



**REPUBLIC OF KENYA**

**HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 815 OF 2007**

**NAFTALI NJOROGE NJAU ..... PLAINTIFF**

**VERSUS**

**POLYPIPES (STEEL DIVISION) LIMITED .....DEFENDANT**

**JUDGMENT**

The plaintiff was injured when he was electrocuted and fell from a height while in the employment of the defendant on 9<sup>th</sup> June, 2005. He brought this suit against the defendant attributing his injuries to the negligence on the part of the defendant and claimed damages as a result.

On 16<sup>th</sup> September, 2015 the parties herein entered judgment for the plaintiff against the defendant in the following terms,

By consent

1. Judgment be entered on liability in favour of the plaintiff against the defendant at the ratio of 80% against the defendant and the plaintiff to bear 20%.
2. The evidence that was recorded by the late Hon. Lady Justice Khaminwa from Professor Kiama Wangai be adopted alongside the medical report.
3. The defendant's medical report dated 11<sup>th</sup> June, 2011 by Mr. M.M. Qureshi be attached to the defendant's submissions without calling the doctor.
4. The plaint dated 6<sup>th</sup> December, 2007 be amended to reflect special damages of Kshs. 38,477/=
5. Parties to agree on quantum failure of which the court to assess the same.

Subsequently both counsel reported that no settlement had been agreed on quantum and an order to file submissions limited to quantum was made. I have had the time to read the said submissions alongside some authorities that have been cited. According to the report by Professor Kiama Wangai dated 11<sup>th</sup> July, 2012 the plaintiff sustained multiple soft tissue injuries involving the Lumbosacral spine, posterior chest wall and the legs. He also had paraparesis. He was treated at PCEA Kikuyu Hospital where he was admitted for 5 days. He was later followed at the outpatient clinic at the rehabilitation centre.

When he was seen by Professor Wangai he was walking with a crutch. He had episodes of severe back pain, lower limb weakness with power ranging from 3 to 5 and had patchy sensory loss on the lower limbs. He also complained of impotency and loss of libido.

Local examination confirmed weakness of lower limb muscles, patchy loss of sensations of the lower limbs and tenderness to the lower back. According to professor Wangai the plaintiff had not and shall never recover from his injuries. He requires permanent and lifelong rehabilitation efforts twice monthly at

an estimated costs of Kshs. 5,000/= each. His loss of libido is also permanent. He shall progressively deteriorate and may require surgical intervention for his back. He is not in a position to eke a living like he would have before the accident. In brief he is a disabled person.

I note from the proceedings before the late Hon. Lady Justice Khaminwa that Professor Wangai gave evidence and more or less repeated the contents of his medical report on the plaintiff set out above.

The report by Doctor M.M. Qureshi is dated 11<sup>th</sup> June, 2011 just a year before the one by Professor Wangai. The doctor is said to be a neurosurgeon and when he saw the plaintiff he complained of numbness, weakness and inability to use his left arm and hand well, left leg weakness, pain across the right knee, low back pain, inability to walk without a crutch, impaired gait, breathing difficulty on walking short distances and erectile dysfunction.

In the doctor's opinion the plaintiff had no definite neurological impairment which could be explained on the basis of a spinal injury. Both doctors' reports are silent on the degree of the plaintiffs permanent disability and I am not in a position to assess the same.

The cited authorities includes **HCCC NO. 119 OF 2008 – EMBU AGNES WANJIKU NDEGWA VS. KENYA POWER AND LIGHTING COMPANY LIMITED and HCCC NO. 147 OF 2009 – KISII JOSEPH KIPTANUI KOSGEY VS. KENYA POWER AND LIGHTING COMPANY LIMITED.**

In those two cases the court awarded Kshs. 1,300,000/= and Kshs. 1,200,000/= respectively as general damages for pain and suffering. In both cases the plaintiffs suffered serious and extensive burns to their bodies which had no relationship to the injuries sustained by the plaintiff herein.

The plaintiff's injuries compares to some extent with the injuries sustained by the plaintiff in the case of **STEPHEN MALEVE VS. KENYA POWER AND LIGHTING KENYA LIMITED (2009) eKLR.** In that case the plaintiff suffered spinal injury with paraparesis, dislocation of right hip, head injury, pneumothorax of the right lung and right drop foot. The court awarded Kshs. 1,750,000/= for pain, suffering and loss of amenities.

I have taken into consideration all the material before me guided by the medical reports and in my judgment an award of Kshs. 3,000,000/= appears to be adequate compensation as general damages, for pain and suffering. The report by professor Wangai which was tendered by consent recognizes the fact that the plaintiff is not in a position to work as before. He was earning a sum of Kshs. 6,656/= per month. He was a technician then aged 26 years at the time he sustained the injuries. It is true that he was capable of working for an extra 30 years but considering the vicissitudes of life that period has to be discounted and in my judgment 25 years would be reasonable.

Taking that into consideration his loss of earning capacity amounts to Kshs. 6,656 x 12x 25= Kshs. 1,996,800/= which he is entitled to. Doctor Wangai also said in the same report that the plaintiff requires rehabilitation twice a month at the rate of 5,000/= per session. This can conveniently be placed under future medical expenses but considering that this is intended to rehabilitate him chances are that he may improve with time.

The learned counsel for the plaintiff has suggested a multiplier of 20 years which I believe is reasonable. This amounts to Kshs. 10,000 x 12 x 20 = Kshs. 2,400,000/=. Special damages have been agreed at Kshs. 38,477/=. The total award to the plaintiff adds up as follows,

General damages                      Kshs. 3,000,000/=

Loss of earning capacity              Kshs. 1,996,800/=

Future medical expenses              Kshs. 2,400,000/=

Special damages	Kshs. 38,477/=
Sub Total	Kshs. 7,435,277/=
Less 20%	<u>Kshs. 1,487,055.40</u>

**TOTAL            Kshs. 5,948,221.60**

The plaintiff is also entitled to interest at court rates on both general and special damages plus the costs of the suit.

***Dated, signed and delivered at Nairobi this 31<sup>st</sup> day of March, 2016.***

**MBOGHOLI MSAGHA**

**JUDGE**