



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)  
CIVIL CASE 754 OF 2000**

**BIBIANA NDELEKU NZUKI ..... PLAINTIFF**

**VERSUS**

**KALELI WAMBUA MUNYAO .....DEFENDANT**

**JUDGMENT**

At the end of the 3 years limitation period required to file suit, Bibiana Ndeleku Nzuki filed this suit on 16.5.00 seeking damages for injuries sustained to her due to a road traffic accident.

She claims that on the 17.5.97 she had indeed been a fare paying passenger when the vehicle she was travelling in was involved in a self accident. As a result, she sustained major injuries to her back.

The defendant on being sued failed to enter appearance nor did he file defence. An Interlocutory judgment was entered on 30.1.00 by the Principal Deputy Registrar. The effect of this is that liability against the defendant is at 100%.

I: Liability 100% against the defendant

II: Quantum

The matters came for assessment of damages.

I: General Damages

a) Pain and suffering

The plaintiff was examined by Dr. Mwachandi

MB ChB M.Med

Date of report 8.5.98.

M.B ChB. M.Med Sur.Nbi Traumatologist

This doctor has since passed away but a colleague who knew him personally and his hand writing came to court to produce the said report and that of Dr. Mwachandi also. This colleague

Dr. A.O. Wandugu

MB. Chb (Uon)

Also prepared a recent report dated 21.10.04 to confirm the injuries sustained by the plaintiff.

The major injuries as found in both reports were the prolapsed lumbar intervertebral disc L4 and L5 which was fractured causing a weakness of the limb.

The plaintiff was not paralyzed and is able to walk well.

I am required to give an award under the head of pain and suffering. I would assess the same at Ksh.300,000/-.

## II Special Damages

The plaintiff amended his plaint to include 3 claims.

The medical and hospital expenses Ksh.440,376/-,

The medical report fee Ksh. 3,000/- ,

The police abstract fee Ksh. 100/-

I) The medical and hospital expenses Ksh.440,376/-

There requires to be pleaded the particulars of special damages. The plaintiff has pleaded all the claims as one making it difficult to know which claim has been specifically pleaded.

I reject his proof to prove the same is inadequate.

a) Medical report Ksh.3,000/-

i) I have only proof of Ksh.1,500/- as having been paid.

I award only what has been proved. Namely Ksh.1,500/-.

ii) Police abstract report fee Ksh.100/-

I see no police receipt produced. The same claim is rejected.

I accordingly enter judgment for the proved claim.

### In summary

- 1) Motor vehicle self accident
- 2) Female adult aged 45 years old in 1997 – passenger
- 3) Injuries:
  - a) Compressed fracture L4 and L5
  - b) Weakness to lower limb
- 4) Liability:

100% against the defendant

Njai (Principal Deputy Registrar) 30.11.00

5) General Damages

i) Pain and suffering Ksh.300,000/-

6) Special Damages

i) Hospital expenses Nil

ii) Medical report Ksh. 1,500/-

Total Ksh.301,500/-

I award the costs of this suit to the plaintiff. I award interest on General Damages from the date of his judgment. Interest on Special Damages from the date of filing suit.

Dated this 24<sup>th</sup> day of November 2004 at Nairobi.

M.A. ANG'AWA

JUDGE

Munyasa & Co. Advocates for the plaintiff

Kaleli Wamnua Munyao – the defendant