



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 3217 OF 1997**

**NICHODEMUS OWOUR ONGONDO.....PLAINTIFF**

**- V E R S U S -**

**CHEMILL SUGAR COMPANY LIMITED.....DEFENDANT**

**J U D G M E N T**

On 8th February, 2001, I entered judgment for the Plaintiff as follows:-

(a) General damages..... K.shs.2,000,000/=

(b) Loss of future earnings..... K.shs. 308,176/=

K.shs.2,308,176/=

Less 25 % contribution..... K.shs. 677,044/=

K.shs.1,631,132/=

(c) Special damages K.shs. 2,000/=

T O T A L.....K.shs.1,633,132/=

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I also awarded the Plaintiff the costs of the suit.

On 5th March, 2001, it was ordered by consent on the Defendant’s application that that judgment be reviewed and if necessary be revised in view of submissions made by the Applicant/Defendant. At the time of writing my judgment, I had not seen the Defendant’s submissions which had been duly filed at the registry, but for some reason had not been placed before me.

The Defendant has no objection to the special damages awarded which relates to fees for the medical report. The substance of the Defendant’s submissions will only refer to the general damages and loss of future earnings.

The parties do not dispute the injuries sustained by the Plaintiff. The Defendant’s only argument is that the Plaintiff has now made remarkable recovery. The Defendant’s view is that an award of K.shs.

800,000/= as general damages would be sufficient compensation for the Plaintiff's injuries. It relied on the following case law in support of its case:

(a) Margaret Wanjiku & Others v. The Honourable Attorney General & Another NAIROBI H.C.C.C. NO. 5602 OF 1989. In that case, the 1st Plaintiff sustained a spinal injury of the T. 12 level involving fracture of the T. 12 bone. She also sustained fracture of the right Radius and ulna shafts. As a result of the spinal injury she was totally paralysed from the T. 12 downwards and consequently lost control of urine and stool. She was likely to develop bladder and kidney infections and renal failure. In a judgment delivered on 14th March, 1991, MBOGHOLI – MSAGHA, J. assessed general damages for pain and suffering at K.shs. 1,000,000/=.

(b) Samwuel Ndiwa Makasa v. Abdi Abdullah Ogle NAIROBI H.C.C.C. NO. 1581 OF 1990. In that case, the Plaintiff sustained a fracture of the spine and became paralysed below the spine T. 7. He lost control of bladder and stool permanently and would experience urinary tract infection and would be permanently confined on a wheel chair. In a judgment delivered on 22nd July, 1992, MWERA, J. assessed general damages for pain and suffering at K.shs. 700,000/=.

(c) Francis Kaguta Mumu v. John Simiyu Malaba & Others NAIROBI H.C.C.C. NO. 1460 of 1990. In that case, the Plaintiff suffered total paralysis which rendered him paraplegic. In a judgment delivered on 18th March, 1993, MWERA, J. assessed general damages for pain, suffering and loss of amenities at K.shs. 900,000/=.

(d) Mbaka Mburu & Kenya Wildlife Service v. James George Rakwar Civil Appeal No. 133 Of 1998 (Unreported but carried in the Daily Nation of 1st February, 1999) (OMOLO, TUNOI & SHAH, J.J.A.). The Plaintiff in that case suffered paraplegia; fracture of the T.12 thoracic vertebra with spinal cord damage. He was unable to control stool and urine, had recurrent bed sores, a painful back due to implanted hardware, abandonment, painful involuntary muscle spasms especially on left lower limb and difficulty in mobility. The Court of Appeal reduced JUMA, J.'s assessment of K.shs. 2,500,000/= as general damages for pain, suffering and loss of amenities to K.shs. 1,500,000/=.

I have looked at these authorities and the authorities cited by the Plaintiff and considered by me in the judgment dated 8th February, 2001, and I see no reason to review my assessment of general damages. That award is reasonable in the light of all circumstances of this case.

Now, I will deal with the Defendant's argument relating to the award under the head of loss of future earnings. The Plaintiff did not plead this claim. It was also observed by me in the judgment under review that the Plaintiff did not lead any evidence as to his age to enable the court deal with the claim under this head adequately. The court had to grapple in darkness in making an assessment under that head. This should not have been the case. Without specifically pleading and specifically proving the claim under that head, the Plaintiff is not entitled to any award. In reviewing the judgment dated 8th February, 2001, I, therefore, omit the award under the head for loss of future earnings for K.shs. 308,176/=.

The reviewed judgment shall now be as follows:-

Judgment is hereby entered for the Plaintiff as follows:-

(a) General damages ..... K.shs.2,000,000/=

Less: 25% contribution..... K.shs. 500,000/=

K.shs.1,500,000/=

(b) Special damages ..... K.shs. 2,000/=

T O T A L                      K.shs.1,502,000/=

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The Plaintiff shall have the costs of the suit.

DATED and DELIVERED at NAIROBI this 3rd day of April, 2001.

**ALNASHIR VISRAM,**

**J U D G E.**