G.K. 233D which was violently hit by motor vehicle registration no. KAG 099J, Mitsubishi lorry along Mombasa Road near Emali.
6. PW1 stated that he together with his deceased wife were travelling in motor vehicle registration no. GK 233D and that from where he was seated he had a clear view of the oncoming motor vehicles. PW1 said he saw a motor vehicle approaching them with its full lights on forcing the driver of the motor vehicle they were travelling in to slow down and suddenly the lights of the oncoming motor vehicle went off and on again. Shortly the oncoming motor vehicle rammed into the motor vehicle they were travelling in and as a result the passengers were seriously injured.
7. PW1 said the plaintiff (deceased) was seriously injured and was unconscious. PW1 also stated that he was not seriously injured and he helped remove the injured from the vehicle.
8. PW1 blamed the oncoming motor vehicle registration no. KAG 099J for reckless driving and for negligently causing the accident. He produced a copy of the judgment in Machakos SPM Traffic Case No. 2022 of 2003 in which the defendant's driver was found guilty as charged for the offence of careless driving.
9. PW1 further stated that after the accident the deceased was admitted at Nairobi Hospital from 29.3.2003 to 30.4.2003 when she was discharged but later re-admitted between 5.11.2003 to 19.11.2003 for further treatment. He also told this court that the plaintiff was attended to by Prof. Mbindyo, Dr. Moniz and Dr. Kioko while she was at Nairobi Hospital.
10. PW1 produced in evidence as an exhibit a copy of the letters of administration in respect of the estate of his deceased wife.
11. PW1 produced the medical report prepared by Prof. Mbindyo Which indicated that the plaintiff sustained the following injuries;

a) Fracture of the right femur

b) Fracture of the left femur

- c) Fracture of the left acetabulum
- d) Double fractures of the shaft of the left humerus.
- e) Inter-condylar fractures of the left humerus.
- f) Inter-condylar fractures of the right humerus
- g) Fracture of the left radius
- h) Fracture of the left ulna.
- i) Fracture of the left 2nd, 3rd and 4th metacarpal bones
- j) Cut wounds on the face and the limbs
- k) Haemorrhage shock
- l) Loosening of the four incisor teeth.

12. The plaintiff's witness also produced a bundle of receipts, vouchers, hospital bill statements for various hospitals and chemists showing the expenses incurred by the deceased in her treatment. PW1 also testified showing that the plaintiff underwent physiotherapy in different facilities within Nairobi area and incurred expenses as follows:

i. Physical therapy services ltd	ksh.43,600/=
ii. Nairobi Reumatology Clinic	ksh.247,000/=
iii. Ambulatory Surgical Centre	ksh.7,000/=
iv. Oriental Chinese Clinic	ksh.12,900/=
v. Gold Neo-life Diamite	ksh.7,688/=

13. He also produced receipts showing the plaintiff spent a further sum of ksh.16,000/= in Barfield Hospital, High Point Foundation and Kam Pharmacy Ltd. PW1 also produced acknowledgment of settled medical bills of the period the plaintiff was admitted at Nairobi Hospital to the tune of ksh.2,094,040/28 to Nairobi Hospital.

14. At the close of evidence, learned counsels were invited to file and exchange written submissions. I have considered the rival submissions. The issues which arose for determination are twofold. **First**, is whether the defendant is liable for the accident. **Secondly**, whether the plaintiff is entitled to damages and if yes how much.

15. On the first issue, it is the submission of the plaintiff that the defendant is wholly to blame for the accident. The plaintiff pointed out that Henry Nganga Kamau the defendant's driver, was tried and convicted for the offence of careless driving contrary to Section 49(1) of the Traffic Act and for the offence of driving a defective motor vehicle on a public road contrary to Section 55(1) of the Traffic Act. It is also the submission of the plaintiff that the defendant's driver did not appeal against the decision on conviction. The aforesaid driver was sentenced to pay a fine of ksh.3,000/-. The defendant submitted that the evidence of PW1 did not prove the particulars of negligence listed in paragraph 5 of the plaint therefore this court was beseeched to dismiss the plaintiff's suit. Having considered the evidence and the rival submissions, I am convinced that the plaintiff has tendered credible evidence that the defendant's driver was wholly to blame.

16. PW1 gave an eye witness account of how the accident occurred.

His evidence was also corroborated by the decision of the traffic court in **Machakos S.P.M.C. Traffic case no. 2022 of 2003** in which the defendant's driver was convicted for the offence of careless driving. That decision has not been impugned on appeal.

17. Furthermore, the deceased was a passenger in motor vehicle registration no. GK 233D, therefore no degree of negligence is attributable to her. The defendant did not deem it fit to issue a third party notice upon the Hon. Attorney General.

18. On quantum, the plaintiff proposed to be paid damages as follows:

i. General damages for pain & suffering	ksh.10,000,000/=
ii. Costs of future medical expenses	ksh.930,000/=
iii. Special damages	ksh.2,597,829/=

19. It is the submission of the plaintiff that a sum of Ksh.10,000,000/= for pain and suffering should be awarded due to the debilitating nature of the injuries the plaintiff suffered. The plaintiff cited two cases vizly;

SLB =vs= Ali Ramadhani & Another (2016) eKLR and

Monicah Muthoni Kiruku =vs= Amalgamated Logistics International Ltd & Another (2016) eKLR.

In the aforesaid cases the claimants were each awarded ksh.6,000,000/= for pain and suffering for near similar injuries.

20. The defendant on its part proposed a payment of ksh.2,500,000/= on this head arguing that it is a reasonable figure. The defendant cited the case of **Sabina Nyakenya Mwanga =vs= Patrick Kigoro & Another (2015) eKLR** where the claimant was awarded ksh.3,000,000/=. The defendant further cited the case of **James Gathirwa Ngugi =vs= Multiple Hauliers (EA) Ltd & Another (2015) eKLR** where this court awarded ksh.2,000,000/=.

21. Having considered the rival submissions and the authorities, it is apparent that the injuries sustained by the plaintiff herein were more severe than those suffered by the claimants in the authorities cited by the defendant. In fact, the cases cited by the plaintiff are in respect of injuries close to those suffered by the plaintiff. The figure proposed by the plaintiff of ksh.10,000,000/= appear to be on the higher side. I am convinced that the figure of ksh.6,000,000/= is reasonable and close to comparable awards.

22. On the award of future expenses, the plaintiff stated that after the accident, the deceased was confined to a wheelchair until she died in 2012. It is also stated that she depended on hand helps and never recovered until her demise. The hand help was paid ksh.6,000/= per month between 1.5.2003 to 30.12.2005.

23. The plaintiff stated that at the time of her demise the deceased had incurred a sum of ksh.930,000/= on future medication.

24. It was pointed out that the deceased had travelled to India for further medical treatment which surpassed the aforesaid amount.

25. The defendant challenged the plaintiff's claim arguing that the plaintiff had failed to produce travel documents and also failed to summon a hand help.

26. I have looked at the evidence tendered and it is apparent that the plaintiff did not present documents to establish expenses on this head. However, it is clear from the medical reports that he plaintiff incurred further medical costs. It was not disputed that the deceased was confined to a wheelchair and therefore the need for a hand help to make her move from one point to another.

27. It is also not disputed that the deceased had to visit India for specialized treatment. In the circumstances, this court should award a global figure which is fair and not exaggerated. I find the figure proposed by the plaintiff of ksh.930,000/= to be reasonable.

28. The final award the plaintiff sought is special damages. The plaintiff submitted receipts, invoices and statements showing the plaintiff spent ksh.2,597,829 on specials. Though the defendant is of the view that there was no basis for the claim, I am satisfied that the plaintiff gave credible documentary evidence to establish special damages.

29. In the end judgment is entered in favour of the plaintiff and against the defendant. The plaintiff is awarded as follows:

a) General damages for pain & suffering ksh.6,000,000/=

b) Cost of future medical expenses ksh. 930,000/=

c) Special damages ksh.2,597,829/=

ksh.9,527,829/=

d) Costs of the suit

e) Interest on (a) – (c) above from the date of judgment until full payment

Dated, Signed and Delivered at Nairobi this 23rd day of November, 2018.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Applicant

..... for the Defendants/Respondents