



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

**Civil Case 2399 of 1992**

**MARY WAMBUI GICHUKI.....PLAINTIFF**

**VERSUS**

**COAST HAULIER LTD & ANOTHER.....1<sup>ST</sup> DEFENDANT**

**ADOW ISSA ABDI.....2<sup>ND</sup> DEFENDANT**

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

This claim arises out of a road traffic accident which occurred on 10<sup>th</sup> December 1989 along Thika – Sagana Road involving motor vehicle registration No. KVZ 787 and motor vehicle registration No KTB 428 Z. 9487. The plaintiff was traveling as a lawful passenger in motor vehicle registration No KVZ 787. As a result of the said accident the plaintiff sustained the following injuries:-

- (1) Fractured bilateral femur
- (2) Dislocation of the left ankle
- (3) Head injury
- (4) Blunt injury to the chest wall
- (5) Bruises of the iliac crest
- (6) Bruises of the left side of the neck
- (7) Pains, blood loss and soft tissue injuries

These injuries were confirmed by Dr. Kiama Wangai (PW1) who examined and treated her and who prepared the medical report dated 14<sup>th</sup> July 2006 which he produced in court. She brought this suit against the defendants who were the registered owner of the accident motor vehicle and his driver respectively seeking both special and general damages.

The plaintiff in her evidence told the court that she used to work with the bank but now she is retired and she is a housewife. On the 10<sup>th</sup> December 1989 she was traveling in the family motor car registration No. KVZ 787 which was being driven by her husband along Nyeri-Sagana Road. When they reached

Riandira Area there was a stationery trailer registration No KTB 428 Z. 9487 which was parked on the road. That motor vehicle did not have warning signs nor did it have reflectors for warning the oncoming motorists. The driver of the saloon car hit the trailer from the rear and as a result of the said accident she sustained injuries as stated above and which were confirmed by the medical report as stated above. She became unconscious and was rushed to Muranga District Hospital where she was given first aid and she was transferred to Nairobi Hospital where she was admitted for 3 months. She was discharged and later readmitted at KNH in July 1990 for one week where she underwent an operation of on the ankle. Again she was later readmitted for the removal of the blade which had been fixed on her leg. She later continued with treatment as an out patient but now she has recovered. She blamed the accident wholly on the 1st defendant. At the close of the plaintiff's case the defendants elected not to offer any evidence.

Having considered the plaintiff's case in light of the evidence adduced and the exhibits availed in court I am satisfied that the plaintiff has proved her case on liability against both defendants. The next issue before me is the assessment of damages both special and general. On special damages the only amount proved is a figure of Sh 4500/= in respect of the consultation fee paid to Dr Kiame Wangai otherwise all hospital bill were paid by the plaintiffs previous employer. On general damages Counsel for the plaintiff suggested a figure of Sh 2,000,000/= and referred the court two authorities which I have considered. The first authority cited was the case of John Mwangi v. Harison Waweru & another NAKURU HCCC No. 501 of 1997 where the court awarded Sh 700,000/= general damages. The other authority cited was that of Stephen Gikonyo v Peter Kirimi NAKURU HCCC No 109 of 2002 where the court awarded Shs. 800,000/= general damages.

Having considered the injuries sustained by the plaintiff in the cited authorities and damages awarded and the injuries sustained by the plaintiff in the instant case and taking into account that damages are not meant to unfairly enrich the plaintiff but a fair compensation it is my considered opinion that a figure of Sh 500,00/= would be adequate compensation for the injuries sustained by the plaintiff.

Accordingly there shall be judgment for the plaintiff and against the defendants jointly and severally for Sh 504,500/=. The plaintiff shall be costs of this suit plus interest.

Delivered and dated at Nairobi this 16th day of May 2008.

**J. L. A. OSIEMO**

**JUDGE**