



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
Civil Appeal 1315 of 2006

RUKIA MUGOYIA.....PLAINTIFF

VERSUS

JOHNSON JUMA OGUTU

EMMANUEL ODHIAMBO.....DEFENDANTS

JUDGMENT

This claim arises out of a traffic road accident which occurred on 7th April 2006 along Nakuru-Naivasha Road involving a motor vehicle registration No. AV 240V in which the Plaintiff was traveling as a fare paying passenger. The said motor vehicle belonged to the 2nd Defendant and was being driven by the 1st Defendant a servant and/or agent of the 2nd Defendant.

As a result of the said accident the Plaintiff sustained the following injuries: Wedge compression, fracture dislocation at C4, C5; facial paralysis both upper and lower limbs, loss of stool control and loss of sensation from the naval region downwards. She was immediately rushed to Naivasha District Hospital where she was admitted for observation and resuscitation then transferred to Kenyatta National Hospital

where she received the following treatment:

1. X-rayed-fractures confirmed
2. Commenced on skull caliper traction
3. Passive Physiotherapy and analgesics.

She was then transferred to National Spinal Injury Hospital where she was commenced on Active Physiotherapy, Active Occupational Therapy, 2 hourly bed turning, Padding of Pressure points; Chest Physiotherapy; Intermittent Catheterization; Regular use of diapers and napkins; being ambulated on a wheelchair and analgesics/antibiotics.

According to the evidence of PW2 Dr. Maurice P. Simiyu the Plaintiff had sustained such severe and debilitating injuries that her residual permanent disability has been assessed at 100%. She suffered a

spinal injury at C4 C5 which has shattered her hopes in life and she has lost the following functions; inability to walk or do anything on her own.. She will be confined to a wheelchair for life. She suffers paralysis of both lower limbs and power grade 2-3 of the upper limbs. She cannot feed or dress or bathe herself and requires assistance. It is estimated she will require change of wheelchair frequently, inability to control stool, inability to control urine for life, inability to engage in active sexual life in future.

The Plaintiff blamed the accident wholly on the driver of the said motor vehicle who was charged and convicted with the offence of careless driving and was sentenced to a fine of Shs.1000/= in Traffic Case No.2038 of 2006 at the Principal Magistrate's Court Naivasha. Mr. Bwomote submitted that conviction on charge of careless or dangerous driving is proof that the Defendant was guilty of negligence in subsequent civil proceedings against him. The court so stated in the case of **OLUOCH VS. ROBINSON [1973] EA 108** and also Section 47A of the Evidence Act Cap 80. The Defendants were served with summons but they did not enter appearance nor file defences.

The Plaintiff applied and obtained interlocutory judgment and the suit proceed by way of formal proof.

Considering the evidence of the Plaintiff and submissions by counsel I am satisfied that the Plaintiff has proved her case against the Defendant on liability. I now proceed to assess the quantum.

The Plaintiff's future medical and nursing needs were clearly set out by Dr. Maurice Peter Simiyu in his medical report which he produced as Exh.4:

- (i) Wheelchair at Shs.60,000/= and has a lifespan of 10-12 months.
- (ii) Nursing assistance at Shs.20,000/= per month.
- (iii) Drugs to evacuate stool at Shs.500/= weekly.
- (iv) Catheters and urine bags at Shs.600/= per week.
- (v) Drugs for chest, urinary tract and skin infections at Shs.2,000/= per month.
- (vi) Special mattress at Shs.150,000/= changed every 3 years.
- (vii) Hydraulic Bed at Sh.350,000/= changed every 3 years.
- (viii) Cost of car hire – Shs.3,000/= every 3 months.

Mr. Onyancha Bwomote counsel for the Plaintiff suggested a multiplier of 15 year. He referred to the case of **ZABLON WARIGA & ANOTHER VS. MORRIS WAMBUA MUSILA CIVIL APPEAL NO. 66 OF 1982 NAIROBI** where Hancox JA (as he then was, had this to say:

..... "I am in no doubt that the doctrine of the lost years --- should in the case of a living human Plaintiff at least, form part of the law which these courts should apply I am convinced that the rule which enables the lost years to be taken into account of comes closer to the ordinary man's expectations than one which limits his interest to his shortened span of life. The interest which such a man has in the earnings he might hope to make over a normal life, if not saleable in a market has a value which can be assessed.

I am satisfied that the multiplier of 15 proposed by counsel for the Plaintiff is reasonable and I adopt it. In the result I have come to the conclusion that a figure of Shs.12,462,000/= general damages would be adequate compensation for the Plaintiff who has sustained severe injuries whose residual permanent disability was assessed at 100% by the doctor.

Special damages were proved at Shs.38914/=.

Accordingly there shall be judgment for the Plaintiff and against the Defendants jointly and severally for Shs.12,500,914/= with costs and interest.

Dated and delivered at Nairobi this 19th day of October 2007.

J.L.A. OSIEMO

JUDGE