



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 295 OF 2014

CHARLENE NJERI KURIA PLAINTIFF

VERSUS

GITU GEOFFREY 1ST DEFENDANT

SIMON GITUMBIRUA 2ND DEFENDANT

JUDGMENT

The plaintiff was injured following a road traffic accident which took place on 16th October, 2012 along Forest Road Nairobi. She was a passenger in motor vehicle registration No. KBM 089M which was owned by the 1st defendant but being driven by the 2nd defendant at the time of the accident.

She was taken to Guru Nanak Hospital but transferred to Agha Khan Hospital where she was admitted to HDU for one week and thereafter in the ward for one and half months. She was then taken to Apollo Hospital New Delhi India, for one month and on her return to Kenya continued with physiotherapy from home for one and half years.

At the time of the accident the plaintiff was aged 21 years old, and a first year student studying Dental Surgery University of Nairobi. When the accident occurred she had just completed her first year in college. Following the accident, she was out of college for one and half years. At the time she gave evidence in June, 2016 she was 23 years old.

On 24th April, 2016 a consent judgment was recorded on liability in favour of the plaintiff at the ratio of 90% against the defendants and 10% on the part of the plaintiff. It was also agreed that all documents filed by the parties herein be produced without calling the makers, and that the matter proceeds for formal proof for purposes of assessment of damages.

Subsequently, the plaintiff gave evidence and also the 2nd defendant. Both counsel for the plaintiff and the defendants have filed written submissions on the subject of damages which I have on record. They have also cited some authorities. From the medical reports filed herein, the plaintiff sustained the following injuries.

- i) Injury to the spine with transient alteration in the level of consciousness, due to the spine injury.
- ii) Inability to walk because of profound weakness of both legs with sensory loss - paraplegic.
- iii) Fracture dislocation at the level of L1 to L2 (complete anterolisthesis of L1 over L2 and wedge fracture of L2) with cord injury.

iv) Loss of sensation on the lower limbs distally.

v) Lower abdominal (lap belt) bruising.

vi) Lower back deformity.

The plaintiff appeared in court walking with the aid of crutches. She could not stand and therefore gave evidence while seated. The report by Doctor Jacinta Maina who examined her on 1st September, 2015 placed the degree of permanent disability at 60%.

She told the court she had flaccid paralysis from her waist down and could not walk soon after the accident, and her legs were insensitive. Her muscles started working six months after she started physiotherapy, but not all muscles have recovered. From her waist to the knee they have recovered but from the knee downwards they are yet to recover. In her own hands,

“My life has not been the same since the accident. I cannot run. I could run before. I cannot walk without crutches. I cannot drive a normal car. I am still a student. I need to do a lot of things. I cannot move by myself. I need help to carry things. I hope one day to be employed.”

She told the court that she is currently going through medication and sees a pain management specialist; and does nerve rehabilitation which means retraining the nerves. This is done at the Aga Khan University Hospital and she continues to buy medication.

The 2nd defendant in his defence recounted the accident and how he committed himself to encouraging the plaintiff up to the point where he received a demand letter from the advocate for the plaintiff and decided to discontinue his visits. The plaintiff was his girlfriend but they no longer relate, after some hostility was shown towards him by the plaintiff's family.

There is no doubt that the plaintiff sustained serious injuries at her very young age. The suspension of her classes at the university coupled with the recovery process must have been very devastating. I saw her testifying and noted her demeanour, determined not only to recover but also to complete her studies. There is no doubt however that the injuries have had a serious impact on her emotional and physical condition.

The court has been invited to award damages on several headings which include;

1. General damages for pain and suffering and loss of amenities.
2. Special damages.
3. General damages for diminished earning capacity.
4. General damages for impareness of housekeeping ability.
5. General damages for loss of consortium.
6. General damages for loss of life expectancy.
7. Cost of future of medication.

Out of the foregoing, I am able to award general damages, special damages, cost of future medication, general damages for diminished earning capacity and general damages for impareness of housekeeping ability.

I am guided by decided cases relating to injuries of more or less the same nature, but not necessarily of

the same impact. In **Nakuru High Court Civil Case No. 248 Of 2011 William Wagura Maigua Vs Elbur Flora Limited** the plaintiff sustained spinal injuries and was confined to the spinal injuries hospital for 14 months. He was 100% dependant and was not able to return to work. An award of Kshs. 3 Million was made in 2012. In **Nakuru HCC No. 157 of 2012 Ngure Edward Karega Vs Yusuf Doran Nasir** the plaintiff in that case sustained a fracture of the 6th cervical and fracture of the right leg, bruises on the head and palms. The fractures took long to heal and the spinal injury incapacitated him. He was admitted to hospital for two months and treated for bed sores and underwent physiotherapy. He was 39 years old at the time of the accident. An award of Kshs. 5 million was made in May 2014. See also Mombasa **HCC NO. 188 of 2005 Joseph Maganga Kasha Vs Kenya Power and Lighting Company Limited and HCCC No. 5 of 2013 Mary Njoki Macharia Vs James Nyaranga (2014) e KLR.**

I have taken into consideration the age of the plaintiff, the nature of her injuries and the degree of permanent incapacity. Doing the best I can with the material before me, I make an award of Kshs. 5 Million general damages for pain, suffering and loss of amenities. Special damages pleaded and proved amount to Kshs. 5,684,484/=. There is evidence that the plaintiff shall continue to be under medication for many years to come. A sum of Kshs. 158,118/= shall be required for three session in a year. At the age of 23 years now, I believe a multiplier of 30 years is reasonable considering the nature of the treatment which she is currently undergoing. Under that head I make an award of Kshs. 4,743,540/=.

The plaintiff is studying dental surgery and there is no doubt that even after completion of her studies, her earning capacity will be diminished considerably. She looks forward to being employed and a payslip from a doctor employed by the Kiambu County has been provided to guide the court in that regard. A sum of Kshs. 100,000/= as salary is not misplaced for a dental surgeon. Again, I have used a multiplier of 30 years but that has to be subjected to 60% incapacity as assessed by Doctor Maina leading to a figure of Kshs. 21,600,000/=.

Due to her condition, the plaintiff will need the services of a house help. A modest salary of Kshs. 6000 /= has been suggested and also that this house help will be working half a day. Again a multiplier of 30 years is not unreasonable and under this head I make an award of Kshs. 1,080,000/=. The total award comes to Kshs. 38,108,024/= which shall be subjected to 10% reduction being of liability assigned to the plaintiff leaving a balance of Kshs. 34,297,222/=.

I have not made any award for loss of consortium for the reason that, although the plaintiff and the 2nd defendant were close friends which relationship has now ended, the plaintiff still has a future to make an independent decision for her future partner. I have also not made any award for loss of expectation of life because, I believe with award of general damages, future medical care and loss of future earning capacity, the plaintiff is well catered for and in any case she still has a life to live.

In the end there shall be Judgment for plaintiff against both defendants jointly and severally in the total sum of Kshs. 34,297,222/= made up as follows:

1. General damages Kshs. 5,000,000/=
 2. Special damagesKshs. 5,684,484/=
 3. Costs of future medical careKshs. 4,743,540/=
 4. Loss of future diminished/ earning capacity Kshs. 21,600,000/=
 5. House help Kshs. 1,080,000/=
- Subtotal Kshs.**38,108,024/=**
- Less 10% Kshs. 3,810,802/=

Total Kshs. **34,297,222/=**

The plaintiff shall also have the costs of the suit and interest at court rates.

Dated, signed and delivered at Nairobi this 30th Day of November, 2016.

MBOGHOLI MSAGHA

JUDGE