REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NUMBER 215 0F 2016

JASON KEVIN DIAS.....PLAINTIFF

VERSUS

KEYA ORENGO.....1st DEFENDANT

KAMAR CHIMANAL VARA.....2nd DEFENDANT

FLORENCE NYAMBURA KARITE.....3rd DEFENDANT

ROBERT WANGAI KIARIE.....4th DEFENDANT

JUDGMENT

The Plaintiff herein filed the Plaint dated the 14th March,2013, in which he has claimed Special and general damages against the Defendants. His cause of action is based on a Traffic Road Accident that occurred on the 5th April,2010 when he was travelling in Motor Vehicle registration number KAU 857X as a passenger along Limuru Road/ 4th Parklands Avenue when the 2nd Defendant as a driver and/or authorized agent of the 1st Defendant and /or beneficial owner of the said Motor Vehicle so negligently and carelessly drove , managed and/or controlled the subject Motor Vehicle causing the same to collide with Motor Vehicle KBK 564Q, registered in the name of the 3rd Defendant which was being driven by the 4th defendant as the authorized driver of the 3rd Defendant. That as a result of the said accident, the Plaintiff sustained serious body injuries.

He avers that the accident was solely caused by negligence of the 2nd Defendant as the authorized driver of the 1st Defendant and/or beneficial owner of motor vehicle KAU 857X, and the 4th Defendant as the authorized driver of the 3rd Defendant and / or beneficial owner of motor vehicle KBK 564Q. He has set out the particulars of negligence of the 2nd and 4th Defendants in paragraph 9 of the Plaint.

The Plaintiff contends that as a result of the accident, he sustained grievous body injuries and has suffered loss and damage. The particulars of injuries and those of special damages are set out in paragraph 10 of the plaint.

He has pleaded that, at the time of the accident he was aged 29 years, in employment and he was a happy and healthy individual. That at the material time, he was a transport & product Designer and in lucrative employment with Tinga Tinga Lifestyle Limited, earning a net salary of Kshs. 45,000 for the period from August 2010 to August 2012 when his contract was to be reviewed and that he relied wholly on himself financially for upkeep. That he also had prospects of becoming a Director at Tinga Tinga Limited in 3-6 months from April 2010 but by reason of the accident, his happy healthy life was curtailed and has been deprived of his sole means of livelihood, upkeep and future earnings. He urged the court to grant him the prayers sought in the Plaint.

The 2nd Defendant filed his defence on the 17th July 2013, in which he admitted the occurrence of the accident but denied all the particulars of negligence attributed to him in driving motor vehicle registration number KAU 857X. He stated that the said accident was wholly and/or substantially contributed to, by the 4th Defendant being the driver and/or owner in possession of and/or agent of the 3rd Defendant, who was the registered owner thereof, at the material time. That consequently, the 2nd Defendant holds the 3rd Defendant vicariously liable for negligent acts of the 4th Defendant. He adopted fully the particulars of negligence attributed to the 4th Defendant by the Plaintiff in addition to the particulars of negligence on the part of the 4th Defendant which he has set out in paragraph 7 of the defence.

The 2nd Defendant pleaded that the Plaintiff was also negligent and/or contributed to the injuries he sustained for failing to obey the law; in that he had at all material times while a passenger in Motor Vehicle KAU 857X, declined and/or refused to fasten his seat belt and that he was on the phone throughout. He has denied the particulars set out in paragraphs 10, 11,12 and 13 of the Plaint and has put the Plaintiff to strict proof thereof.

The 1st,3rd, and 4th Defendants did not file defences in the matter following which, interlocutory judgment was entered against them on the 4th March,2014.

At the hearing, the Plaintiff testified as PW3 and called three witnesses in support of his case. He adopted his witness statement filed in court on the 22nd March, 2013 and produced the documents dated 14th March, 2013 and filed on the 14th March, 2013 as exhibits.

It was his evidence that, on the 5th April, 2010, at around 9.30 Pm, he was a passenger in motor Vehicle KAU 857X, which was being driven along 5th parklands Avenue and, as the driver was joining Limuru road, the said Vehicle collided with Motor Vehicle KBK 564Q. He blamed the driver of Motor Vehicle KAU 857X for failing to have proper lookout; for driving above the average speed and for not being attentive. He also blamed the driver of Motor Vehicle KBK 564Q for driving too fast in the circumstances.

He stated that as a consequence, he sustained injuries as set out in the Medical Report dated the 29th May 2019, by Dr Maina Ruga which shows that he sustained head injury with subarachnoid haemorrhage and loss of consciousness.

The said Doctor testified as PW2 and produced the Medical Report as an exhibit in the case.

Hezekia Muthiani who testified as PW1, is a Police officer attached to Parklands Police station. He produced an extract of the O.B for the said accident. It was his evidence that the accident involved motor Vehicle registration numbers KBK 564Q, a matatu which was being driven along Limuru road towards U.N.E.P and KAU 857X which was joining Limuru road from 4th Parklands Avenue near City Market.

On his part, the 2nd Defendant testified as DW2 and called two witnesses. He adopted his witness statement dated the 12th July, 2013 as his evidence in chief. It was his evidence that on the material day, he was driving his motor Vehicle KAU 857X along 4th Parklands Avenue, and on reaching Limuru road so that he could go to the City Market, he stopped the Vehicle to check if there were other cars on the road so that he could cross Limuru road. He stated that upon checking, there were no cars going to Town but there were two Cars coming from Town that wanted to join the road that he was driving on. That he was on the left side of the road and they were to enter on the left side of the road

It was his further evidence that as he was just about to finish crossing Limuru road, there was a matatu coming from Town which was being driven fast; it overtook the two vehicles that were waiting to join 4th Parklands Avenue and in the process of overtaking, it hit his vehicle. He blamed the driver of Motor Vehicle KBK 564Q for the accident for driving very fast. He also blamed the Plaintiff for failing to wear a safety belt and for being on phone. According to him, he tried to avoid the accident but the Matatu was too fast. He stated that though he was charged in Traffic Case number 18798 of 2010, he was acquitted under section 210 of the Criminal Procedure Code.

The 2nd Defendant's wife testified as DW3. She adopted her witness statement as her evidence in chief. Her evidence corroborated that of the 2nd Defendant in all material respects on how the accident occurred and blamed the driver of the Matatu for overtaking carelessly, and the Plaintiff for not wearing a safety belt, for talking on phone and for moving from one side of the seat to the other.

Doctor Wambugu Mwangi testified as DW1 and produced the Plaintiff's second Medical report dated the 1st December, 2015 as an exhibit.

As earlier noted, the 1st, 3rd and 4th defendants did not file defences and the matter proceeded exparte as against them.

At the conclusion of the hearing, parties filed written submissions which the court has duly considered together with the evidence on record and the authorities filed herein.

This being a Road Traffic accident, the only two issues for determination are Liability and quantum of damages. It is trite Law that the burden of proof lies on whoever alleges certain facts. Section 107 of the Evidence Act is apt on this legal position and it provides as follows;

> ***107(1) whoever desires any court to give judgment as to any legal right or liability depended on the existence of facts which he asserts must prove that those facts exist.***
>
> ***(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.***
>
> ***108; The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.***

On the issue of liability, the Plaintiff blamed the two drivers for the accident. He submitted that from the investigations carried out regarding the accident and as recorded in the occurrence book, the 2nd Defendant failed to give way to Motor Vehicle KBK 564Q. That the 2nd Defendant was charged with a Traffic offence but he was acquitted as he was charged under the wrong provisions of the Law. He further submitted that DW2 admitted that he joined Limuru road when it was not safe so to do in that, there were two other Vehicles joining the 4th Parklands Avenue and thus he had been obstructed and for that reason, he was charged with a Traffic offence. He urged the court to find that the Plaintiff has proved his case and that the 2nd Defendant should be held 100% liable for the accident.

On the part of the 2nd Defendant, it was submitted that the evidence adduced by the Plaintiff was shallow as he could not explain the road on which the accident occurred and how the two vehicles collided. The 2nd Defendant contended that the Plaintiff could not give a good account of how the accident occurred because he was seated on the back seat in the vehicle that he was travelling in and it was unlikely that he could witness the occurrence of the same. He submitted that the Plaintiff's version of events leading to the accident lacks consistency and do not stand the test of Section 107 of the Evidence Act pointing out that his evidence is at variance with his pleadings. To support this contention, he cited the case of Joshua ***Batisi Makomere Vs Lubao Jagger Factory Limited Kakamega HCCA No. 121 of 2013*** in which the court held;

> ***"When a party gives a testimony that is at variance with what is contained in his pleadings then the said testimony speaks of a totally different case or complaint"***.

And the case of ***Independent (Electoral and Boundaries Commission & Another Vs Stephen Mutinda Mule & 3 others civil case number 219 of 2014)*** in which the court held that;

> ***"It is now a very trite principle of law that parties are bound by the Pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded"***.

It was further submitted that the evidence of PW1 is not enough to show who was to blame as between the drivers of Motor Vehicles KAU 857X and KBK 564Q as the said police officer was not involved in investigations into the cause of the accident and he did not produce the police file or the sketch plan which could have shed light on the case. To this end, he cited the cases of ***Osman Ahmed Kahia Vs Joseph G. Njoroge HCCA No. 42 of 2010*** and that of ***David Kajogi Vs Francis Muthomi (2012) e KLR Civil Appeal 18 of 2010.***

With regard to the Traffic charge preferred against the 2nd Defendant, it was submitted that he was acquitted under Section 210 of CPC and although the trial court found that he was charged under the wrong section of the Law, it also found that the evidence offered by the prosecution was inconsistent. That the Court also found that the prosecution could not establish the exact point of impact /collision or the scene of the accident. He has urged the court to find the evidence of the 2nd Defendant and his witnesses consistent as to how the accident occurred and as to the point of impact and find that the point of impact was at the end of Limuru road to City Park area.

In addition, he asked the court to attribute some blame to the Plaintiff as set out in Paragraph 9 of the Plaint for failing to fasten his seatbelt and being on phone, thus contributing to the accident for not sitting safely in the Vehicle.

The court has considered the evidence on record and the submissions by both parties.

The Plaintiff has blamed both the 2nd and 4th defendants for the occurrence of the accident. In his evidence he stated that the 2nd Defendant failed to give way to Motor Vehicle KBK 564Q and joined Limuru road when it was not safe for him so to do and thus caused the accident. He also blamed him for driving fast and not being attentive.

The 2nd Defendant denied any negligence on his part and explained in details how the accident occurred. He stated that on the road that he was driving, that is (4th Parklands Avenue), before you get to Limuru road, there are two bumps and he had slowed down so that he could drive over the bumps and he had thus reduced the speed to 20 KPH. He explained that on reaching Limuru road and before he started to cross the same, he stopped his Vehicle to check if the road was clear and on checking, there were no vehicles heading to Nairobi City but from the City, there were two vehicles that were waiting to join 4th Parklands Avenue. He started driving across Limuru road but before he could finish, motor Vehicle KBK 564Q which was being driven at a high speed overtook the *two vehicles that were waiting to join 4th Parklands Avenue and in the process, it hit his motor vehicle* KAU 857X. According to him, the impact was on the left side of the road as one drives on Limuru road to Nairobi City.

It was the 2nd Defendant's further evidence that he tried to avoid the accident by swerving and braking but the Matatu was being driven too fast and the accident could not be avoided. He denied that he drove into Limuru road without giving way to the oncoming vehicles and without keeping proper lookout. His evidence was corroborated by that of his wife who testified as DW3 who stated that Motor Vehicle KBK 564Q was being driven very fast and it was overtaking two other vehicles that were waiting to join 4th Parklands Avenue. She also confirmed DW2's evidence that the point of impact was at the junction of Limuru road and the entrance to the City Market. According to Dw2, the 2nd Defendant was not speeding as alleged by the Plaintiff and he stopped at the junction to check if the road was clear.

In his evidence, the Plaintiff relied heavily on the Proceedings in the Traffic case number 18798 of 2010 in which the 2nd Defendant was charged. The proceedings were produced as an exhibit in this case. I have looked at the said proceedings and I can confirm that the 2nd Defendant was acquitted under Section 210 of the Criminal Procedure Code as the prosecution had failed to establish a prima facie case against him. In acquitting the 2nd Defendant, the trial court found that the accused person was charged under the wrong section of the Law. The learned Magistrate further found that the evidence adduced by the prosecution in support of the charge was quite inconsistent and that the prosecution could not establish the exact point of impact /collision or the scene of the accident.

In the Traffic case, the Plaintiff herein was not called as a witness. The driver of motor Vehicle KBK 564Q gave evidence as PW1 and I must say that his evidence did assist the trial court to determine how the accident occurred. The officer who visited the scene did not tell the court why he decided to charge the 2nd Defendant herein yet he had issued both drivers with a notice of intended prosecution. It was his further evidence that he did not find any eye witnesses at the scene of the accident. Pw1 herein, Heziah Muthiani, was not the investigating officer and he did not produce the police file to support the evidence that he gave in court.

In the case herein, the Plaintiff's evidence was very shallow and generalized. He could not tell the court where the point of impact was, to enable the court determine who between the 2nd and the 4th Defendants was to blame. On the other hand, the 2nd Defendant gave a detailed account of how the accident occurred and the same was supported by that DW3. This court finds the account given by the DW2 and DW3 more credible and believable. As stated earlier, the 3rd and 4Th Defendants did not defend the suit and hence, the court does not have the benefit of the evidence that they could have offered.

With regard to the contributory negligence attributed to the Plaintiff, the court notes that he denied those allegations and with the evidence

available to this court, it is my considered view that the particulars of negligence against him were not sufficiently proven.

Having analysed the evidence as above, I come to the conclusion that the Plaintiff has failed to prove his case against the 2nd Defendant. The evidence available to this court reveals negligence against the 3rd defendant at 100%. In the plaint, the 3rd defendant is said to have been driving the 4th defendant's motor vehicle KBK 564Q as an authorised driver and/or agent. There is no evidence on record to suggest the contrary and on that basis, this court finds the 4th defendant vicariously liable for the negligence on the part of the 3rd defendant. I accordingly find them liable as such. On the other hand, the Plaintiff's case against the 1st and 2nd Defendants is hereby dismissed with costs. I wish to state that though there is already interlocutory judgment against the 1st Defendant, he is described as the registered owner of Motor Vehicle KAU 857X. This court having found the driver of that vehicle as having been free of liability, it therefore follows that the 1stDefendant cannot be found liable as well.

On damages, the Plaintiff prays for special damages of Kshs. 1,366,414.31, General damages for pain and suffering and General damages for loss of future earnings.

On General damages, he has relied on the Medical report by Doctor Maina Ruga. In addition to this, a second Medical report by Dr Wambugu was also produced as an exhibit. The two doctors are in agreement on the injuries sustained by the Plaintiff and on the degree of incapacity that he suffered. They both described the degree of injuries as grievous harm and the degree of permanent incapacity at 60%. According to Doctor Maina Ruga, the Plaintiff was admitted at Aga Khan Hospital from 5th April, 2010 to 2nd May, 2010. He was later attended to, in two Hospitals in Bangalore, in India where further treatment was given. By the time he was seen by Doctor Maina Ruga, he had weakness on the right hand with wrist and foot drops on the right leg. He is using an AFO (abnormal foot orthosis splint).

On his part, Doctor Wambugu opined that the Plaintiff has made adequate recovery though he has residual severe paralysis of the right upper and lower extremities coupled with slight facial paralysis and slight disorder of speech function.

In his submissions, the Plaintiff has urged the court to award general damages of Kshs 6,000,000 and has relied on the cases of ***Martin Kidake Vs Wison Simiyu (2014) Eklr*** where a sum of Kshs 3,500,000 was awarded and that of ***Susan Wanjiru Njuguna Vs Keringet Limited & others*** cited in the case of ***Martin Kidake*** (supra) where ***Kshs. 6,000,000*** was awarded. On his part, the 2nd Defendant urged the court to award **Kshs 800,000** and has relied on the cases ***of Prem Gupta Vs Grimley Otieno*** **and** ***3 Others Mombasa HCCA no. 131 of 2016*** and that of ***Dominic Mbithi Vs Agness Mwinzi*** and another ***HCCA 44 of 2016*** where ***Kshs 800,000*** and ***1,500,000*** were awarded respectively.

On damages for loss of future earnings, the Plaintiff submitted that prior to the accident, he was a happy and healthy individual earning ***Kshs. 45,000*** per month. That he was a Transport & product designer by profession holding a Diploma in BTEC foundation Art & design, UK and had just landed a lucrative job with Tinga Tinga Lifestyle Limited earning the stated salary. That following the accident, he lost the job and he has been deprived of his sole means of livelihood, upkeep and future earnings. That he is currently dependant on PW4 as he cannot secure gainful employment following the injuries that he sustained in the accident, which injuries have diminished the chances of him getting employment. He has cited the case of ***Kimati Mbuvi Vs Augustin Munyao Kioko*** **(Civil appeal No. 203 of 2001**).

He suggested that the court do adopt the multiplier formula and urged the court to apply a multiplicand of Ksh45,000, multiplier of 25 years giving a total of Ksh 13,500,000. On damages for future earnings, the 2nd Defendant submitted that the Plaintiff did not prove earnings in that at the material time, he was on contract and what he produced was an invoice and not a payslip and that the letter on the employment that he had secured did not disclose the salary that he was to earn.

On the characteristics of an award for loss of earning capacity and the principles to be considered in assessing the same, the 2nd Defendant cited the case of ***Fairly Vs John Thompson Limited (1973) 2 Lloyd's Rep*** wherein the court distinguished award of damages for loss of earnings as distinct from damages for loss of future earnings. The case of ***Moeliker Vs Reyrolle & company Limited (1977) WLR 132*** was also quoted to advance the same principle. Counsel for the 2nd Defendant urged the court to dismiss the claim for loss of future earnings. Counsel also argued that the Plaintiff did not demonstrate to the court how being a trained graphic designer he would be unable to secure employment or other contracts since the Doctor stated that his mental capacity and skills as a graphic designer are still intact. In the alternative, counsel submitted that should the court award damages under this head, Kshs 300,000/= should be sufficient.

On special damages, the Plaintiff has urged the court to rely on the receipts that were produced as exhibits and award the claimed figure of Kshs. 1,366,414.31. On his part, the 2nd Defendant does not have any issues with all the other aspects of special damages save for the medical expenses and related costs which his Counsel has seriously contested. He avers that the receipts produced in this case have no breakdown of charges for drugs, accommodation and admission among other things. It was further submitted that the charges therein are in Indian Rupees and the conversion rate was not shown.

Counsel for the 2nd Defendant also urged the court to consider the evidence of Pw4 who told the court that the Plaintiff had a medical cover with Apollo assurance Company Limited but he did not tell the court who paid for the Plaintiff's medical expenses incurred in India and argued that the Plaintiff should not benefit twice as that would amount to double enrichment. Counsel submitted that though the Plaintiff told the court that the insurance paid Kshs. 400,000 for him, he did not produce receipts of what he paid from his own pocket for the balance. However, the 2nd Defendant, indicated that he did not have any problem with some of the receipts for medical expenses amounting to Kshs. 146,977.50 and urged the court to award that amount in addition to a total of Kshs. 4,600 for the Police Abstract, copy of Records and the Medical report.

On interest, the court was urged to award the same based on the guiding principles which are that, on special damages, from the date of filing of the suit and not before and for general damages, from the date of the judgment.

The court has considered the submissions by both parties on quantum of damages and the principles that should guide the court in awarding the same.

On general damages, I note that the injuries sustained by the Plaintiffs in the authorities quoted by the Counsel for the Plaintiff are more severe in that in the case of Martin(supra) the plaintiff suffered very severe brain damage while in the case of Susan Wangari (supra) the Plaintiff suffered permanent brain damage. On the other hand, in those cited by the 2nd Defendant, the injuries are not as severe as those suffered by the Plaintiff herein. Taking the nature of injuries into account, I am of the view that Kshs. 2,000,000 would be a reasonable compensation for the injuries sustained by the Plaintiff.

On damages for loss of future earnings, the Plaintiff relied on the case of **Mumias Sugar Company Limited Vs Francis Wanalo (2007) Eklr** where the court laid down the principles for the award of damages for the loss of earning capacity and urged the court to apply the multiplier method in calculating damages under this head. He submitted that the Plaintiff was in employment with Tinga Tinga Lifestyle Limited earning a total of Kshs. 45,000. That as a result of the accident, chances of him getting employed have been diminished by the injuries which left him with permanent incapacity of 60% and inability to use his right hand and right foot. He urged the court to be guided by the case of ***SBI International Holdings (AG) Kenya Vs William Ambuga Ongeri (2008) eklr*** in assessing damages using the multiplier method. He urged the court to adopt a multiplicand of Kshs. 45,000 and a multiplier of 25 years giving a total of Kshs. 13,500,000.

On the part of the 2nd Defendant, it was submitted that the plaintiff did not prove employment in that he did not produce a letter of appointment but rather, what he produced was an invoice that he had raised for some work that he was undertaking for Tinga Tinga Company, on contract. Counsel submitted that the job the Plaintiff had been promised had no indication of the salary that he would earn and the date when he would commence. Counsel relied on the case of ***Moeliker Vs Reyrolle & Co. Limited (1977) 1 WLR 132*** on the principles applicable in assessing damages for loss of earnings and urged the court to find that the same was not proven by way of evidence in that, the Plaintiff did not demonstrate that he was in actual employment earning a salary.

Counsel for the 2nd Defendant further argued that the Plaintiff did not demonstrate how he would be unable to seek employment or other contracts with other companies since the doctors stated that his mental capacity and the skills he had acquired as a graphic designer are still intact. It was submitted that the Plaintiff's risk of not getting a job or contract as a graphic designer are minimal and therefore, the award should be in hundreds of pounds and not in thousands. According to the 2nd Defendant's counsel, an award of Kshs. 300,000/= should be made for loss of earning capacity though the same was not pleaded.

The court has considered the respective parties' submissions in that regard. What the Plaintiff has prayed for, are damages for the loss of future earnings. In the case of ***Mumias Sugar Company*** **(Supra**), the court held that damages under this head can be made both when the Plaintiff is employed at the time of the trial and even when he is not so employed. The justification of the award when the plaintiff is employed is to compensate him for the risk that the disability has exposed him of either losing his job in the labour market while the justification for the award where the plaintiff is not employed at the date of the trial, is to compensate him for the risk that he will not get employment or suitable employment in future. Going by that reasoning, it is therefore clear that damages under this head can be awarded whether or not the plaintiff was in employment at the time of the trial. Further, it is trite that the court can award such damages using the global formula or by way of the multiplier taking into account, the evidence availed to it by the Plaintiff.

In this case, it is clear that the Plaintiff did not produce any evidence to show that he was in employment and that he was earning a salary. What we have on record are invoices for some work that he was doing on contract basis for Tinga Tinga Company for a period of three months, after which he would join the company on a full time basis. This is contained in the letter dated the 28th May, 2010, by Tinga Tinga lifestyles limited. The court notes that, the said letter does not indicate when he was to start working and the salary he would earn.

It is not, however, disputed that the Plaintiff is a Transport & Product Designer by profession and by virtual of his qualification, he was earning a living as evidenced by the letter dated 28th May,2010. There is no doubt that the injuries that he sustained were severe and they left him with permanent disability which both Doctors assessed at 60%. He has right sided hemiplegia with weakness of the right arm and right leg. The right leg has a foot drop and the foot is supported using AFO splint. These kind of injuries will obviously reduce his chances of getting employment or suitable employment in future, considering that he is right handed and the injuries have severely affected his right hand and foot.

Going by the principles laid down in the case of **Mumias (supra**), there is no doubt in my mind that the plaintiff has proven that he is entitled to damages under this head, the only issue being the formula that the court should adopt in awarding such damages. I am persuaded by the Plaintiff's submissions that the multiplier method is applicable in this case but there being no evidence of appropriate multiplicand, and the plaintiff having proven that he was earning a living and had been offered a job, this court is of the considered view that the plaintiff should be compensated using the minimum wages of a designer which is Kshs. 20,904.90cts per month as per ***THE REGULATION OF WAGES (GENERAL) (AMENDMENT) ORDER ,2018.***

On the multiplier, the evidence available to the court is that the plaintiff was born on the 1st April, 1981 meaning that he is 39 years old. A multiplier of 25 years was suggested by the Plaintiff's counsel. Taking into account the fact that he has not been rendered completely unable to engage in any work, I am of the considered view that a multiplier of 18 years is reasonable in the circumstances of this case.

On special damages, several receipts were produced as exhibits. As correctly submitted by counsel for the 2nd defendant, the receipts were just thrown to the court to sort them out and to decide the conversion rate for those issued in Indian Rupees. I have done my best in the circumstances that I find myself in, and I note that some are not in the name of Plaintiff and some costs were not explained how they were incurred and how the expenses are related to the accident. The receipts are in two different currencies, that of Kenya Shilling and Indian Rupees. In terms of Kshs., an award of Kshs. 185,714 is made for the receipts on pages 31, 33, 37, 110, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, and 136.

On the other hand, a total of 66,381 Indian Rupees were proven and I hereby award the same. They are on pages; 42 ,46, 47, 48, 49,50, 53,

54, 55, 56, 57, 59, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72,73, 74, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 96, 98, 100, 101.

In the end, this court enters judgment for the plaintiff against the 3rd and the 4th Defendants jointly and severally as follows;

(1) Liability	-	100%.
(2) General damages for pain and suffering	-	Kshs. 2,000,000.
(3) Damages for loss of future earnings	-	Kshs. 4,523,234
(4) Special damages	-	(1) Kshs. 185,714
	-	(2) 66,381 Rupees
TOTAL		**Kshs. 6,708,948**

Rupees 66,381

The plaintiff is also awarded the costs of the suit. Special damages to earn interest at court rate, from the date of filing of the suit while the general damages will attract interest from the date of this judgment. I make no orders as to costs with regard to the 1st and the 2nd defendants.

Dated, Signed and delivered at Nairobi this 16th July,2020.

……

L. NJUGUNA

In the presence of

……. for the plaintiff

……. for the first Defendant

……. for the 2nd Defendant

……. for the 3rd Defendant

……. for the 4th defendant