



**CHRISTINE ADHIAMBO ..... PLAINTIFF**

**V E R S U S**

**1. FALCON COACH LIMITED**

**2. LAWRENCE KATANA KALUME ..... DEFENDANT**

### **J U D G M E N T**

On 13<sup>th</sup> June, 2005, the plaintiff was traveling as a fare paying passenger in a bus Registration No. KAN 830V owned by the 1<sup>st</sup> defendant and driven by the 2<sup>nd</sup> defendant. At some point along the Kericho – Kisumu road, the bus rolled several times in consequence whereof the plaintiff suffered injuries. She filed this suit on 24<sup>th</sup> March, 2006, claiming against the defendants, jointly and severally, special damages, general damages, costs of and incidental to the suit, and interest on damages.

Although the defendants were duly served, they neither entered appearance nor did they file any defence within the prescribed period. Interlocutory judgment was accordingly entered as prayed in the plaint together with costs and interest. The matter then came to court for formal proof and assessment of damages.

In her evidence, the plaintiff stated that she was travelling by bus from Mombasa to Kisumu. Just before the accident occurred, the bus was speeding. According to her, the steering wheel got cut, the driver then jumped out through the window, and the vehicle rolled several times. Some of the passengers died. The plaintiff became unconscious for about 6 hours, and she was injured on the head, the left shoulder, the arm, the left eye, and she cannot carry anything on her head. After the accident, she was admitted at the District Hospital, Kericho, and thereafter she was transferred to Nakuru Provincial General Hospital, and was also attended to at the Coast provincial General Hospital. She produced the discharge summary from Nakuru as her exhibit No. 1, and the treatment notes from the Coast Provincial General Hospital as exhibit No. 2. She also produced a P3 Form, which was issued to her at Kericho Police Station, as exhibit No. 3. She was further referred by her advocate to Dr. Ashraph for medical examination, and she paid a sum of Kshs. 2,000.00 for the medical report. She produced a bundle of receipts as her exhibit No. 6 and told the court that she was not yet fully recovered as she continues to have persistent headaches, and when she walks the legs are painful.

Dr. Ashraph testified as PW 2. His evidence was that consequent upon the accident, the plaintiff sustained the following injuries –

- (a) *Deep cut wounds – head left parietal area about 20cm in length.*
- (b) *Deep cut wound around left orbit about 5cm in length.*
- (c) *Cuts left upper arm and forearm.*

In the doctor’s opinion, the plaintiff suffered serious injuries to the head, face and left arm following the accident. Although she recovered, she still has ugly scar tissues on the head and face which will

remain as permanent features.

Mr. Kariuki for the plaintiff relied on RHODA TUKWANJE v. SAMUEL KAMAU S. K. MWAURA, Mombasa HCCC No. 489 of 2001 and the cases cited therein and proposed an amount of Kshs. 600,000.00 for general damages. No case is exactly the same as another. In the case referred to, the plaintiff was aged 22 years at the time of the accident, and was a computer student. She was unconscious for 4 days and was admitted for 5 weeks both at Coast General Hospital and at Makupa Hospital. She was left with a bald head with no hair on the left side and  $\frac{1}{3}$  of her left ear was cut off. She suffered bruises; her appearance was drastically changed and she was affected psychologically. She was awarded Kshs. 550,000/- for pain, suffering and loss of amenities.

In the instant case, the plaintiff was aged about 33 years at the time of the accident and was a business lady. She was unconscious for about 6 hours and was hospitalized for  $3\frac{1}{2}$  weeks from 13<sup>th</sup> June, 2005, to 7<sup>th</sup> July, 2005 at Kericho District Hospital, Provincial General Hospital, Nakuru, and Coast Provincial General hospital. After recovery, she retained some ugly scars which will remain a permanent feature on her body. This is bound to affect her psychologically. Considering the amounts awarded in Rhoda Tukwanje's Case and those other cases cited therein, and that the dates of those awards range from 1990 to 2003, I consider that an award of Kshs. 400,000/- for pain, suffering and loss of amenities would be reasonable in the circumstances of this case. Since the evidence adduced for the plaintiff was not controverted in any way, I find that the defendants are 100% liable.

The plaintiff also claims Kshs. 6,390/- by way of special damages on account of a medical report, police abstract and P3 Form, along with a hospital bill. The principle governing the recovery of special damages is that these must be specifically pleaded and strictly proved. Although the plaintiff claimed Kshs. 2,500/- for the medical report, she produced a receipt for Kshs. 2,000/- only. I would therefore award her a total of Kshs. 5,890/- by way of special damages.

In sum, judgment is hereby entered against the defendants, jointly and severally, for –

- (a) *special damages for Kshs. 5,890/-.*
- (b) *General damages in the sum of Kshs. 400,000/-.*
- (c) *Costs of and incidental to this suit.*
- (d) *Interest on (a) at court rates from the date of filing of this suit until payment in full.*
- (e) *Interest on (b) at court rates from the date of judgment until payment in full.*

Dated and delivered at Mombasa this 27<sup>th</sup> day of March, 2009.

L. NJAGI

JUDGE