



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 433 of 2005**

SAMMY MACHOKA OIRA.....PLAINTIFF

VERSUS

JOSPHAT MWANGI KIHURO AND ANOTHERDEFENDANT

JUDGEMENT

The plaintiff moved to this court by way of a plaint dated 14th April 2005 and filed on 18th April 2005. The cause of action is found in paragraph 4, 5, of the plaint. The central theme in them is that, on the material date of 9th day of February 2003 at about 6.00 p.m., him the plaintiff was a lawful paying passenger traveling in motor vehicle Reg No. KAK 114y Nissan Matatu when the said motor vehicle was driven so negligently by the second defendant who was the authorized driver, servant and or agent of the first defendant who was the owner of the said motor vehicle. That around Madaraka round about, the 2nd defendant drove, managed and or controlled the said motor vehicle in such a dangerous and or negligent manner that it veered off the road and overturned causing the accident as a result of which the plaintiff suffered serious injuries and damages particularized in paragraph 7 of the plaint.

It is the plaintiff's stand that the said accident was as a result of the negligence of the 2nd defendant, particularized in paragraph 5 of the plaint.

The said negligence is attributable to the 2nd defendant as the person causing the accident, and the first defendant who is to be held vicariously liable as the one to be held responsible for the wrongs of his lawfully authorized servant and or agent.

In consequence thereof the plaintiff seeks both special damages as particularized in the plaint, and general damages as prayed for in the plaint. The plaintiff also pleaded that he would rely on the doctrine of Res Ipsa loquitur in support of his case.

For purposes of the record only, the defendants were served and appearance dated 28th June 2005 and filed on 29th June 2005. They filed a defence dated 11th day of July 2005 and filed on 13th July 2005. The central core of their defence is found in paragraph 3, 4,5,6,7, and 8. The sum total of which in summary form is as follows:-

- Denied allegations of negligence attributed to them.
- Denied that an accident occurred in the manner alleged.
- Alternatively that if at all an accident occurred then the same was beyond the control of the second defendant.

- Denied that the plaintiff was a lawful passenger in the said vehicle.
- Denied that the plaintiff suffered any damages as claimed.

On 6/5/08 when the matter came up for the inter parties hearing both counsels recorded a consent apportioning liability at 85% in favour of the plaintiff as against the defendant, and 15% in favour of the defendant as against the plaintiff. There after the matter proceeded by way of assessment of damages PW1 is the sole witness on his part. The evidence on the causation of the accident have been catered for by the consent and so the court will move straight on to the assessment of injuries. The sequence of the evidence is as follows:-

- He suffered a lot of pain when he was thrown up and landed back on to the seat and he was hit by the metals behind.
- Later on he developed dizziness, necessitating him being taken to Nairobi west clinic from where he was referred to Kenyatta National Hospital. Where he was examined by Dr. Mogire and Dr. Wokabi later on. He incurred medical expenses as per the receipts produced.
- He used to attend physiotherapy and was still doing so as at the time of trial.

His current complaints as at the time of trial are:-

- He was still attending physiotherapy along side chiropractor
- He cannot use ordinary vehicles. He has been recommended to be using a four wheel vehicle.
- He cannot sit for long.
- He has to attend the machine that stretches the back once or twice a week.
- The accident has changed his life and it is recommended that he should go for a correctional operation.
- He doesn't work, the way he used to work.

when cross examined he stated the following:-

- The doctor recommended a four wheel vehicle for him but he has not produced any document to that effect.
- He agreed that Dr. Wokabi is of the opinion that him the plaintiff should not under go correctional operational.
- Maintained that he still attends physiorepy and he pays for the service but the receipts were not in court, though he could avail them.
- That he is in salaried employment with the ministry of finance and he also owns business as a motor vehicle dealer.
- Maintained that he still suffers from backache

In re axam he reiterated that;-

-he still attends physiotherapy and chiropractor

-that Dr. Mogire who saw him first recommended an operation but Dr.Wokabi who assessed him at a

later date stated that the operation was not necessary but confirmed that as a result of the injury, the back will remain a source of pain to him.

Parties filed written submissions. The plaintiffs' counsel urged the court to take note of the following:

- (1) The plaintiff evidenced has been confirmed by medical evidence to the effect that him plaintiff can longer perform the duties he used to do with the same capacity.
- (2) That the first medical doctor assessed permanent disability at 40% where as the latest one placed it at 12% permanent disability.
- (3) On account of the assessment by the medical Doctor counsel recommended that an amount of 2,000,000.00 would be adequate compensation for pain suffering and loss of amenities, Ksh. 1,200,000/= as loss of earning capacity, future medical expenses in the sum of Ksh. 300,000.00 and special damages totaling Ksh. 91,200/= bringing total to Ksh. 3,062,520.00.

Case law was also referred to the court, by the plaintiffs' counsel. The case of **ZABLON W. MARIGA VERUS MORIS WAMBUA MUSILA NAIROBI CA 66 OF 1982** decided by Chesoni JA as he then was on 18th day of May 1984. The victim had been involved in an accident and his injuries and or disabilities were listed in the judgement as:-

1. -A fracture of the cervical spine resulting in (a) paresis involving muscles of the left limbs with (b) loss of muscular power in the left limbs and (c) considerable reduction in mobility to the extent that he has now to walk with the aid of a stick (d) paresis has developed in permanent paralysis resulting into increased immobility.
2. He now suffers permanent urinary tract infections and chronic constipation.
3. he has been rendered impotent
4. Has considerable difficulty in attending to his toilet requirements, bathing, dressing and undressing.
5. Suffers stiffness of the left ankle and wasting of left quadriceps.
6. Suffers stiffness of the right knee that is held in a position of 30 degrees and cannot bent beyond a right angle.
7. Suffers a wasting of the left thenar and hypothenar muscles resulting in the left hand being very weak.
8. Can only walk about twenty yards without having to rest.
9. Cannot sit for long in any one position in comfort and has to change position.
10. Cannot take part in dancing or games, nor can he play darts as he did before.
11. He is severely restricted in social activities.
12. Can not drive a motor car for long periods of time or distance.

He was rendered unconscious at the time of accident, and recovered consciousness the following day in hospital, where he stayed for six and a half months. He was treated with cervical traction on and for unspecified period he was totally paralyzed in all the four limbs.

The trial court had assessed Ksh. 500,000.00 for general damages for pain and suffering and loss of amenities. The CA had been invited to interfere with the award, but the CA declined because it had not been shown that the learned trial judge had exercised the discretion unjudiciously or acted on any wrong

principle to warrant interference by the CA.

The case of **MAKENZIE ALFRED MUEKE** versus **MR. NZUKI MULA NAIROBI HCCC A 4293** of 1987 decided by Butler - sloss J as he then was, on 13th day of December 1998. The plaintiff had been involved in an accident.

- He lost consciousness and recovered from it three hours later.
- transferred by Flying Doctors Service to Nairobi hospital where he remained for two months.
- Then he was transferred to the spinal injury hospital where he spent seven months in hospital
- The plaintiff was a civil servant but also engaged in a business of a matatu, and a butchery but he produced no records to substantiate that income.
- He had been in the service for 28 years. The service had stopped but he did not know whether he would get pension.
- He had injured his spinal chord and he was permanently paralyzed.
- He could neither walk or stand
- He had a deep cut in the head and a broken color borne.
- he was in continent and required a full time attendant.
- He could not walk and he had to be lifted in and out of his wheel chair.
- he paid his attendant 1,550/= per month.
- the court awarded Ksh. 920,000 all inclusive of special and general damages.
- There was also an award of lost years which revised the figure to the total award to Ksh. 2,520,000/=.

The case of **GEOFREY MUTIBA THR'SILAS WEKESA MUTIRA VERSUS MAINA KURIA AND ANOTHER NAIROBI HCC NUMBER 821 OF 1991** decided by **MBOGHILI** Msagha J. at Nairobi on 7th April 1993. The plaintiff in this case had fractured pelvis, suffered internal bleeding and injury to the spinal chord, and was now aparaplezia and shall remain so for the rest of his life. He suffered extreme pain and a stormy post operative period. His life span had been shortened as he would suffer kidney infections and crinary tract infections and bed sores ordinarily associated with paraplegics.

- He lived in hospital for 2 months
- brought to hospital in a wheel chair.
- He can not work neither can he participates in any activities.
- He had not gone to school ever since.
- Injuries suffered by the plaintiff were very serious.
- 0 he has to live with the disability for a longer period than if he were an adult. The court awarded.

(a) General damages for pain suffering and loss of amenities ksh. 2,000,000.00.

- (b) Cost of hiring a maid ksh. 432,000/=
- (c) Cost of disposables Ksh.540,000/=
- (d) Cost of paraplegic equipment Ksh. 150,000.00
- (e) Damages for loss of earning capacity Ksh. 250,000.00

Total award Ksh. 3,373,100/=

THE CASE OF MARGERET WANJIKU AND 4 OTHERS VERSUS THE ATTORNEY GENERAL AND ANOTHER NAIROBI HCC NUMBER 198 5602/1989 ALSO DECIDED BY MBOGHOLI Msagha J on 14th March 1991.

The plaintiff had suffered a spinal injury on thoracic level T12 with fracture body of level T12.

- she also suffered fracture of right radius and ulna shaft.
- Treated at Lodwar hospital and then transferred to spinal injury unit at Kenyatta NATIONAL Hospital.

Complaint at the time of trial were:

- Her lower limbs are completely paralyzed. She has no power at all to move the legs.
- She has lost all her sensation below the chest and cannot feel anything.
- She has developed pressure sores on the sacral areas. These sores are not healing despite prolonged treatment and daily dressing. She cannot feel them but she can smell them and is quite depressed about it.

(4) She is unable to control her urine and stool. She thus has an indwelling urinary catheter to keep urine from wetting the bed. The presence of this catheter has led to repeated urinary bladder infection and fever from which she is currently on treatment. Her loss of ability to control stools means she has to get nurses to manually evacuate the reaction for which she is also unhappy about.

(5) Painful forearm at the fracture site. For the first plaintiff Margaret Wanjiku damages awarded were as follows:-

- General damages for pain suffering and loss of amenities Ksh. 1,000,000.00.
- nursing care Ksh. 1,500,000.00
- future medical care, drugs etc Ksh. 250,000.00
- Special damages Ksh. 2,000.00.

The case of **PARTRICK MUISYO KITONYI VERSUS KANGUNDO TOWN COUNCIL NAIROBI HCC** number 3738 of 1992 decided by John Mwera J. on 19th day of November 1992. The plaintiff sustained neck and spine injuries, fracture of several vertebrae. The court awarded the following damages.

- pain and suffering and loss of amenities Ksh. 1,500,000/=
- Loss of earning capacity Ksh. 127,908.
- Future medical needs and nursing total Ksh. 300,000.00 total Kh. 1,927,908.

The defence also put in written submissions. They stressed the following points:-

- Plaintiff produced no evidence to show that as at the time of the accident he was a businessman nor that he was working at the ministry.
- Concerning physical capabilities, counsel submitted, that the plaintiff submitted that he suffers from pain on the back and right leg. He had performed his duties fully and was due to travel abroad for an assignment.
- In view of the plaintiffs' own testimony, the claim for loss of earning is not sustainable and it should be disregarded as the same has not been proven.
- They also maintain that on the basis of the report prepared by Dr. Wokabi, the claim for future medical expenses is not available to the plaintiff because the said Doctor who prepared the report four years later was categorical:-

(i). That there was no need for surgery

(ii). Surgery was a temporary solution to the problem

(iii). Surgery is advised for people with serious neurological problems.

- That the plaintiff is not entitled to this claim of future medical expenses because he did not plead it specifically.
- Though the plaintiff claimed that he had been attending physiotherapy and continues to do so, even as at the time of the trial, no proof of the same was proved and as such asks the court to take it that the plaintiff is fully recovered.
- On special damages counsel submitted that amount pleaded on special was Ksh. 91,200/= although the receipts produced amounted to Ksh. 222,130/= and in the absence of an amendment of the plaint, the only amount payable under the special claims is the amount pleaded.
- That as regards the general damages, the court, was urged to find that the plaintiff is fully healed and be guided by case law cited. Namely the case of **MOSES MZEE MBAGAYA versus ISMAEL ISANGA ATITI HCC** no 3213 of 1989 Nairobi decided by Mbogholi Msagha J. on 24/9/91, where the plaintiff suffered a depressed fracture of the 5th lumbar vertebrae on the left side, bruising of the lip, chest and laceration on the right leg. Hospitalized for 5 days. At the time of examination he complained of low backache, stiffness of low back pain in the left hip, inability to stand for long and do heavy work. The fracture healed without any permanent, incapability except for a scar on the right leg. General damages for pain suffering and loss of amenities assessed at Ksh. 180,000.00.

The case of **SAMUEL PHILIP KIDOTI VERSUS KENYA CARGO HANDLING LIMITED** civil appeal No 76 of 1992 Mbombasa where the plaintiff was a dock worker aged 47 years at the time of appeal suffered injury of severe back strain with prolapse of disc (Lumber) spine L5 (L1) and head injury concussion. He was hospitalized for 7 months. The injuries healed with a permanent persistent backache pain. He would not be able to resume full work. The trial judge had assessed Ksh. 100,000.00 for pain, suffering and loss of amenities. The plaintiff appealed, and the court, of appeal raised the award to Ksh. 250,000.00. The case was decided in 1993.

On the basis of the foregoing submissions, and case law the learned counsel for the defence urged the court to award Ksh. 350, 000.00 less contribution.

This court assessment has to be based on the claims, presented by the plaintiff in his plaint herein:-

(1) Special damages in the sum of Ksh. 91,200.00. The rule concerning specials, which this court, has

judicial notice of, and which is now trite is that specials must be specifically pleaded and strictly proved. Herein they have been specifically pleaded in the sum of Ksh. 91,200. they have also been strictly proved by production of a bundle of the receipt exhibit 5 save that the amount on the receipts exceed the amount pleaded, but no efforts were made to amend the figure even through oral application in court. The total came to Ksh. 217,385.00 as tablebulated by the court.

As submitted by the defence counsel, in the absence of even an oral application for amendment, the plaintiff can only get what has been pleaded. No doubt the plaintiff counsels acknowledged this fact and that is why in his submissions, he settled for the figure pleaded. The court finds specials both pleaded and proved and the court allows Ksh. 91,200.00 under this head.

There was a claim for loss of earning and loss of future earning capacity. As submitted by the defence counsel, it has to be demonstrated that the plaintiff earning capacity has been seriously jeopardized before an award under this head can be made. The court agrees with the defence submission because in the case where this head of damages was awarded, were the cases cited by the plaintiffs' own counsel. They are on record and injuries of each victims has been set out. These were cases where the victims had become paralyzed. They were in capable of propelling themselves, in addition to not being able to render services to themselves when applied to the plaintiff condition. It is clear that as per the plaintiff counsels submissions, the plaintiff was accountant II as at the time of accident and had risen to the rank of accountant I as at the time of trial. The plaintiff had also alleged he was a businessman dealing in motor vehicle (motor vehicle dealer) but no books of accounts were produced to show how much he earned from the said business before the accident, and how much he stood to earn from the same after the accident, whether the business was still operational or not if still operational what difficulties does he experience in running the same and what are the current return as compared to the period before the accident.

As for the office work, he has to demonstrate how the injuries were affected his prospects of future advancement in his career. What were the resistance would were likely accorded to up to the time of his retirement. What are the salary scales in respect of those careers. It was also necessary for him to provide history of career progression previously to show that he had accelerated promotion which were out on hold by the accident in the absence of such proof as gathered from decision put forward by the plaintiffs counsel himself cited show that where no demonstration of the loss he has been made the same is to be declared. On this account I agree with the defence submissions that the claim for loss of future earnings has not been accident and the same is disallowed.

As further medical expenses once again the authorities cited by plaintiff counsel set out herein show that there are available to victim who suffered very serious injury i.e. life threatening resulting to the victim being forced to be action on medication or medical surveliance the basis for this claim was the recommendation medical report by Dr. Mugire that surgery is necessary to alleviate the plaintiff problems.

The defence counsel submitted that the plaintiff is disentitled to the same by reason of it not having been pleaded and secondly by reasons of it not being proved. In this courts' opinion, failure to plead the same would not have disentitled the plaintiff as the same would have been comfortable included under the prayer "*such further other relief as the court deems it fit to grant*" as the same is a consequential relief to the one for general damages. Alternatively it can be included in the prayer for general damages. The reasons being that it cannot be specific as it is a future expense. Secondly it is based on an estimate which the court may allow or disallow. The amount is also liable to be increased or reduced by the court.

Having ruled that the same is claimable whether pleaded or not, the court has to deal with the second limb of the claim whether the same has been proved or not. There is no dispute that the court has three competing medical reports on surgery exhibit 3, 4, and 7. the first one is by Dr Mogire dated first April 2003 concluding remark 5 reads:-

"Injury to his lumber spine is of a serious nature;-Tramnatic disc protrusion with spinal stenosis at L4/5 andL5/51 levels. This may require surgery if conservative treatment were to fail. This attracts financial

costs of about Ksh. 300,000.00 and is not without surgical intervention, the injury has caused irreversible damage to the structural and functional ability of the lumbar spine at 2 levels out of five. This has both short term and long term functional implications as regards to the lower back. These translates to 40% (2/5th) lumbar functional permanent in capacity". This court's construction of that conclusion is that, the operative words there are: "this may require surgery if conservative treatment were to fail" It was therefore necessary for the plaintiff to prove that future medical reports have shown that. The next medical report is that one of Dr. Wokabi dated 26th February 2007. In his concluding opinion the position relevant to future medical expenses is found at line 13 from the bottom, it reads:-

"Conservative management will be encouraged in that any surgery done will alleviate the problem only for a short period. Experience even shows that even after surgery, for this condition the recurrence occurs within five years, and people revert to the same level as when started. Considering that he is not showing much in way of neurological problems, I would recommend that he continues with conservative management. Surgery for people like him, will not be advised surgery is usually advised for people who have very severe neurological problems. I have seen the report that where recommendation has been made that he undergoes this surgery at expense of Ksh. 300,000 (three hundred thousand shillings). Considering that this is an injury that occurred almost four years ago, it would be ill advised for him to undergo a disc surgical operation. However his back will remain weaker and it will remain a source of pain for a long time to come. I would assess the disability at approximately 12% (twelve percent)"

Exhibit 7 also done on 13th February 2003 did not mention future surgery. It therefore follows that the latest report is the exhibit ably by Dr. Wokabi. It therefore follows that in order for the plaintiff to insist on future surgery, another appraisal report countering the content of Dr. Wokabi's report was necessary. For this reason the court, agrees with the submissions of the defence that the same has to be disallowed.

As for general damages, these are usually based on the assessment of the effect of the injuries suffered on the victims productivity, whether life standards altered, whether future earning is now affected etc.

In the report of Dr. F.J.O. wasunna exhibit 7, dated 13/2/03 the finding noted are:-

" (i) No pre vertebral and/or para spinal soft tissue lesion is seen. The vertebral body height are within normal limits. No fracture subluxation and or spondylosis thesis is seen. Spondilotic changes with a loss in normal lordosis due to muscular spasm is demonstrated.

(ii) There is disc degeneration at L4/5 and 5/51 with narrowing of the disc space) There is a large central posterior and left posterior lateral disc protrusion with ligamentous by per trophy comprising the thecal sac with spinal stenosis and narrowing the ipsilateral exit, foramen at L5/51. A significant central posterior disc protrusion compressing the thecal sac with canal stenosis is also demonstrated of L4/5at L4/5. No significant intradural intramedullary abnormality and or evidence of Archnoiditis demonstrated. The conus medullaris has a normal appearance"

Exhibit 3 by Dr Mogire dated 1/4/2003 notes the following findings on examination.

- Tenderness and fluctuant swelling scalp top of head to occipital area .
- Tenderness over cervical spine with limitation in range of movement in all planes.
- Tenderness over 3rd through 5th lumbar area associated left side sciatica with posture straight leg rising at 45 left side.
- Tenderness and bruising over the intercostal or abdominal left side.
- Swollen tender right wrist with associated restriction of movement. Radiological examination findings on the other hand are as follows:-

- Soft tissue swelling right wrist but no fracture
- Soft tissue swelling haematoma of the skull but no fracture noted
- Loss of lordosis, of the cervical spine but no fracture noted. Disc spaces not reduced, no listhesis on the lumbar spine. There was loss of normal lordosis, reduced disc space L4/5 and L5/S1 level but no fracture noted MR/Scan on the lumbar spine done on 13/2/03 revealed the narrowing of L4/5 and L5/S1 Disc space, Disc degeneration, large posterior and left posterior lateral disc protrusion compressing the cal sac with spinal stenosis at L4/5 and L5/S1. NO significant intradiscal, intramedullary abnormality . In conclusion the Doctor concluded among others that it is true Sammy did suffer injuries of multiple nature, head, neck abdomen, right wrist and lumbar-spinal chord, not most of the injuries involved soft tissue, were responding well to treatment and close to full function restoration expected. The rest of the comments relate to future medical surgery already set out herein.

Dr. Wokabi on the other hand in his report dated 26/2/07 made the following findings on examination. The plaintiff as at that time were:-

- (a). He experiences back ache. He also gets spasm of muscle of his back.
- (b). He also gets numbness over the right thigh and calf.
- (c). He cannot be able to bend or lift heavy loads.
- (d). He cannot travel in vehicle especially on bumpy roads.

The findings on examination revealed that the plaintiff was working normally but was exhibiting moderate spasms of the back muscles. He was not able to bend fully. The straight raising legs test was positive on the right leg and could only be elevated to 65 degrees. The MRIs report confirmed the findings. On the basis of the examination, the doctor concluded in part that, the medical review show that the plaintiff sustained a disc prolapse at the level of L4/L5 and L5/S1. That he has continued to experience backache despite treatment. Though the doctor advised against surgery, None the less concluded that *“However, his back will remain weaker and it will remain a source of pain for a long time to com”* and assessed the permanent disability at 12%.

Also produced was a P3 exhibit 2 filled on 13/3/03 and which listed the following injuries:-

- Head and neck -pain in the vertex.
- Thorax and abdomen- tender lumbar sacral area, cause of chest pain and incontinence in relaxation.
- Upper limbs tender left elbow lower limbs course of numbness on the left calf.

The court has given due consideration to the findings in the said medical documents relied upon by the plaintiff in line with the plaintiffs’ evidence as regards the effect of the accident on his daily life and career and future complications. These have been compared to the injuries suffered by other victims in the case law cited by both sides as guides to this court. The court finds those suffered by victims in the case law cited by the plaintiff counsel were very serious, devastating had left the victims in a state of hopelessness, leaving them as total dependants on other people for their survival. They also needed continuous medical care for the rest of their lives. Where as those of the defence had injuries less serious than those of the plaintiff.

In comparison the plaintiff has not lost his career and infact has advanced one rank higher.

- he propels himself
- He does not need constant help from 3rd parties.

- The incapacity percentage has improved from 40% immediately after the accident to 12% four years later. This is evidence that as advised by the doctor, proper but conservative medical care will go a long way into improving the plaintiffs' health, meaning, that the recovery graph is going up instead of declining.

Having taken note of the plaintiffs' injuries and compared them to those of the victims in the cited cases, and having appreciated and noted the effect of the injuries suffered by the plaintiff on his life, and noted that he will have to live with the said condition for a long time, if not for the rest of his life, the duty of this court is now to assess an appropriate award commensurate to those injuries. The principles this court, has always called to the fore when dealing with such claims, that this court has judicial notice of are as follows:-

- (a). An award of damages should not be too low or too high.
- (b). Damages are not meant to enrich a victim but to compensate such a victim for the injuries suffered and restore him where possible to the position he was in before suffering the injuries on question.
- (c). Decisions in past cases on awards are mere guides and each case has to depend on its own circumstances.
- (d). Where past awards are to be taken into consideration account elements of inflationary trends trend has to be taken into a client.
- (e). This one added by the court, as being derived from its own judicial wisdom namely, the award should be such that it does not in itself render the entire exercise of the assessment nonsensical.

The court has taken all relevant factors into account inclusive of the fact that the purchasing power of the Kenyan shillings in 1991 is not the same as it is now. A tablet of medicine which cost 2/= in 1991 might be costing 30-50/= now, which factor has to be factored in the award. Doing the best I can the court, assess Ksh.1,750,000.00 less 15% contribution of Ksh. 342,500.00 leaving a balance of Ksh. 1,407,500.00 . I therefore enter judgement for the plaintiff against the defendant jointly and severally on the following terms;-

- (1) Special damages of Ksh. 91,200.00 less 15% contribution of Ksh. 13,680.00 leaving a balance of Ksh. 77,520.00. This will carry interest at court rate from the date of filing till payment in full.
- (2) Damages for loss of future earning disallowed for the reasons given.
- (3) Damages for future medical care disallowed for reasons given.
- (4) General damages for pain suffering and loss of amenities Ksh. 1,750,000 less 15% contribution of Ksh. 342,500.00 leaving a balance of Ksh. 1,407,500.00. This will carry interest at court rates from the date of judgement till payment in full.
- (5) Costs of the suit.

Dated, Read and Delivered at Nairobi this 31st day of October 2008

R.N. NAMBUYE

JUDGE