



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NO. 356 OF 2008

YVONNE CHEROTICH.....PLAINTIFF

VERSUS

SAID ALI.....1ST DEFENDANT

PETER MUIRURI WAWERU.....2ND DEFENDANT

JUDGMENT

1. The plaintiff was involved in a road traffic accident while a passenger in motor vehicle Registration NO. KAZ 928Z/ZC 5276 owned by the 1st defendant and driven by the 2nd defendant, on the 21/1/2008 along the Eldoret – Nakuru Highway at Soilo Junction. She sustained injuries and blamed the defendants for negligence particulars stated in the plaint dated 24/11/2008 and filed on the 25/11/2008, seeking;

a) Special damages in the sum of Shs.130,934/=

b) General damages

c) Cost and incidentals to the suit.

d) Interest at Court rates.

2. On the 10/3/2001, parties to the suit adopted a consent order recorded in **Nakuru HCC NO. 357 of 2008**, being the Test Suit in respect of liability, among three other cases filed in respect of the same accident. Judgment in the test suit was delivered on the 25/2/2013 whereby the defendants were held 100% jointly and severally. This judgment was adopted by this court on the 16/9/2019.

3. Quantum of damages.

The plaintiff Yvonne Cherotich testified as PW1. She adopted her statement filed on the 14/11/2019 as her evidence in chief. She also produced documents filed in a bundle on the 24/9/2014 – as documents NO. 1-16.

It was the plaintiff's evidence that after the accident, she was taken to Valley Hospital at Nakuru, and next day admitted at Kenyatta National Hospital up to 14/2/2008, when she was discharged but continued with clinics.

Produced by consent of the parties are;

a) Medical report of Dr. W.M. Wokabi dated 22/10/2008

b) Medical report by Dr. P.M. Wambugu dated 14/10/2014.

4. Special Damages.

A sum of Shs. 130,934/= is pleaded in the plaint, and particularized therein.

Both parties agree on a sum of Shs. 39,449/=.

The balance of Shs.91,485/= is contested. These are charges by Kenyatta National Hospital at Shs.87,785/=. Medical report fees of

Shs.3500/= and Shs.200/= for police abstract.

5. I have looked at the invoices produced by the plaintiff. Document No 13, and particularly Receipt No. 018425 – dated 14/2/2008. It is clear that out of the total bill, a sum of Shs. 46,000/0 was paid by NHIF as rebate, leaving a balance of Shs. 37,535/=. I therefore agree with the defendant that the sum of Shs. 37,535/= ought to be deducted from the plaintiffs claim. On medical report fees, on Dr. Wokabi's report dated 1/7/2008, a sum of Shs. 2000/= only was paid and not Shs.3500/= as pleaded. The sum of shs. 200/= for police abstract is not supported by any payment receipt.

6. Thus, the proved special damages amount to Shs. 78,984/=. It is allowed as against the defendants.

7. General damages for pain and suffering.

The injuries sustained by the plaintiff are largely agreed upon by both the plaintiff's and defendant's Dr. Wokabi and Dr. P.M. Wambugu, respectively. These are mainly **soft tissue injuries (blunt injuries) to the neck, lower hip, shoulder (painful chest (muscular injuries) and shoulder blade) back injuries.**

At the time the plaintiff was examined by **Dr. Wokabi** on the 1/7/2008, six months after the accident, the plaintiff was noted to have had pains on the injury sites, including backache. She was unable to undertake sporting activities, move sideways or bend fully. But, the doctor confirmed that she had healed.

8. **Dr Wambugu** examined the plaintiff on the 14/10/2014, six years after the accident. He confirmed that the soft tissue, blunt injuries had since healed. At the time of her testimony before me on the 14/11/2019, the plaintiff testified to have pains at the back, and as a soldier with National Youth Service was unable to participate in drills, lift heavy things or stand for long.

9. The plaintiff proposed general damages in the sum of Kshs.800,000/=-, citing two authorities, **Catherine Wanjiru Kingori & Others Vs. Gibson Theuri Gichubi (2005) e KLR** and **Hezborne Akinyi Baraza Vs Moses Vusolo Madegwa** (full decision not provided).

Injuries in the **Catherine case** were multiple soft tissue injuries on the elbow joint and both ankles; for the 3rd plaintiff. A sum of Shs.350,000/= was awarded.

The defendant on its part proposed a sum of Shs. 130,000/= also citing two decisions.

10. In **Kiwanjani Hardware Ltd & Another Vs. Nicholas Mule Mutinda (2008) e KLR**, for blunt injuries to the head, neck, shoulder, back and chest, a sum of Shs.150,000/= was awarded to the plaintiff.

In **Lamu Bus Services & Another Vs. Caren Adhiambo Okello (2018) e KLR**, a sum of Shs.200,000/= was reduced on appeal to shs. 130,000/= for dislocation of left shoulder joint, deep cut on the left chin, and blunt injury to the thigh.

11. I have considered the age of the decisions cited by both parties as well as the inflationary trends currently and more recent decisions. For multiple soft tissue injuries, the court on appeal reduced a sum of Shs.300,000/= to shs. 100,000/= in February 2018.

12. In **Purity Wambui Muriithi Vs. Highlands Mineral Water Company Ltd (2015) e KLR**, the Court of Appeal downsized the High Court award of Shs.700,000/= to Shs.150,000/= while in **Dickson Ndungu Kirembe Vs. Theresia Atieno & 4 Others (2014) e KLR**, the High Court reduced on award of Shs.255,000/= to Shs.127,500/= for soft tissue, blunt injuries.

13. Guided by the above and the nature of injuries sustained by the plaintiff herein, and upon consideration of the residual pains that the plaintiff complains about, **I am of the opinion that a sum of Kshs.170,000/= would be sufficient as general damages.**

14. The upshot is that the plaintiffs claim is allowed against both defendants jointly and severally as hereunder.

- **Liability – 100%**
- **Special damages – Shs.78,984/=**
- **General damages – 170,000/=**

15. Special damages shall accrue interest from the date of filing this suit, while general damages attracts interest at court rates from the date of this judgment. The plaintiff is awarded costs of the suit.

Delivered, Signed and Dated electronically at nairobi this 13th day of May, 2020.

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J.N. MULWA

HIGHCOURT JUDGE

Delivered, Signed and Date