



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 1152 of 2002**

**KORNELIUS KWEYA EBICHET.....PLAINTIFF**

**VERSUS**

**C & P SHOE INDUSTRIES LTD.....DEFENDANT**

**JOHN MANUTHU MAINGI.....THIRD PARTY**

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

1. The Plaintiff herein commenced suit by way of a plaint dated 6/06/2002 and filed in court on 9/07/2002. The Plaintiff who was an employee of the Defendant alleged that he was injured in an accident involving himself and the Defendant's motor vehicle registration number KAA 173Y along the Enterprise Road in Nairobi and that the accident occurred as a result of the negligent and/or dangerous manner in which the Defendants servant, agent or driver controlled the Defendants motor vehicle. As a result of the said accident, the Plaintiff averred he sustained fractures of the left tibia and fibula, was admitted into hospital for one week and had the fractures fixed with metal implants. The Plaintiff also said that as a result of that accident, he is unable to stand or walk without support, and that the doctors have recommended further surgery at an estimated costs of Kshs.120,000/= (as at 6/06/2002). He asked for judgment against the Defendant for

- (a) ***General damages for pain suffering and loss of amenities of life.***
- (b) ***Provision for cost of future medical care***
- (c) ***Special damages***
- (d) ***Costs and interest***

2. The Defendant filed its statement of defence on 23/08/2002 and denied the Plaintiff's allegations and further averred that if any accident occurred then it occurred as a result of the negligence of the driver of motor vehicle Registration No. KAA 413Q one John Manuthu Meng who was later joined to the proceedings as a 3<sup>rd</sup> party. A Third Party Notice was duly issued and directions were taken on 19/05/2005 that the 3<sup>rd</sup> party suit proceeds to trial together with the Defendant's suit.

3. On the 24/07/2008, judgment on liability was entered by consent for the Plaintiff as against the Defendant in the following terms:-

- (i) ***Judgment be and is hereby entered for the Plaintiff against the Defendants on liability and the ratio of 60:40.***
- (ii) ***The two medical reports of Mr. R.P. Shah dated 15/12/2000 and Dr. Wambugu P.M. dated 9/05/2002 be admitted in evidence without calling the makers and the same be attached to the written submissions of counsel.***
- (iii) ***Parties do tender written submissions on quantum of damages for pain suffering and loss of amenities and future medical expenses.***

- (iv) *The court to assess loss of earning based on a minimum wage of Kshs.5000/= per month.*
- (v) *The Plaintiff be awarded special damages of Kshs.4200/= gross.*
- (vi) *A sum of Kshs.76032/= be deducted from the award on account of advances.*
- (vii) *The Defendant do pay the costs of the suit to the Plaintiff.*

4. The Plaintiff filed his submissions on 30/07/2008 through the firm of Nelson Kaburu Advocates. Regarding the injuries sustained by the Plaintiff, it was submitted that these injuries were severe with life-long consequences. Dr. R.P. Shah's report dated 15/12/2000 confirmed the injuries as fractures of the tibia bone of the left leg and observed that the Plaintiff walked with the aid of crutches. In Dr. Shah's opinion, the injury would leave a scar and that the Plaintiff needed to undergo another operation to clear osteomyelitis and for plating and bone grafting of the fracture at an estimated cost of Kshs.120,000/=. Dr. Shah opined that the Plaintiff would be able to recover within 5-6 months after the operation and that he would also be able to resume work.

5. Dr. Wambugu P.M. saw the Plaintiff in 2002 and prepared his report dated 9/05/2002. Dr. Wambugu noted that the Plaintiff had sustained the following injuries

- **Blunt trauma forehead**
- **Compound fracture left tibia and fibula bones**

and noted that from the X-rays which were taken of the Plaintiff's left leg, he saw a mid-shaft, fibular fracture and a distal third tibia fracture. As at the date of examination by Dr. Wambugu, the Plaintiff still walked aided with elbow crutches and there was wasting of the leg muscles; and that the Plaintiff had a sinus measuring about 10cm with foul smelling seropurulent discharge. Dr. Wambugu formed the opinion that the injuries sustained by the Plaintiff

- *still subjected the Plaintiff to pain and life morbidity*
- *there was non-union and progressive chronic osteomyelitis of the left tibia bone*
- *part of the bony tissue was lost due to the osteomyelitis with the effect of resulting in abnormal leg movement at the fracture site*
- *the Plaintiff would benefit from further surgical intervention to control the bone infection and possibly bone grafting to bridge the bony defect at an estimated cost of Kshs.120,000.*
- *The plaintiff would remain permanently disabled.*

6. In view of the above findings, the Plaintiff has asked for an award of Kshs.1,200,000 for pain, suffering and loss of amenities. As for the cost of future medical expenses, the Plaintiff prays for Kshs.150,000/= due to inflation between the date of this judgment and the year 2002 when the estimates were made.

7. Regarding loss of earning, the Plaintiff stated that if he continued to work for the Defendant, which is a private company, he would have worked beyond age 55, let us say up to age 60. The Plaintiff proposes a multiplier of 19 years. The Plaintiff relied on the case of **Alice Mboga –vs- Samwel Kiburi Njoroge – HCCC No.357 of 1999**. In the said case, Rimita J (as he then was) observed that though the Plaintiff was aged 53 years at time of death, the nature of his work (as a printing technician) was "such that he would have worked for private firms past 65 years" and applied a multiplier of 10 years.

8. The Defendant did not file any submissions and as such all that I have on record to guide me in the awards to make are the Plaintiffs submissions. After carefully considering the pleadings and these submissions, I award the sum of Kshs.1,000,000/= for pain suffering and loss of amenities. As for cost of future medical expenses, I do award the sum of Kshs.120,000/= as pleaded in the plaint and as supported by the two medical reports which were admitted in evidence by consent.

9. The Plaintiff was said to have been born in 1958, so that by the time he was injured in March 1999, he was aged 41 years. Although the nature of the work the Plaintiff was engaged in at the Defendant's company is not disclosed by the pleadings, I am satisfied that he would have worked at least up to age 55 years if it were not for the accident. I will therefore take a multiplier of 15 years. At the agreed monthly salary of Kshs.5,000/= this will work out to:

**5000 x 15x12 = Kshs.900,000**

10. In the result, I enter judgment for the Plaintiff as against the Defendant as follows:-

- (a) Pain suffering and loss of amenities.....Kshs.1,000,000.00
- (b) Future medical expenses .....Kshs 120,000.00
- (c) Lost earnings.....Kshs. 900,000.00
- (d) Special damages .....Kshs. 4,200.00

Kshs.2,024,200.00

Less 40% liability                      809,680.00

Kshs.1,214,520.00

Less Advances                      Kshs 76,032.00

Net Awards                      Kshs.1,138,488.00

11. I therefore enter judgment for the Plaintiff as against the Defendant in the sum of Kshs.1,138,488.00 plus costs and interest at court rates.

It is so ordered.

**Dated and delivered at Nairobi this 17<sup>th</sup> day of October 2008.**

**R.N. SITATI**

**JUDGE**

Delivered in the presence of:

Mr. Kaburu (absent) For the Plaintiff

Mr. Kounah holding brief for Midwa (present) For the Defendant