



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 3154 OF 1996

ELIZABETH NDUTA MUTHEE.....PLAINTIFF

-VERSUS

OLIVER KARONGO NGARI & ANOTHER.....DEFENDANT

JUDGMENT

LIABILITY

Liability was settled between the plaintiff and the defendants at 100% against the defendants.

DAMAGES

The medical reports produced by the doctors show the extent of injuries suffered by the plaintiff. Of importance in addition to the reports by the doctors is that the plaintiff paid for her medical bills but that she had to stop treatment because she could not afford to pay for the hospital bills. In her evidence the plaintiff explained how she was not able to run her business after the accident. To prove loss of earning due to the accident she called PW2 David Thuo Chege who carried out some assessment of her business. His conclusion was that the plaintiff was making Shs.919,740 per annum.

But in her own evidence she says she was making a profit of Shs.5,000/- per day. She thus claims loss of earning and I find the claim of earning of Shs.5,000/- per day to be exaggerated. There was no other evidence to support this claim and I also found PW2 evidence on this far from being conclusive.

To sustain the claim urged for the plaintiff on this item the plaintiff needed to give proof of the income from the business. I have no doubt that she ran a business from which she scooped her livelihood but the evidence is lacking to support the figures. The Doctors report show that the plaintiff suffered injuries on the head which testify to the loss of memory. The injuries she received no doubt are such that she would not be able to do the kind of work she was doing before the accident. For her earning I would accept an income of Shs.2,000/- per month. There was no evidence to show that the plaintiff is likely to recover quickly to be able to work again so that her inability to work could be taken to be permanent. She was 45 years old at the time of the accident. She could have worked for 16 years. For loss of earning therefore the plaintiff shall be entitled to $\text{Shs.}2,000 \times 12 \times 16 = 384,000/-$

SPECIAL DAMAGES

The plaintiff produced evidence of the amount of money she paid to the hospitals and to the doctors all amounting to Shs.343,655/-. I accept this evidence and the plaintiff shall be paid this sum under this head.

GENERAL DAMAGES

I have considered the injuries suffered by the plaintiff as explained in the reports by the Doctors. I have also considered the cases cited in support by way of comparison and for General damages. I accept the figure of Shs.700,000/- adequate compensation.

JUDGMENT

There will be Judgment for the plaintiff as follows:

(1) General damages	Shs.700,000/-
(2) Special damages	Shs.343,655/-
(3) Loss of earning	
2000 x 12 x 16	<u>Shs.384,000/-</u>
Total	<u>Shs.1,427,655/-</u>

The Defendants shall pay costs of the suit and interests.

Delivered and dated at Nairobi this 28th day of January, 2000.

**KASANGA
JUDGE**

MULWA

28-1-2000

Coram: Hon. Kasanga Mulwa J.

Mr. Njiah for Defendant 1st Defendant

Mr. Kamau for the 2nd Defendant

Judgment Read

**KASANGA
JUDGE**

MULWA

Mr. Kamau : We ask for a Stay of 30 days.

Court: Stay for 30 days granted.

KASANGA MULWA

JUDGE