



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HCCC NO. 383 OF 2010

PHELISIA WAWIRA DAVID PLAINTIFF

VERSUS

AISHA MOTOR DEALERS LIMITED1ST DEFENDANT

JOHN GITAU2ND DEFENDANT

DAVID GAITHO WAINAINA3RD DEFEDANT

JUDGMENT

The plaintiff was injured as a result of a road traffic accident that took place along Nairobi Ruaka Ndenderu road on 22nd March 2009. She brought this suit against the defendants jointly and severally claiming general damages for pain and suffering and contingent medical expenses.

She also claimed special damages and costs of the suit. The 1st 2nd and 3rd defendants did not enter any appearance or file a defence to the suit. The plaintiff then filed a request for judgment against all the defendants whereupon an interlocutory judgment was entered against all the defendants on 21st September, 2010.

By a Chamber Summons dated 1st October 2010, the 3rd defendant applied to set aside the interlocutory Judgment entered against him and that he should be granted leave to defend the suit by filing a memorandum of appearance and statement of defence.

The application was heard by Waweru J who set aside the interlocutory Judgment and gave the 3rd defendant conditional leave to defend. The 3rd defendant was ordered to enter appearance and file a defence and serve within seven days of the delivery of ruling. He was also ordered to pay the plaintiff costs assessed at Kshs. 10,000/= within fourteen days of delivery of the ruling and in default of the foregoing conditions the application shall stand dismissed with costs to the plaintiff.

The 3rd defendant is said to have fulfilled the 1st condition but defaulted in paying the costs and so his application stood dismissed and therefore the interlocutory judgment against him is still valid. This matter was thereafter listed for formal proof. Only the plaintiff gave evidence in support of her pleadings by submitting her statement to the court as her evidence. She also produced a bundle of documents in support of her case.

Thereafter the learned counsel for the plaintiff made written submissions which I have gone through. Her evidence in the absence of any challenge remains uncontroverted. Having heard her evidence and seen

her testify she has proved her case against the defendants and liability shall be borne in full by the said defendants jointly and severally.

There is a medical report prepared by Dr. Maina Ruga who examined the plaintiff on 18th May, 2010. He confirmed the plaintiff suffered segmental fractures of the right tibia and fibula, bruises and cut wounds on the forehead and bruises on both arms.

She still gets pains on the right leg and may require occasional analgesic medication. There is a scar to the right leg and tenderness over the tibia. There is slight lateral bowing deformity of the leg.

There are several cases that have been cited to guide the court which I have examined and these include **MOMBASA CIVIL CASE NO. 176 OF 2006 ENOCK KEDOGO VERSUS HILARY ISAAC JILANI** where the court awarded 800,000/= for pain and suffering. I note however in that case the plaintiff suffered a fractured hip and not the leg.

Comparable injuries should attract comparable awards taking into considering the circumstance of each case. Taking everything into consideration, I make an award of Kshs. 600,000/= for pain and suffering. The plaintiff established special damages amounting to Kshs. 32,580/= by producing the receipts for payments made for medication, transport and related expenses. Loss of future earnings has not been proved.

Accordingly, there shall be judgment in favour of the plaintiff against the defendants jointly and severally in the sum of Kshs. 600,000/= general damages plus Kshs. 32,580/= special damages. General damages shall attract interest at court rates from the date of this judgment while special damages attract interest at court rates from the date of filing this suit.

The plaintiff shall also have the costs of the suit.

Dated and delivered at Nairobi this 2nd Day of December, 2015.

A.MBOGHOLI MSAGHA

JUDGE