



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Civil Case 17 of 1983

LUCY NTIBUKA.....PLAINTIFF

versus

BERNARD MUTWIRI & OTHERS.....DEFENDANT

JUDGMENT OF THE COURT

1. The plaintiff case arises out of a motor traffic accident which occurred on 2/9/1980 along the Meru-Nanyuki road while she was aboard motor vehicle registration number KQB 875.
2. There is no dispute on liability the same having been agreed at 70:30% as against the defendants. Consent on liability as indicated above was filed by the parties on 8/12/2002.
3. The judgment is on quantum only. The plaintiff gave her testimony on 31/7/2006 and told the Court that as a result of the said accident, she sustained:
 - (a) head injuries
 - (b) lacerations on the lateral side of the right eye.
 - (c) Lacerations and cut wound on the left arm (elbow)
4. These injuries were confirmed by Dr Wangai in the medical report dated 27/4/1983 produced in Court as plaintiff exhibit 1. The plaintiff was further examined by Dr. Joab Bodo as per the medical report dated 8/6/1991 by Dr Bodo. The report was produced in Court as plaintiff exhibit 2.
5. According to these exhibits, the plaintiff was admitted at Meru District Hospital in an unconscious state. According to plaintiff exhibit 2, the plaintiff suffered soft tissue injuries from which she had fully recovered by the time she was seen by Dr Bodo in early June 1991. She was however, noted to experience headaches which were on and off due to the brain concussions she suffered during the accident. At the time of hearing, the plaintiff told the court that her only complaint was weakness in her left hand.
6. The case by the plaintiff proceeded ex-parte since the defendants who though duly served through their advocates on record did not appear.
7. On quantum of damages, the firm of Ms Mithega & Co Advocates represented by Mr M Kariuki contended that the plaintiff was entitled to the sum of Kshs 600,000/- in general damages for pain,

suffering and loss of amenities. No claim for specials was made since the same were neither specifically pleaded no proved.

8. The two authorities cited in support of the claim for general damages were:-

(i) Nairobi HCC No 293 of 2000 Margaret Atieno Ayany versus Julius Muraya and others.

In the said case, the plaintiff sustained compound fractures of the left tibia and fibula and also suffered a head injury with the resultant slanting of the left tibia after operation of the left leg to remove dead pieces of bone. The learned judge made an award of Kshs 400,000/- for pain and suffering.

(ii) Nairobi HCC No 950 of 1998 Habiba Abdi Mohamed versus Peter Maleve, in which the plaintiff suffered injuries on her left arm and her head and face. The Court made an award of Kshs 400,000/- in general damages for pain and suffering.

9. I have considered the injuries sustained by the plaintiff in this case, and the authorities cited in support thereof. Taking into account all the circumstances of this case, I shall and hereby make an award of Kshs 500,000/- (shillings five hundred thousand only). In the final analysis I enter judgment for the plaintiff as follows:

(d) General damages for pain and suffering Kshs 500,000.00

(e) Special damages nil

TOTAL Kshs 500,000.00

Less 30% contributory negligence Kshs 150,000.00

Kshs 350,000.00

10) The plaintiff shall also have interest on general damages from the date of judgment until payment in full.

11) I also award costs of the suit to the plaintiff.

12) Orders accordingly.

Dated and delivered at Meru this 8th day of February, 2007.

R.N. SITATI

JUDGE

Delivered for and on behalf of Sitati J by Lenaola J

8/2/2007