



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MERU  
Civil Case 54 of 2001**

**KARIUKI M'NG'ONDU ALIAS**

**KARAUKI JOSPHAT M'NGO'NDU ..... PLAINTIFF**

**VERSUS**

**PHILIP MIRITI ..... 1ST  
DEFENDANT**

**MINISTRY OF AGRICULTURE & LIVESTOCK**

**DEVELOPMENT ..... 2ND DEFENDANT**

**ATTORNEY GENERAL ..... 3RD  
DEFENDANT**

**JUDGMENT OF THE COURT**

The plaintiff herein Karauki M'Ngondu alias Karauki Josphat M'Ngondu was injured in a road traffic accident on 31.3.2000 when she was hit by motor vehicle GK V 522 belonging to the 2nd defendant and which was being driven by the 1st defendant. The plaintiff testified that on the material day, she was coming from the hospital and walking along the Maua-Kanuni road. The motor vehicle GK V 522 which was zigzagging hit her. She was in the company of one Nathan who was trapped under the vehicle. She was hit on the left side leg, shoulder and arm. A good Samaritan took her and her companion to the police and later to the hospital where she remained hospitalized until 12th August 2000. After discharge, she continued attending hospital as an outpatient. She produced hospital notes as P exhibit 1A. She also produced hospital papers from Kanuni clinic as P exhibits 2A, B, C, D and E. The x-ray was produced as P exhibit 3. She also produced a bundle of payment receipts amounting to Kshs. 43,009/= as P exhibit 4. The police abstract was tendered in as P exhibit 5A and the receipt thereof for Kshs. 100/= as P exhibit 5B. The P3 form was produced as P exhibit 6. The demand letter to the 3rd defendant and reply thereto were tendered in evidence as p exhibits 7 and 8 respectively. Proceedings of the traffic case in which the 1st defendant was charged with careless driving and driving while under the influence of alcohol and jailed for 6 months was produced as P exhibit 9.

The plaintiff testified (on 18.6.2002) that she still experienced much chest pain and could not raise her left leg.

Dr. John Kimani Macharia PWI who examined the plaintiff on 23.11.2000 testified that the plaintiff sustained injuries as follows:-

1. Facial laceration.

2. Laceration over her left wrist.

3. Fractures of the left scapular and clavicle.

As a result of those injuries the plaintiff had (i) proper surgical amputation of the left lower limb below the knee, (ii) clavice and scapular managed with a bandage (iii) received blood transfusion because of great loss of blood.

By 23.11.2000 when the plaintiff was examined by Dr. Macharia she still complained of pains on amputation and also complained of pains on the left upper limb and was unable to lift weights. She was walking with use of crutches. The left fracture had healed with mal-alignment and was unable to lift the left upper limb fully. The plaintiff also had healed scars on the forehead and left cheek.

In Dr. Macharia's opinion, the plaintiff would require prosthesis fitted to aid in her walking. Dr. Macharia produced the legal-medico report as P exhibit 1 and the discharge summary as P exhibit 2. The two out patients units were produced as P exhibits 3A and 3B.

Though none of the defendants testified the three of them filed a joint defence. The defendants denied that the accident occurred as a result of the negligence of the defendants' driver as alleged in the plaint. The defendants also denied the particulars of negligence and further denied that the plaintiff was entitled to (a) general damages for pain and suffering and loss of amenities, (b) special damages (c) costs of the suit and (d) interest on (a) (b) and (c) above.

The plaintiff put in written submissions in support of her claim. On liability, it was contended that the defendants should be held 100% liable in negligence. In this regard the plaintiff relied on the following authority-

**1. Kenya Commercial Bank Ltd V. Mwanzau Mbaluka & another Civil Appeal No. 274 of 1997.**

On quantum, it was contended that each head of injury should be compensated as follows:-

(a) Amputated left leg – Kshs. 1,600,000/=.

Plaintiff relied on the case of **Samuel Wanguru Njoroge V. Kenya Bus Service HCCC No. 495 of 1995** where the plaintiff was awarded Kshs. 1,200,000/= for an amputated leg.

(b) Fractures of scapular and clavice together with other soft tissue injuries – Kshs. 700,000/=.

The plaintiff relied on the case of **Tito Sekeni V. John Kanyili Muguti & Amra Transporters – Msa HCCC No. 245 of 1992**, wherein the plaintiff was awarded Kshs. 400,000/= for similar injuries.

(c) Artificial leg – Kshs. 300,000/=.

The plaintiff also prayed for special damages in the sum of Kshs. 43,009/=.

As there were no agreed issues, I need to determine whether the accident occurred in the circumstances as alleged by the plaintiff. I have also to determine whether the plaintiff sustained the injuries as alleged and finally whether the plaintiff is entitled to the reliefs sought.

I have carefully considered the pleadings before the court. I have also considered the evidence by the plaintiff in addition to the evidence given by Dr. Macharia on the plaintiff's behalf. Taking all the evidence together, I am satisfied that the plaintiff has proved her case against the defendants jointly and severally. The plaintiff testified that the subject motor vehicle was being driven in a zigzag manner and despite her efforts to run away and steer clear of the approaching vehicle, the vehicle still zigzagged off the road, followed her and hit her. In the absence of any other evidence, either from the driver of the motor vehicle or some other witnesses, I do accept the plaintiff's evidence on how the accident occurred.

I therefore have come to the conclusion that the driver of motor vehicle GK V522 was negligent by driving the vehicle in a zigzag manner and going off the road and hitting the plaintiff. I find the defendants 100% liable in negligence.

On the injuries sustained by the plaintiff, the evidence given by Dr. Macharia was not rebutted. I therefore accept that the plaintiff suffered lacerations on her face, a fracture of the left scapular and clavicle left wrist laceration and complete traumatic amputation of her left lower limb just above the knee joint. There is also evidence that the plaintiff had to have blood transfusion as a result of great blood loss from the lower limb amputation. There is also unrebutted evidence that the plaintiff cannot lift weights, nor can she do the work of farming she used to do before the accident. There is also evidence that the plaintiff will need an artificial limb to assist her in her walking.

In matters of quantum, it is trite law that general damages must be assessed on the combined effect of all the injuries on the person injured and not calculated as the sum of independent assessment for each injury. See **Cavito – V. Di Pilippo (1957) EA 535 and Kenya Bus Services Ltd V. Jane Karambu Gituma – Civil Appeal No. 241 of 2000 (unreported)**.

In assessing the damages, I have not only considered the authorities cited to me but have also considered the law in its broad sense and other relevant authorities. In the result, I award a sum of Kshs. 1,500,000/= for pain, suffering and loss of amenities. Though the plaintiff has urged the court to award a sum of Kshs. 300,000/= for the artificial limb, I find that this amount was neither specifically pleaded nor strictly proved. I therefore decline to award this amount.

On special damages, I award the sum of Kshs. 100/= in respect of the payment for the police abstract. I disallow P exhibit 6 for Kshs. 3,000/= as the same bears no revenue stamp as required by the Stamp Duty Act. P Exhibit 3A is also disallowed as the same is only an invoice from Maua Methodist Hospital. The plaintiff did not adduce evidence to show that the invoice was ever settled.

In the result, there shall be judgment for the plaintiff in the following sums:-

(a) General damages	–	Kshs.	1,500,000/=
(b) Special damages	-	Kshs.	100/=
<b>Total</b>		<b>Kshs.</b>	<b>1,500,100.00/=</b>

The plaintiff shall also be paid costs of this suit and interest.

It is so ordered.

Dated and delivered at Meru this 27th day of July 2005.

**RUTH N. SITATI**

**JUDGE**

**27.7.2005**