



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL SUIT NO. 144 OF 1996**

**HARUN HABEL MNJAU ..... PLAINTIFF**

**V E R S U S**

**1. NGUI MAKAU**

**2. PANALPINA KENYA LTD**

**3. FRANCIS NJUGUNA KIRORO .....DEFENDANTS**

**JUDGMENT**

The plaintiff suffered injuries leading to the amputation of his left arm below the shoulder in a road accident involving motor vehicles KAD 476P owned by the 1st Defendant in which he was traveling as a lawful passenger and lorry No. KAE 597S ZA 3655 owned by the second defendant and driven by 3rd Defendant.

The parties had agreed on liability which was apportioned by consent on the 12th June 2001 on the basis of 10% against the plaintiff, 30% against 1st defendant, and 60% - against 2nd and 3rd defendants jointly and severally.

The suit was set down for formal proof and once again the parties agreed to admit the three medical Reports prepared by Doctors Rasik Patel, Hemart Patel and J. M. Muthuuri by consent. Basically the major injury for consideration is loss of the left arm.

The parties also agreed on part of the special damages as follows:-

1. Medical Reports	1,500/-
2. Police Abstract	100/-
3. Hospital Charges	61,000/-
4. Medicine	11,000/-
5. Cost of Prosthesis	<u>50,000/-</u>
TOTAL	<u>124,600/-</u>

The plaintiff gave evidence on the issue of the remaining special damages which are amounts he claims he has spent to pay for a gardener and loss of income from his shamba as well as General Damages.

The plaintiff's evidence was that he is a retired Civil Servant and was at the time he met the said accident. He had engaged himself in subsistence farming in which he would feed his family and sale the excess produce and would earn about Kshs. 2,000 per month. It was his evidence that since he suffered the injuries he stopped work at the shamba for a period of 1 year before he decided to engage the services of a shamba boy at a monthly salary of Kshs. 1,000/-.

Counsel for the defendant submitted and rightly so that the plaintiff was not entitled to the said claim as this being a special claim it must not only be pleaded but proved. The plaintiff did concede he had no records to show that he indeed earned Kshs. 2,000/- from his farm nor did he call evidence to proof that he was the only member of the family engaged in the farming. It is now set law that special damages must not only be pleaded but proved. In this case, the plaintiff has not proven the same and consequently the claim cannot stand.

On the issue of General Damages, the plaintiff has testified and relied on medical reports that he has lost his left arm. This is not in dispute and indeed parties have gone ahead and agreed on the cost of a prosthesis. The court has been referred by the plaintiffs counsel to the decisions in **HCC 401 of 1993, Florence Kaiyu Nyamai Vs Coast Bus Company & Another** in which the plaintiff was awarded Kshs. 900,000/- in 1995 for amputation of arm and **HCC NO. 696 of 1990 Francis Nyacholea Vs Said Mwanzombe & Others** in which the award in a similar injuries leading to traumatic amputation of left arm, the award was Kshs. 750,000/- in 1999. On its part, the defence relied on the case of **Donaldo M. Mwangombe VS Nzozo Ndamu HCC No. 481 of 1993**. This case was distinguished from the current one in that the plaintiff therein only suffered a fracture of the 1/3 humerus and 1/3 tibia leading to paralysis of left arm and the award in 1994 was Kshs.300,000/-. The court in making awards has to be alive to the inflation as well as the injuries suffered.

There is no doubt that the plaintiff at the time he suffered the injuries was still a healthy man going about his normal duties and it is further no doubt he suffered pain both physical and phycological. The plaintiffs counsel submitted that an award of Kshs. 800,000/- would suffice while at the defence submitted on a figure of Kshs. 300,000/-. Taking all factors into account I award an amount of Kshs. 750,000/- under pain and suffering.

The plaintiff shall therefore have judgement as follows:-

**Special Damages**

Medical Report	1,500/-
Police Abstract	100/-
Hospital Charges	61,000/-
Medicine	11,000/-
Cost of Prosthesis	50,000/-
General damages for	
Pain and suffering	750,000/-
	874,600/-
Less 10% contribution	

Out of the said amounts the 1st Defendant is 30% while the 2nd and 3rd defendants shall bear 60% jointly and severally.

The plaintiff shall also have the costs of the suit and interest at court rates.

Dated and Delivered this 30th day of July 2002.

**P. M. TUTUI**

**COMMISSIONER OF ASSIZE**