



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**CIVIL SUIT NO.18 OF 2013**  
**STEPHEN MBURU MAINA.....PLAINTIFF**  
**VERSUS**  
**H. YOUNG & COMPANY (E.A.) LTD.....DEFENDANT**

**JUDGEMENT**

1. The plaintiff Stephen Mburu Maina brought this suit against the defendant H. Young & Company (E.A.) Limited on the 24<sup>th</sup> July 2013 seeking for special and general damages as a result of injuries sustained while he worked for the defendant as a driver.

2. The parties agreed that this was a typical case of contributory negligence and a consent arrived at on liability at 65% against the defendant and 35% against the Plaintiff.

3. The medical reports and several hospital cards and receipts were admitted in evidence by consent of the parties revealing that the Plaintiff sustained the following injuries;

- i. Impacted fracture to L I vertebral bone**
- ii. Tenderness, bruises on the lumbosacral areas**
- iii. Injury to the lower back.**

4. The latter of the three medical reports prepared in June 2014 indicated that the Plaintiff was in general good condition and physique and walked normally. He still wore a lumber corset for support, had moderate tenderness along the lower part of the backbone (lumbar region and had tenderness (pain) on the level of L 1 vertebral bone. The doctor assessed him to have complication of post-traumatic osteoarthritis of the lumber spine and thus suffers chronic back pain prompting him to chronically take pain killers. He assessed permanent disability at 20%.

5. The principle in assessing damages is based on comparables as much as possible bearing in mind that an award of damages is some kind of consolation for the injuries and pain suffered.

In the case of **H. West & Son Ltd Vs Shephard (1964) AC 26** Lord Morris of Burth Gest had this to say;

***“...but money cannot renew a physical frame that has been battered and shattered. All that judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be an endeavor to secure some uniformity in the general method of approach. By consent awards must be reasonable and must be assessed with***

*moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional...”*

6. In his submissions Counsel for the plaintiff sought for;

- an award of kshs.7,000,000/- for general damages for pain and suffering and relied on the case of **Alex Otieno Amolo & Another Versus Hayer Bishan Singh & Another.**
- Future medical expenses of Kshs.480,000/-
- Hospital attendance of Kshs.260,000/- yearly
- Future surgery Kshs.400,000/-
- Loss of earning capacity Kshs.5,543,280

7. The respondent’s Counsel proposed an award of Kshs.600,000/-. He relied on **Ben Mengesa Vs Edith Makungu Lande (2013) e KLR.**

8. The most recent of the three medical report did not suggest any future medical follow up or surgery not weekly physiotherapy.

I therefore am of the opinion that surgery is not necessary,

secondly with time physiotherapy need has subsided hence not included in the most recent report.

9. Further the incident occurred while the Plaintiff was 63 years. I do not find the contention that he would have worked as a truck driver for another 12 years a serious preposition.

In my view the Plaintiff had pushed his luck to a fairly advanced age as a truck driver and may not have continued with the job due to his advanced age. I will therefore decline to award under this head.

10. Considering all the factors in this matter I find the defendant’s authority more comparable as opposed to that of the Plaintiff as the Claimant in the Plaintiff’s authority had sustained much more severe injuries.

I will also consider the lapse of 4 years since the decision in **Ben Mengesa Vs Edith Makungu Lande.** Consequently I will award a sum of Kshs.800,000/- as general damages.

11. Special damages according to Receipts produced is awarded at Kshs.8,150.

12. The upshot of this judgement is that I have awarded

**I. General damages awarded at Kshs.800,000**

**II. Proven Specials Kshs.8,150**

**Total Kshs.808,150**

**Less 35% Contributory Negligence Kshs.282,852.50**

**III. Costs of the suit Kshs.525,297.50**

**DATED and DELIVERED at BUNGOMA this 19<sup>th</sup> day of October, 2017.**

**ALI-ARONI**

**JUDGE**