



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NUMBER 578 OF 2011

BEATRICE GATHIGIA MWANGI.....PLAINTIFF

VERSUS

NGUYAI LEAH.....1ST DEFENDANT

TRUPHENA NAXALAYO.....2ND DEFENDANT

J U D G M E N T

The plaintiff was injured as a result of a road traffic accident involving motor vehicle registration No. KAU 557H. She brought this suit against the defendants for damages for the injuries that she sustained.

The parties herein agreed and recorded judgment on liability at 80% against the 2nd defendant in favour of the plaintiff and 20% contributory negligence on the part of the plaintiff. The 2nd defendant was the driver of the said motor vehicle which was owned by the 1st defendant. The parties also agreed that there be an award of Ksh.500,000/- for future medical expenses. Original receipts and invoices were to be provided to the court for assessment of special damages pleaded, and the parties were to rely on medical reports that had been filed to assess general damages.

In that regard both parties have filed submissions which I have on record, alongside some authorities which I have been asked to consider in the assessment of damages.

The plaintiff has provided an original receipt issued by Karen Hospital against the payment of Ksh.2,295,197.28 for the medical bill. The said receipt bears a serial number, a stamp of the Karen Hospital Limited and a revenue receipt. It is dated 4th June, 2010 and I have no reason to doubt the same.

The plaintiff has also provided a receipt for Ksh.500/- paid for obtaining the details of the motor vehicle that was involved in the accident. The total proved special damages therefore, amounts to Ksh.2,295,697.28.

On general damages, I have considered the medical reports prepared by Dr. P. M. Wambugu dated 28th March, 2012 and by Dr. David G. Kinyanjui dated 18th March, 2011.

The plaintiff sustained a fracture to the right femur, extensive degloving wound on the right shin, and as a result developed deformity of the injured site leading to 40% permanent incapacity. She was in hospital for a period of about 2 months, but the fracture site did not unite completely. She experienced post-surgery complications which, other than the non-union of the right femur fracture site, there was deep venous thrombosis. She was 62 years old and a retired nurse.

There is a report by the Metropolitan Hospital dated 15th July, 2017 which indicated that there is still non-union of the fracture site, and that the plaintiff may require removal of the nail which had been implanted to the fracture site plus total knee replacement.

I am guided by the medical reports and the authorities referred to by both counsel which included the following **Omar Musa Hassan & Another Vs Rashid Salim & Another [2000] eKLR, Florence Njoki Mwangi Vs Peter Chege Mbitiru (2014) eKLR, Lucy Nyambura Mungai Vs Thomas Gikonyo Mundia (2011) eKLR.**

Comparable injuries should attract comparable awards. No amount of compensation however, can ever repair an injury sustained by a human being. Each case has to be considered on its own merit. I have considered all the material placed before me with the view to arriving at a fair compensation for the injuries sustained by the plaintiff. I bear in mind the depreciation of the currency, and the fact that future medical

intervention which has been provided for in the settlement by the parties may, to some extent, reduce the suffering of the plaintiff. Doing the best I can I make an award of ksh.800,000/- general damages for pain and suffering.

In the end there shall be judgment for the plaintiff against the defendants jointly and severally as follows: -

a) General damages	Ksh. 800,000.00
b) Special damages	Ksh.2,295,697.28
c) Future medical Expenses	<u>Ksh. 500,000.00</u>
TOTAL	Ksh.3,595,697.28
Less 20%	(<u>Ksh. 719,139.46</u>)
TOTAL	Ksh.2,876,557.82

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The plaintiff shall also have the costs of the suit plus interest at court rates which shall also be subject to 20% contributory negligence on her part.

Dated, signed and delivered at Nairobi this 6th day of June, 2019.

A. MBOGHOLI MSAGHA

JUDGE