



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 345 of 2007

EUPHAMIA AWINO ODEGO alia JUNE EUPHAMIA ODEGOPLAINTIFF

VERSUS

MARTIN INGUDI OSODO DEFENDANT

JUDGMENT

The plaintiff *Euphamiah Awino Adegoo* alias *June Euphama Odego* sustained injuries in an accident involving motor vehicle Registration No. KAP 688X Toyota station wagon on the 4th of May, 2004. She filed suit by way of a plaint on the 16th of April, 2007. The Defendant filed a memorandum of appearance on the 7th of June, 2007 and a defence on the 29th of June, 2007. When the matter came up for hearing on the 15th of October, 2008 the parties entered a consent on liability. The Plaintiff conceded to 30% contribution and the defendant admitted liability at 70%.

The parties have appeared before me for assessment of damages. Due to the severe injuries sustained by the Plaintiff the parties agreed to dispense with her attendance. The court will therefore rely on the evidence of *Dr. W. M. Wokabi & Mr. Jackson Odego Odenyo* the Plaintiff's father and documents produced in evidence.

The defence did not adduce any evidence.

As a result of the accident the Plaintiff sustained severe injuries and was admitted at M.P. Shah Hospital between 4th May, 2004 and 20th August, 2004. She was later transferred to Aga Khan Hospital Kisumu where she stayed for 2 months, thereafter she has been admitted to hospital in 2006, 2007, she continue attending hospital as an out patient to date.

Two medical reports were produced in court. One dated the 30th of March, 2007 prepared by *Dr. W.M. Wokabi* a Consultant Surgeon and the 2nd one by *Prof. G.M. Sande* a consultant neurosurgeon. Both the reports detail the injuries sustained and the post-accident condition of the Plaintiff.

Plaintiff's 2nd witness (P.W.2) who is the Plaintiff's father gave evidence to the effect that the Plaintiff was born on the 30th of May, 2004. That at the time of the accident the Plaintiff was a 1st year student at the University of Nairobi, pursuing a degree course in Sociology and political science and aspired to serve the nation which I translate to mean that she had hoped to join the civil service. P.W. 2 stated further that the University of Nairobi paid most of the hospital bill but he borrowed from his employer *Kshs.150,000/=* which he used on medical bills.

On his daughter's health condition, he stated that she cannot undertake any serious activities. That she forgets very fast and has memory lapses. That the Plaintiff spends her time sitting in the house, she is not capable of doing any chores.

The Plaintiff's 2nd witness (Pw2) *Dr. W.M. Wokabi* stated that he examined her on the 23rd of March, 2007, when she was 25 years old. He told the court that in preparing the medical report he relied on the discharge summary, CT Scan, X-ray films and information provided by the Plaintiff and her parents. He produced Plaintiffs' exhibit 1 being the report that he prepared. Upon examining the Plaintiff and based on the medical evidence he formed the opinion that the Plaintiff suffered.

1. Severe head injury resulting in a deep comma and brain damage
2. Compound fracture of the left tibia and fibula. The fracture failed to heal as desired leaving a deformity
3. Fracture of ribs.

At the time of examination he found the Plaintiff to have the following conditions.

- (i) Very poor memory
- (ii) Was not able to walk or stand for long hours. Extreme amnesia
- (iii) Had a long prominent scar on the forehead
- (iv) Walked with the help of crutches

He recommended plastic surgery to correct the "*prominent and unsightly*" scar on the Plaintiffs' forehead which would cost about *Kshs.100,000/=* on and an operation to correct the deformity on the left leg which would cost *Kshs.120,000/=*.

A second report was produced as Plaintiff's exhibit 2. The same was prepared by *Prof G.M. Sande* who summarized the injuries as follows:-

1. "Head injury: She became unconscious immediately after the accident and remained uncommunicative for several months. A laceration in the fore head bled a lot and was treated with Suture.
2. Fracture of left tibia: she sustained open fracture of the left tibia and fibula. She needed multiple operations to correct the fracture.
3. Loss of teeth: Four teeth from the lower jaw came out.
4. Multiple bruises on the body: There was bruising on the trunk and limbs."

He described the present symptoms as

1. Poor understanding
2. Poor memory
3. Headaches
4. Swollen legs.

From the above, *Prof. Sande* collaborated the opinion of *Dr. W.M. Wokabi* that the Plaintiff sustained very severe brain injury as evidenced by the long unconsciousness and post traumatic amnesia. That the

abnormalities sustained from the injuries are permanent and the Plaintiff's intellect has severely and permanently been compromised. He went further to observe that there is 30% likelihood of epilepsy, need for plastic surgery and further operation on the lower limb. He assessed permanent disability at 82 %.

I have considered the submissions and authorities cited by the learned counsel and the evidence on record. The issue before the court is assessment of general and special damages to be awarded to the Plaintiff against the liabilities conceded by each party.

It is apparent from the evidence that the Plaintiff sustained very severe injuries where she was admitted to hospital initially for close to 6 months and has continued since to attend out patient clinics. The injuries sustained are likely to result in post-traumatic epilepsy, poor memory, severe & permanent injury to the brain, cerebral dysfunction and loss of teeth. The Plaintiff will require future medical treatment, operation and a corrective surgery.

General damages: For the said injuries the Plaintiff urged the court to award damages of Kshs.4,000,000/=. The Plaintiff's counsel relied on the following authorities.

1. HCCC No. 64 of 2001

Susan Wanjiru Njuguna vs. Keringet Flowers & Others

2. HCCC No. 95 of 2002

Sylvano N. Nyaga & Another vs. Joseph Kogi Ngotho & 2 Others.

The defence has proposed the sum of Kshs.1,000,000/= and relied on the following authorities:-

1. HCCC No. 334 of 1994

Mamicha & Another vs. Kimari

2. HCCC No. 39 of 2001

Ndungu vs. Wahome

I have considered the authorities cited and submissions by learned counsels for this head and I am of the considered opinion that the sum of Ksh.3,000,000/= would be adequate compensation to the Plaintiff for pain suffering, less liability conceded bringing the sum to Kshs.2,100,000/=.

Future Medical Expenses: The Plaintiff proposed the sum of Kshs.220,000/= to cover correctional surgery & future operation. The defence did not offer any proposal in this regard. I will award the Kshs.220,000/= less liability conceded which brings the sums to Kshs.154,000/=.

Future Earnings: it was stated in evidence that the Plaintiff was a first year graduate student with hope of joining Civil Service. It was submitted on behalf of the Plaintiff that she was likely to be employed under Job Group K at a salary of Kshs.26,323/= whereas the defendant has proposed Job Group J at a starting salary of Kshs.21,304/= but urges the court to adopt Kshs.20,000/= as likely net salary. The Plaintiff was about 22 years of age at the time of the accident. She would have graduated after 4 years at the age of 26 years. The Plaintiff has proposed a multiplier of 30 years at a salary of Kshs.45,000/= net. The Plaintiff's counsel relied on the case of Sheikh Mushtaq Hassan vs. Nathan Mwangi Kamau Transporters & Another (1982-1988) 1 KAR 946.

The defence proposed dismissal of this claim or alternatively a monthly salary of Kshs.20,000/= and a multiplier of 16 years. They relied on the following cases.

1. *Evans M. Ndiva vs. Father Rino Meneghello & Another HCCC No.1319 of 1992.*

2. *Eliffv vs. Crescent Transportation Company Limited HCCC No.629 of 2001.*

I propose to take Job J as proposed by the defence. The court takes cognizant of the fact that after statutory deduction the amount payable including other benefits would be slightly in excess of Kshs.20,000/= I therefore propose in the absence of concrete figures the sum of Kshs.20,000/= as net.

There is a possibility that the Plaintiff would not have been employed immediately upon graduation. Although the retirement age is now 60 years, there is a possibility that the Plaintiff would have retired early or would not have stayed on the work up to the age of 60. I am of the view that multiplier of 20 would be reasonable. I therefore assess the Plaintiffs future earning as follows, taking into account Plaintiff's permanent incapacity assessed by *Prof. Sande* at 82% and the liability concede.

$20,000 \times 12 \times 20 \times \frac{82}{100} = 3,936,000/=$

100

Less 30% Concession = 2,755,200/=

Special Damages: The Plaintiff produced receipts as follows:

Transport Kshs.82,200/=

Food & Accommodation Kshs.69,500/=

Out Patient Kshs.30,770/=

Medical reports Kshs.2,000/=

Police abstract Kshs.200/=

Kshs.184,670/=

Less Liability conceded Kshs55,401/=

Kshs.129,269/=

The sum total of my Judgment is that I award the following.

Pain & suffering Kshs.2,100,000/=

Loss of future earnings Kshs.2,755,200/=

Future medical expenses Kshs.154,000/=

Special damages Kshs.129,269/=

Kshs.5,138,469/=

The Plaintiff is also awarded costs and interest.

Dated and delivered at Nairobi this 28th of September, 2009.

ALI- ARONI

JUDGE