

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 6214 OF 1991

LUCIA KASWII MUTINDA PLAINTIFF

VERSUS

SIMON MUNYOKI 1ST DEFENDANT

STEPHEN WAMBUA MUNGUTI 2ND DEFENDANT

J U D G E M E N T

Plaintiff claims general and special damages as a result of injuries she sustained in a road traffic accident. Defendant did not enter appearance. As a result interlocutory judgement was entered against the defendants. Defendants entered appearance about 3 years after interlocutory judgement had been entered. But defendant did not apply for setting aside the interlocutory judgement.

On 24.11.93 – special damages were agreed at by Kshs.3,150/= being the salary of a house girl for 7 months, Kshs.100/= for police abstract, and Kshs.900/= for medical report. The total is Kshs.4,150/=. It was then agreed that General damages be assessed on the basis of the medical report for Dr. R.P Shah and written submissions. Plaintiff’s counsel filed written submissions. Defendant’s counsel failed to file written submission. According to the medical report of Dr. R.P Shah dated 13.8.91 plaintiff sustained the following injuries

1. Head injury
2. Neck injury
3. Eye injury

The injury to the neck was a small fracture of cervical vertebra number seven and ligamentous injury to cervical spine. The head and eye injuries were minor injuries. She was admitted in hospital for one day. Her neck was immobilized in cervical collar for 2 months. The collar was then removed for 2 weeks. Cervical collar was again applied for further six months. She was unable to work for some time due to pain and stiffness of the neck. The accident occurred on 25.12.88. By the date of the medical report on 13.8.91 she had fully recovered. Plaintiff’s counsel recommends an award of Kshs.400,000/=. It is clear from the medical report that plaintiff did not sustain serious injuries. The injury to the neck was only a small fracture of cervical vertebra number 7. There was no fracture of the cervical spine. The fact that she was admitted in hospital for one day and that the fracture of the cervical vertebra No.7 was treated conservatively is an indication that the injuries sustained were not disabling. In the circumstances I would award Kshs.450,000/= as general damages and Kshs.4,150/= as special damages.

Consequently I enter judgement for plaintiff against defendants jointly and severally on Kshs.450,000/= being General damages plus Kshs.4,150/= as Special damages plus costs and interest at court rates.

E.M. GITHINJI

JUDGE

30.5.2002

Mr. Muturi for plaintiff present