

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO.1727 OF 1999

FATUMA ABDALLA PLAINTIFF

VERSUS

TUSKS RESTAURANTS LTD. & ANOTHER DEFENDANT

JUDGMENT

On or about 8th October, 1997 the Plaintiff was lawfully and carefully crossing the WAIYAKI WAY on a Zebra Crossing along the road when the 2nd Defendant so negligently drove, managed and/or controlled motor vehicle registration number KAA 635 L that it hit and knocked down the Plaintiff an accident from which she sustained the following injuries:- 1. Multiple bruises and lacerations to the face. 2. Segmental fracture of the right superior public ramus 3. Multiple bruises to the left thigh. 4. Laceration anterior aspect of the calf on the right leg. 5. Fracture of the tibia and fibula of right leg.

She filed this suit claiming both special and general damages. Judgment on liability was entered by consent in favour of the Plaintiff at 75-25 basis. It was also agreed by consent that assessment of general damages be based on written submissions to be filed by both parties. The medical report by Dr. Shah dated 17/11/1998 which was filed by consent indicates that the Plaintiff had suffered compound fracture of left leg bones (the tibia and fibular) fracture of right superior pubic ramus of pelvis. Cuts and bruises of right forearm, back left thigh and left leg. While in hospital she underwent operation of plating of fractured tibia injection and oral medicine. She used aid of clutches for 3 months after the operations to enable herself to walk.

She attained excellent recovery in 4 to 5 months after the accident. Counsel for the Plaintiff suggested a figure for Kshs.1,500,000/= general damages for pain suffering and loss of amenities and cited two authorities. MUTINDA MATHEKA VS. GULAM YUSUF HCCC NO.752 of 1993 (MSA) where the Plaintiff was awarded Kshs.1,000,000/= general damages for pain and suffering. HCCC No. 287 of 1988 CHARLES ANUSALE AND ANOTHER VS. MICHAEL MBUGUA where the Plaintiff was awarded Kshs.600,000/= general damages for pain and suffering.

While Counsel for the Defendant suggested a figure of Kshs.290,000/= and cited three authorities HCCC No.48 of 1990 (MSA) SOUTHERN ENFINEERING CO. LTD VS. KAZUNGU KENGA where the Plaintiff was awarded Kshs.200,000/= general damages for pain and suffering. HCCC NO.3354 of 1983 ESTHER NJERI GIKONYO VS. MZEE ASEMBO AND TWO OTHERS where the Plaintiff was awarded Kshs.260,000/= general damages for pain and suffering. HCCC NO.2393 of 1988 JUMMY MBITHI KITELE VS. JAMI RATIMA CONSTRUCTION CO. LTD where the Plaintiff was awarded Kshs.250,000/= general damages for pain and suffering. Having considered the injuries suffered by the Plaintiff and compared them with the injuries sustained by the Plaintiff in the cited authorities and the damages for pain and suffering.

Having considered the injuries sustained by the Plaintiff and compared them with the injuries sustained by the Plaintiff in the cited authorities and the damages awarded, I am satisfied that a figure of Kshs.600,000/= would be adequate compensation for the Plaintiff. Special damages were agreed at Kshs.202,238/= This makes up a total of Kshs.802,238/= Liability was apportioned at 75-25 in favour of the Plaintiff. This would work out as follows: $802,238 \times 75\% = 601,678$

Accordingly there shall be Judgment for the Plaintiff and against the Defendants jointly and severally for Kshs.601,678 with costs and interest.

Delivered and dated at Nairobi this 18th day of January 2000

J.L.A. OSIEMO

JUDGE