



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**H.C. CIVIL APPEAL NO. 288 OF 1999**

**LUCY WANJIRU GACHIRI ..... APPELLANT**

**VERSUS**

**KIAMBU GENERAL TRANSPORT**

**AGENCY LTD KARUME INVESTMENT .....DEFENDANT**

**JUDGMENT**

The appellant appeals against the judgment of Mr. Mukabwa Resident Magistrate, Githunguri in Civil Case No. 151 of 1998 Githunguri given on the 23.6.1999 on the grounds that the Magistrate failed to admit medical evidence and that the amount he awarded was inordinately low. The parties appeared before me and relied on their written submission by underlining the same. The claim in the lower court arose out of a traffic accident in which the appellant suffered injuries after being hit by the respondent's motor vehicle whilst walking along the Banana/Ndenderu road.

The appellant's advocate attached the decision by the Magistrate for not admitting two medical reports that were put in as their makers were not present to give evidence in court. From the record it appears that two medical reports were put in evidence marked Ex.4 and Ex.6. In the absence of any objection by the defendant/respondent to those reports they must be deemed to have been admitted by consent. The Magistrate was wrong therefore not to have taken them into account. Had the Magistrate required the medical reports to be proved he should have not admitted them into evidence that had them marked for identification to be admitted when the witness appeared in person.

As a result the Magistrate failed to take into account the plaintiff/appellant injuries in their full extent. The injuries she sustained were as follows:-

1. Compression fracture of the thoracic spine
2. Contusion of the thoraco-lumar spine
3. Sprain right shoulder Page 15 of the report.

This is confirmed by Dr. Wokabi on page 17 of the record, but who is ordering an X-ray found that the appellant had no fracture actually occasioned. However he found that she suffered severe pain and had already developed localized lumbar spondylosis. He also found that she was depressed with a lot of self pity. I have considered the submissions of counsel and cases relied on. I am of the view that the sum of Kshs.40,000/= awarded by Magistrate is inordinately low. I therefore set aside this award and bearing in mind the submissions of both advocates and on the medical reports award the plaintiff a sum of Kshs.200,000/= by way of general damages. This is to be reduced by 20%. The appellant will have the costs of this appeal.

Dated and delivered at Nairobi this 17th day of September 2003.

**P.J. RANSLEY**

**JUDGE**