



No. 318/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 112 OF 2008

JOYCE WAYUA RICHARD.....PLAINTIFF

VERSUS

1. MIKE TROJANUOK.....1ST DEFENDANT

2. RICHARD MUTINDA MWANTHI2ND DEFENDANT

JUDGMENT

1. The plaintiff sued the defendants seeking payment of damages following injuries sustained as a result of a road traffic accident. In her pleadings, she stated that on the **4th January, 2007**, she was travelling as a passenger in motor vehicle registration number **KAS 204L** along **Nairobi-Mombasa** road when the driver of motor-vehicle registration number **KAE 480T** negligently controlled it whereby he permitted it to lose control and ram into motor-vehicle registration number **KAS 204L**. As a result of the accident she sustained serious injuries
2. She blamed the 1st defendant for the accident being the registered owner of motor-vehicle registration No. **KAE 480T** and the 2nd defendant being its beneficial owner.
3. The 1st defendant never entered appearance. An interlocutory judgment was entered against him on the **29th September, 2009**. Subsequently, leave was granted to the 2nd defendant to enjoin the 1st, 2nd and 3rd, third parties in the matter. Summons to enter appearance were only served upon the 1st and 2nd third parties. At the hearing the defendants did not appear.
4. The plaintiff testified that she was travelling from **Kiunduan** going to **Mwala** aboard motor-vehicle registration No. **KAS 204L** along Mombasa road. There was an oncoming motor-vehicle, a lorry. Another motor vehicle registration number **KAE 480T** passed in between the two (2) motor –vehicles thereby causing the accident. In her pleadings she attributed negligence to the person who was in control of motor-vehicle registration number **KAE 480T**. She blamed the person for failing to maintain any and/or proper lookout and effective control of the motor-vehicle; failing to swerve, stop, brake, slow down and or in any other way to avoid colliding with the motor-vehicle in which she was travelling; driving carelessly and dangerously without due regard to other road users. Failure to properly estimate when to overtake one of the motor-vehicle resulted into the vehicle -coming in between the two (2) and causing the accident was evidence of negligence on the part of the driver. Evidence adduced by the plaintiff having been uncontroverted, she says that the driver of motor-vehicle registration number **KAE 480T** was solely to blame for the accident.
5. The plaintiff adduced evidence of a copy of records from the Registrar of Motor-vehicles that proved ownership of the motor-vehicle. The 1st defendant was the owner of motor-vehicle

registration number **KAE 480T, Fiat Station Wagon** as at **May, 17, 2008**.

6. An abstract from police on the accident indicates that the said motor vehicle's insured owner at the time of the accident was the 2nd defendant. In her evidence the plaintiff did not blame the third parties. In the premises, the defendants herein are vicariously liable for the actions of the agent/servant who was in control of the motor-vehicle. They are held 100% liable jointly and severally for the accident.

Quantum of damages

7. Per the evidence adduced the plaintiff sustained serious injuries as follows:-

- i. Concussion of the brain with loss of consciousness for one day.
- ii. Blunt head injury on the right side
- iii. Deep cut wound on the head measuring 8cm
- iv. Blunt trauma on the back
- v. Fracture of the thorax spine T5 & T6
- vi. Spinal injury causing total paralysis of the Lower Limbs.
- vii. Multiple cut wounds on both wrists.
- viii. Blunt injury to the left knee.

8. **Doctor Noorani** examined the plaintiff on the **16th January, 2007**, who noted surgery that had been performed for purposes of spinal stabilization to enable her use a wheel chair. She was also advised to get a thoracolumbar brace. **Dr. Ndambuki** examined her on the **11th August, 2008**. He opined that the plaintiff sustained severe life threatening injuries with total paralysis of the lower limbs which is 100% total permanent incapacitation.

GENERAL DAMAGES

PAIN, SUFFERING AND LOSS OF AMENITIES.

9. The plaintiff underwent surgery which was done with fixation of the spine. She was put on a wheelchair that she uses to date. She developed bedsores and has urinary incontinence and she is unable to move her legs. According to the Doctor she is at a risk of recurrent infections. A proposal was made for an award of **Kshs. 4,000,000/=** on this head. In support of the claim the plaintiff cited two (2) authorities.
 - i. **Samuel Njoroge Mbuni versus Nganga Kama & Multiple Hauliers E.A. Ltd Nakuru – HCCC No. 358 of 2001** where **Ksh, 2,000,000/=** was awarded to a plaintiff who sustained injury to the cervical spine that led to paralysis.
 - ii. **Edward Nzamili Katana versus CMC Motors Group Ltd and Shah Punja Hira Mombasa HCCC No. 70 of 1997** where a similar sum was awarded for multiple injuries.
10. In the case of **Eva Mueni Wambugu versus Peter Githae and Another Machakos HCCA 202 of 2009 Kshs. 3,500,000/=** was awarded to the plaintiff who sustained fracture of ribs and paralysis of both limbs. She also lost sensation of waistline downward and was not able to control urine and stool and had to use a wheel chair. In the circumstances a sum of **Kshs. 3,200,000/=** would be sufficient on this head which I award.

Future medical expenses

11. It was proved that as a result of her condition the plaintiff required medical attention. She goes for physiotherapy. Praying for further medical expenses the plaintiff stated that she has to continue meeting treatment expenses. In her testimony she was not specific as to the estimate of the expense of treatment she may incur. It is however submitted that she will need-
 - i. **Kshs. 20,000/=** per month for **15 years** being the average costs of drugs hence a total sum of-

Cost of nursing care - 1,680,000/=

Special damages - 718,087/= Total
7,958,087/=

14. Interest shall be paid on special damages from the date of filing of the suit.

15. The plaintiff shall have costs of the suit

16. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 12TH day of JUNE, 2014.

L.N. MUTENDE

JUDGE