



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

CIVIL SUIT NO. 390 OF 2000

SOLOMON MUTURI EVANS & 2 OTHERSPLAINTIFF

VERSUS

MARY WANGARI KUNGU (Sued as the legal representative and

Administrator of the estate of the late SAMUEL KUNGU).....DEFENDANT

JUDGMENT

This case comes up for assessment of damages. Judgment on liability was entered in favour of the Plaintiffs by consent in the ratio of 80:20.

On August 16, 1996, the Plaintiffs were travelling in motor vehicle Registration Number KAE 204 X when the same veered off the road and rolled several times causing the Plaintiffs to be injured. The Defendant is sued as the legal representative of Samuel Kungu (Deceased) who was the owner and driver of the offending motor vehicle.

On April 9, 2003 the parties consented further to amend the Plaintiff and have certain documents admitted in court. The amendment involved particulars of special damages as follows:

- (a) 1st Plaintiff ... Kshs. 5,750/=
- (b) 2nd Plaintiff ... Kshs. 102,790/=
- (c) 3rd Plaintiff ... Kshs. 72,100/=

These damages were specifically proved by Exhibits III, X and XIV respectively which were some of the documents admitted as aforesaid. I, therefore, award the Plaintiffs those damages.

As to general damages, I will say as follows:

All the Plaintiffs were examined by Doctors M. S. Malik and Wellington K. Kiamba. The Medical Reports of the two Doctors were admitted by consent. The Doctors did not testify in court.

The 1st Plaintiff sustained fracture of the neck, of the left femur and deep lacerated wounds on the left

shoulder and severe soft tissue injuries of the shoulder joint. He was admitted at Nakuru Nursing and Maternity Home for 5 (five) days and later referred to Aga Khan Hospital where he was admitted and managed for more than two weeks. The fracture of the femur was reduced and fixed by plating. He was then discharged home. When Dr. Malik examined him in November 1997 he was still attending out-patient clinic. He was using crutches and was unable to do any gainful work. At the time of examination in 1997, he complained of inability to walk without support (he was using crutches), pain in the left hip joint and left femur and pain in the left shoulder joint at times. Dr. Kiamba was of the view that the 1st Plaintiff had suffered 30% permanent disability while Dr. Malik was of the view that he had suffered 15% permanent disability. In the circumstances, the Plaintiffs' Advocates suggested that an award of Kshs. 700,000/= would be fair compensation for the 1st Plaintiff's pain, suffering and loss of amenities. The Defendant's Counsel on his part suggested Kshs. 80,000/=. The Defendant relied on the case of **Edward Marigia (A minor) v. Nathaniel David Schuller Esco (K) Ltd.** HCCC 2339 in which the Minor Plaintiff suffered a fracture of the left femur which healed by the leg shortening of 2 cm. It was found in that case that permanent disability would grow less as the child grew. At the time of examination, the disability could not allow the child to play games but physical examination revealed that he could walk normally, squat, stand on heels and tiptoe. He had made satisfactory clinical and functional recovery. On October 28, 1992 my Learned Brother the Honourable Mr. Justice Mwera assessed general damages at Kshs. 80,000/=. The injuries sustained by the 1st Plaintiff are more serious than those sustained by the Minor in the Marigia case. Taking into account the nature of injuries, the incidence of inflation and the effluxion of time that has attended the period between the cases relied on by the Counsel and the present day, I am of the view that an award of Kshs. 500,000/= would be fair compensation for the 1st Plaintiff's pain, suffering and loss of amenities.

The 2nd Plaintiff sustained a fracture dislocation of the left hip joint. She was admitted at Nakuru War Memorial Hospital for 7(seven) weeks during which period she was put on traction. She walked with crutches for about 6 (six) months after which she started using a walking stick. The Plaintiff's Advocates suggested that Kshs. 370,000/= would be adequate compensation for the 2nd Plaintiff's pain, suffering and loss of amenities. The Defendant's Advocates on the other hand suggested an award of Kshs. 100,000/= therefor. I have considered the extent of the 2nd Plaintiff's injuries and the authorities cited by both Counsel and taking into account the incidence of inflation and the effluxion of time between the present day and the time of the authorities, I am of the view that an award of Kshs. 300,000/= would be fair compensation for the 2nd Plaintiff's pain, suffering and loss of amenities.

Finally, the 3rd Plaintiff suffered the following injuries:

- (a) Fracture of the 5th, 6th and 7th ribs on the right side of the chest
- (b) Fracture of the left femur in the upper one third
- (c) Deep cut wounds and lacerations on the right leg and thigh and anterior aspect of the right ankle joint and bruises on the anterior aspect of both knees.

She was admitted at Nakuru War Memorial Hospital for 5 (five) weeks where her fractures were managed conservatively.

She had to use crutches for about 6 (six) months and was being attended to as an out-patient at the time of examination in November 1997. The Plaintiffs' Advocates suggested that Kshs. 550,000/= would be fair compensation for the 3rd Plaintiff while the Defendant's Advocates suggested Kshs. 120,000/=.

Having considered the nature of injuries sustained by the 3rd Plaintiff and the cited authorities as well as having taken into account all other relevant factors including inflation and the passage of time, I am of the view that an award of Kshs. 400,000/= would be fair compensation for the 3rd Plaintiff's pain, suffering and loss of amenities.

I, therefore, enter Judgment for the Plaintiffs as follows:

(a) 1ST PLAINTIFF

(i) General Damages Kshs. 500,000/=

(ii) Special Damages Kshs. 5,750/=

505,750/=

Less: 20% contribution 101,150/=

Total Kshs. 404,600/=

(b) 2ND PLAINTIFF

(i) General Damages Kshs. 300,000/=

(ii) Special Damages Kshs. 102,790/=

402,790/=

Less: 20% contribution 80,558/=

Total Kshs. 322,232/=

(c) 3RD PLAINTIFF

(i) General Damages Kshs. 400,000/=

(ii) Special Damages Kshs. 72,100/=

472,100/=

Less: 20% contribution 94,420/=

Total Kshs. 377,680/=

The Plaintiffs will also have the costs of the suit, and interest as prayed.

Dated and Delivered at Nakuru this 25th day of June, 2003.

ALNASHIR VISRAM

JUDGE