



RUNNING DOWN CASE

INJURIES

- *Fracture of the neck of the femur on the left.*
- *Head injury – was unconscious on admission.*
- *Multiple cuts on the scalp and on the face.*
- *Fracture midshaft of the right femur.*
- *Loss of 3 toe nails on the right foot.*
- *Bruise on the right knee.*

AWARD

- *Pain and suffering - Kshs. 1,800,000/=.*

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HIGH COURT CIVIL CASE NO. 83 OF 2002

**F.G (Minor suing thro' the father & next friend T.M)
PLAINTIFF**

VERSUS

JOHN MWANGI

NDUNG'U1ST DEFENDANT

JAMES KOOME NAIRUTI T/A MEKA

AGENCIES.....2ND DEFENDANT

JUDGMENT

The plaintiff F.G through her next of friend sued the defendants claiming for judgment for special and general damages for pain and suffering, loss of amenities and costs of future medical expenses. On 16th July 2001 G was knocked down by a vehicle registration number KAC 298A which belonged to the 2nd defendant and at the time was being driven by the 1st defendant. The evidence of PW2 was that G on 16th July 2001 was walking about three steps out of the tarmac of the Meru/Maua road. The subject vehicle which was then carrying khat (*miraa*) ran over a bump on that road whilst being driven at very high

speed. The bump caused the vehicle to go off the road where it hit G. G, according to this witness, was hit whilst she was off the road. The vehicle when it hit G did not stop. The witness said that before the vehicle hit the bump at high speed he did not hear the vehicle being hooted nor did he see any attempt to slow down. PW2 blamed the 1st defendant for the accident. PW1 was Dr. Macharia. He gave evidence that G was involved in a motor vehicle accident on 16th July 2001. She was taken to Tigania Mission Hospital where it was found that she had sustained the following injuries:-

- ***Fracture of the neck of the femur on the left.***
- ***Head injury – was unconscious on admission.***
- ***Multiple cuts on the scalp and on the face.***
- ***Fracture midshaft of the right femur.***
- ***Loss of 3 toe nails on the right foot.***
- ***Bruise on the right knee.***

The treatment she received on being transferred to Meru District Hospital the following day was:-

- ***In Meru District Hospital bilateral traction was applied. The cuts were also stitched and a head injury chart started. After 1 week, she was referred to Kenyatta National Hospital for further management.***
- ***In KNH, a CT scan of the brain was done. ORIF was done on the left femoral fracture and she was put on traction. She remained unconscious for 3 months. After ORIF it was noted that adequate reduction was not achieved.***
- ***ORIF was repeated after 3 months.***

The current condition of G is that:-

- ***Complains of pain on the left hip.***
- ***Is using crutches.***
- ***Examination – A child in a fair general condition. Has a healed scar on the left hip. Can not walk without support (crutches).***
- ***Multiple healed scars on the face. The left lower limb is shortened.***

The doctor's opinion is that:-

- ***Following the accident, Faith sustained multiple injuries. The fracture of the left thigh resulted in shortening of the left lower limb. This has made walking difficult and she is not able to perform her duties. This is permanent incapacitation.***

The doctor in further evidence stated that G will require a follow up, surgical treatment and specialized treatment. The doctor in evidence did not elaborate on this treatment. The injuries described by the doctor were confirmed by G's father, PW3. He stated that G was hospitalized for one year and was in a comma for three months. That G has to attend hospital every three months for treatment and he spends Kshs. 5,000/= for each visit and Kshs. 5,000/= for transport. That G is often in pain and constantly needs pain relieving medication. For her movement she entirely depends on crutches. She was affected in her schooling as a result of the accident which accident made her to be disabled. She could not after the accident play with other children and she always needs to be assisted in all chores. He said that she will need assistance for her lifetime. The defendants did not file an appearance on being served with the summons and plaint and as a consequence interlocutory judgment was entered against them on 5th

January 2009. At the close of the plaintiff's case, the plaintiff's learned counsel Mrs. Kaume was given an opportunity to submit before court giving authorities that she relied on. She unfortunately failed to attend court on two separate occasions when this matter was adjourned. As I consider this judgment, I therefore do not have the benefit of her submissions. I have considered the case **Philip Kimani Ngugi vs. The Attorney General** HCC Civil Suit No. 151 of 1994 which was decided on 21st January 2003. The injuries suffered by the plaintiff in that case were:-

“(i) Head and Brain

1. ***Cranial nerve palsies due to structural damage to the left cerebral hemisphere.***
2. ***Expressive amphasia due to damage of more speech centre located in left cerebral hemisphere.***
3. ***Brain contusion and hemorrhages in the legs cerebral hemisphere with presence of air in the brain.***

1. ***The right upper limb***
2. ***Total paralysis of the limb.***

(b) Dislocation of right shoulder.

(c) Loss of power to the right upper limb.

(ii) The right lower limb

(a) Muscle wasting

(b) Walking with a limp

(c) Cuts and lacerations on the chest, tenderness over

the sternum and over the lower left chest, fracture of

the 7th, 8th and 9th ribs.

In that case, the plaintiff's disability was assessed at 63%. In our case G's disability was assessed as permanent incapacity. I have also considered a case that was decided in 1999 which was quoted in the case **Hamisi Gunga Baya Vs. Salt Manufacturers Ltd & Ano.** Civil Suit No. 651 of 1993. The injuries of that case of 1989 are comparable to our present case. The judge quoted that case as follows:-

“I peg my award on the of Lesikar Ole Murindo Vs. Raybinder Singh H.C.C.C. No. 1772 of 1985. In that case the facts are that the plaintiff suffered a major head injury, fracture of the mandible multiple injury to the left forearm and fracture of the right ankle joint. He was unconscious for three and half weeks; the mandible was fixed with interdental wiring for 5 and a half months. The forearm was extensively swollen while the fractures of the ankle were

manipulated and plaster applied for two months. Due to prolonged period of unconscious the head injury would pre dispose him in developing epilepsy late in life. There was need for further hospitalization and proper management of the fractures but malunited mandible. The ankle had healed well but with some moderate stiffness. General damages for pain, suffering and loss of amenities were assessed at Kshs. 250,000/= in a judgment delivered on 3rd October 1989.”

Bearing in mind those authorities and the very severe injuries suffered by G at a young age of 7 years, it is undoubtedly clear that the accident drastically changed the course of her life. At present G is 16 years old. With that in mind, I make the following award which is the judgment of this court:-

- 1. For pain and suffering Kshs. 1,800,000/=.*
- 2. For loss of earning and earning capacity I award Kshs. 5,000 x 12 x 20 = 1,200,000/=.*
- 3. For future medical treatment I make an award of Kshs. 500,000/=.*
- 4. Special damages of Kshs. 87,200/= which amount shall attract interest from the date of filing suit until payment in full.*
- 5. Costs and interest on number 1, 2 and 3 above from the date of this judgment until payment in full.*

Dated, signed and delivered at Meru this 10th day of February 2011.

MARY KASANGO

JUDGE