



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO. 163 OF 2008

JANET MWOVAPLAINTIFF
VERSUS
MURIITHI MARTINDEFENDANT

J U D G M E N T

The plaintiff **JANET MWOVA** filed this suit dated 6/6/2008 seeking the following

- a) **General damages for pain and suffering and loss of earning and/or earning capacity.**
- b) **Special damages**
- c) **Costs of the suit**
- d) **Interest on (a) (b) and (c) above”**

The defendant one **MURIITHI MARTIN** despite having been properly served did not enter appearance and neither did he file any defence to the plaint. Interlocutory judgment was therefore entered as against the defendant on 21/12/2009. The matter then came up before this court for formal proof on 24/5/2011.

The suit arises out of an accident which occurred along the Mombasa –Malindi road on 4/11/2007. The plaintiff told the court that on that day she was traveling to her parents home in Shanzu form a funeral in Bombolulu – she was a passenger in a motor vehicle Registration KAX 813 N which vehicle belonged to the defendant. Near KRA- customs the driver lost control of said vehicle and it veered of the road and hit a wall. The plaintiff sustained injuries as a result of this accident. She was rushed to Jocham Hospital where she was admitted for about two (2) weeks. She was then transferred to Agakhan Hospital in Mombasa where she was admitted for a further two (2) weeks. Thereafter the plaintiff filed this suit seeking the prayers listed above.

As stated earlier the defendant despite having been properly served made no response to this suit at all. The plaintiff’s evidence on record therefore remains uncontroverted. The fact of ownership of the motor vehicle Registration KAX 813N is proved by the search certificate obtained from the Kenya Revenue Authority dated 4/11/2007 **Pexb1**. The registered owner of this vehicle is one ‘Muriithi Martin’ (the defendant herein). The fact of the accident is also not in any doubt. The matter was reported to police who issued an abstract dated 8/4/2008 **Pexb 4(a)** confirming the occurrence of an accident in which the plaintiff ‘Janet Mwova’ was injured.

Similarly the fact and the extent of the injuries suffered by the plaintiff are proved by the bundle of

medical documents which she produced in court as Exhibit **Pexb 5**. There is an invoice from Jocham hospital indicating that the plaintiff was admitted in that hospital on 4/11/2007 and was discharged on 10/11/2007. Likewise the discharge summary from Agakhan hospital Mombasa proves that the plaintiff was admitted into that hospital on 9/11/2007 and discharged therefrom on 20/11/2007.

The plaintiff was later examined by a **DR. S.K. NDEGWA** of Jambo clinic and laboratory. His report dated 5/5/2011 was produced in court as an exhibit **Pexb 7** certifies that the injuries which the plaintiff sustained as a result of the accident included the following:-

- fracture of the left acetabulum
- fracture of the left pubicrim
- dislocation of the left hip
- chest contusion
- several lacerations on the left upper arm
- cut wounds above left eye.
- Huge deep and disfiguring cut wound below the left eye.
- Bed sores on both buttocks
- Injury to left sciatic nerve leading to left foot drop.

No doubt these were very severe, debilitating and extensive injuries. The same Dr. Ndegwa concluded that as a result of these injuries the plaintiff had sustained 60% permanent disability.

I will now proceed to consider the issue of quantum. No challenge has been made to this suit and indeed interlocutory judgment was entered against the defendant. From the police abstract **Pexb 4(b)** it is clear that this accident was self-involved. No other vehicle or person could be said to have contributed to the accident. The driver of the vehicle in which the plaintiff was a passenger simply lost control, veered off the road and hit a wall. As such I find liability against the defendant is 100%. Prayers have been made for an award of damages under the following headings –

GENERAL DAMAGES FOR PAIN AND SUFFERING

As stated earlier the plaintiff sustained, severe, debilitating and extensive injuries which necessitated her admission into hospital for a period of about one month during which time she had to undergo numerous operations. She continued with treatment and therapy in Germany where she lives. For pain and suffering, I do award to the plaintiff a sum of Ksh.2,000,000/- [read two million only]

SPECIFIC DAMAGES

The plaintiff conceded that no specific claim for medical expenses was made as she was unable to raise the court fees for the same. Much as I may sympathize with the plaintiff it has been held severally that courts may only make awards for special damages which have been specifically pleaded **and** proved. In this case the only special damage pleaded and proved is the sum of kshs.2,200/- for the medical report and police abstract. Therefore award to the plaintiff this sum of Ksh.2,200/- as special damaged

GENERAL DAMAGES FOR LOSS OF EARNING AND EARNING CAPACITY

The plaintiff in her evidence told the court that before this accident she worked as an aminorator at the Bamburi Beach Hotel where she earned a salary of 9,000/- per month. This is proved by the letter from her employer dated 2/5/2008 which states that the plaintiff earned a sum of ksh.350/- per day. Assuming that she had one day off per week this could amount to 350X26 (days) which amount to ksh.9100/- per month. This court takes judicial notice of the fact that the job of an animator in a tourist beach hotel requires one to be agile and active most of the time. Clearly with the injuries which the plaintiff suffered she cannot continue with that line of work. In the case of **LALJI-VS- TOKA [1981] KLR 325** the court held that where a plaintiff has established that his capacity to earn a living has been diminished and/or reduced he is entitled to an award of damages for loss of future earning. At the time to the accident the plaintiff was aged 34 years. She could have worked to the age of about 55 years which was the official

retirement age at the time. This I will apply a multiplier of 18 years. Thus the quantum for loss of earning comes to:

$$\begin{aligned} 9,100 \times 12 \times 18 &= \mathbf{1,965,600} \\ \text{Less 60\% permanent disability } 1,965,600 \times 60/100 & \\ &= \mathbf{\underline{1,179,360}} \end{aligned}$$

Finally I award to the plaintiff damages as follows:

Pain and suffering	2,000,000/-
Loss of earning capacity	1,179,360
Special damages	2,200
TOTAL	<u>3,181,560</u>

In addition I award to the plaintiff costs of this suit and interest at court rates from the date of this judgment until payment in full.

Dated and delivered in Mombasa this 8th day of September 2011

M. ODERO
JUDGE

In the presence of

Mr. Mulwa for Plaintiff

No appearance by defence.

M.ODERO
JUDGE
8/9/2011