



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

**Civil Case 1 of 2002**

**IRENE WAMBUGI NTHIGA.....PLAINTIFF**

**VERSUS**

**STAGE COACH BUSH COMPANY LTD.....DEFENDANT**

**JUDGMENT**

The plaintiff in her plaint pleads that on or about 7/11/1998 she was lawfully traveling in the Defendants motor vehicle **No. KAJ 073 X** along Meru/Chuka road when at **Nithi River Bridge** the defendants authorized driver servant or against so negligently managed controlled the vehicle causing the same to loose control and plunge into the river thereby occasioning the plaintiff serious injuries. The particulars of injuries are set out and the defendant's particulars of negligence are also set out in the plaint. The plaintiff claims special and general damages costs and interest. The defendant did file a statement of defence. It is admitted that the accident occurred as stated in the plaint. The Defendant also pleads an Act of God and inevitable accident. Notice to admit document under Order X11 (3) was served by the plaintiff. By order of court dated 5/12/2005, the firm of Kantai & Company who had been acting for defendant was granted leave to cease acting for Defendant. Although hearing Notice was served on 15/9/2006 no action was taken by Defendant to attend court on hearing date or to appoint advocate to replace the first advocates. The hearing therefore proceeded ex parte. The plaintiff's evidence was that on that day (7/1/1998) she was traveling from Chogoria. She boarded a bus KAJ 073 X ALONG Meru Chuka Road. On reaching main Meru/Embu road the vehicle gained high speed and as it was approaching Nithi Bridge the accident occurred when the vehicle plunged into Nithi Bridge. There were 150 passengers some were standing. Plaintiff was sitting at the back. She became unconscious. When she came to she found herself in Chogoria Hospital. She had sustained injuries right leg toe and felt pain on the left leg. She had fractured pelvis, Right hand was injured and had a fracture at elbow. She had stitches on her stomach midriff to bottom. She was in hospital at Chogoria for 29 days. She was later transferred to Embu Hospital where she stayed for 66 days. The wound became septic. She then was taken to Kijabe where she stayed for 36 days. Then she returned home. Now she can not heavy jobs. She walks with the help of a stick and after 9 years her legs are not strong. She produced documents to support her claims for special damages. She testified that before accident she was earning Shs.7000/= per month as family health educator.

On the issue of liability the evidence is that the plaintiff was a fare paying passenger and she was sitting on a seat in the bus. She said the bus driver was driving fast at excessive speed. The driver failed to swerve brake stop or slowdown or otherwise avoid causing the accident. He failed therefore to keep proper look out and he had no regard for his passengers safety. The plaintiff was relying on the doctrine of Pas Ipsa Loquitur and vicarious liability. The Defendant admitted that the accident occurred and pleaded Act of God and that the accident was inevitable. There is no evidence offered by defendant to support these contentions. The evidence is that the vehicle was involved in an accident as pleaded. The

Police Abstract shows that the driver of the vehicle died. It is my finding in the circumstances that the driver of the said vehicle KAJ 073 X was guilty of the particulars of negligence as pleaded in the plaint. And I find he was liable on 100% basis. The driver was driving the vehicle as employee servant and or agent of the Defendant and I hold the Defendant vicariously liable for the negligence of its driver.

On quantum, it is to be noted that the plaintiff sustained multiple injuries of very serious nature. A perusal of the medical report made by Dr. Ndirangu shows the injuries suffered on:

1. right upper limb
2. left lower limb
3. right limp joint and pelvis bone.
4. abdomen

Plaintiff was treated at various hospitals;

1. Chogoria Hospital admitted for 29 days.
2. Embu Provincial Hospital 66 days.
3. Kijabe AIC Hospital admitted for 36 days.

The nature of treatment given is described in detail. The plaintiff was unconscious for 8 hours. She remained with ugly scars. It was the opinion of the doctor that the plaintiff has suffered life long permanent disability, post traumatic arthritis described as osteoarthritis by Dr. Yaya has already set in. The plaintiff was also examined by Dr. SS Fanya at the request of Defendant. The opinion of this doctor was that the Plaintiff sustained multiple injuries in the accident. There is evidence that future medical treatment is likely. With these details of the injuries the plaintiff proposes damages as follows:

Pain and Suffering - Shs.3,500,000

Loss of earnings - Shs.2,800,000

Costs of Future treatment - Shs.1,800,000

Totaling to 8,319,850/=. In support of these claims there are cited some authorities.

1. HCC at Eldoret No. 188 of 1996

Prisca Cherono Kitchicheruyot Vs Kiara & Kipkerel Songok – Defendant.

Aro Furniture Ltd Third Party. The injuries in both cases are almost similar the award was for:-

Pain and Suffering - Shs.1,700,000/-

Loss of future - Shs. 1,200,000/-

Cost of future treatment - Shs 496,000/-

Cost of future operation - Shs.64,000/-

Cost of future operation - Shs.300,000/-

**Total - Shs.3,761,000/-**

In that case the plaintiff was only 38 years in this case at the time of accident, she was 53 years old. Her working life in Government service would come to an end at 55 years. She could have continued in private sector perhaps to the age of 65 as a Health Educator. That would give her 12 years of active income earning life. The income she said was 7000/= per month.

I have also perused the authority of HCC No.4483/1988 Mathew Mulilo Vs John M.O Nyaga & another where total damages was awarded in the sum of Shs.3,030,000/=. And the court of Appeal decision in Civil Appeal No. 109 of 1996 Michael Maina & Kenya Postal and Tel. Corp Vs Stanley Kigara Kagome where the plaintiff had suffered multiple injuries and several fractures. Taking into consideration all material laid before the court. It is my finding that the plaintiff suffered almost 100% permanent disability as the doctor said she suffered near fatal injuries. His opinion was that she also suffered inconvenience of long hospital stay with repeated operations. She will suffer life long pain on the left knee joint due to post-traumatic arthritis which already set in. The same with right elbow joint. It is the same with right hip joint she has permanent scars she suffered unconsciousness for 8 hours. She now has to use her left hand because of injury on elbow of right arm. For all these injuries and sufferings it is my view that an award in the sum of 2.5 million is appropriate and I award the same for pain suffering loss of amenities. On the issue of loss of earnings I have already said that she would have had 12 years of income earning life because of the nature of her profession of a Health Educator. She said herself shs.7000/= per month in her clinic. She will not be able to carry on due to the condition she has been put to. The loss of earnings there should be calculated at the rate of 7000/= X 12 months X 12 years yielding Shs. 1,008,000/=. For costs of future treatment and the removal of implants she will require funds she says she has to visit the clinic every month where she has to pay shs.40/=.

Dr. Ndirangu testified that she will get worse as time goes because of arthritis which she has already set in. She will need limp replacement to reduce the pain at a cost of about 300,000/= at Kenyatta National Hospital. This including the further operations to remove the metal implants. There is no indication of the cost of these future operations and further treatment in my view a sum of Shs.1,000,000/=.

On the issue of Special Damages Shs.72,412.50 was pleaded but the amount supported by documents is Shs.218,250.25 the cost of medical charges and medicine. Police Abstract Shs.100/= and medical report at Shs.2000/= The claim for medical expenses cannot be limited to the date of filing the plaint since treatment continues for long time after filing the plaint even at the hearing of the suit medical expenses may still be incurred.

I therefore allow Shs.219,850.25. In conclusion the award made in favour of the Plaintiff are as follows:-

For Pain & suffering and loss of amenities - Shs.2,500,000/=

Loss of earnings - Shs 1,008,000/=

Future medical Expenses - Shs.1,000,000/=

Special damages - Shs. 219,850.25

**Total - Shs.4,727,850/25**

Judgment is entered for plaintiff against the defendant in the said sum of Shs.4,727,850/25 plus interest at court rates.

The plaintiff will also have costs of this suit. It is so ordered.

Dated this 8<sup>th</sup> October, 2007.

**J. N. KHAMINWA**

**JUDGE**

**8/10/2007**

**Khaminwa – Judge**

**Njue – Clerk**

**Mr. Githinji for Mbogo Njiru for plaintiff**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**