



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 2926 OF 1996

AGNESS MUHONI MWANGI PLAINTIFF

VERSUS

KENNEDY WACHIRA KARIGU MALLAT ADAM DEFENDANTS

JUDGMENT

This is an accident case. The plaintiff a businesswoman as on the material day of 26th December 1995 walking along a pavement along 1st Avenue Eastleigh. There was on the said street pavement a small vegetable market where she was attempting to select vegetable for herself. She heard a bang and on turning she saw a motor vehicle come to wards her. She was unable to escape and the said motor vehicle ran over her leg. The driver instead of reversing the vehicle ran away leaving her leg trapped underneath the vehicle. At the time of the accident the plaintiff was also pregnant.

She was rushed to hospital thereafter. Her leg was then amputated. She had delivered her baby early due to the accident. Although she was later fitted with an artificial leg her wound on the stem of her thigh leg had not healed causing her discomfort. She sued both the owners of the vehicles driver registration number KAA 546Y and KAC 803E.

She had informed the court how the vehicles were traveling at a high speed. When they had reached an intercession the lorry vehicle lost control and climbed on to the pavement where she was. The said vehicle did so as a result of the conduct of the other vehicle. I find that the plaintiff has proved that the two defendants agents were negligence. I therefore find them liable jointly and severally.

As to the quantum the advocate for the plaintiff recorded Ksh.900,000/-. He also recommended loss of earning to be Ksh.5000/- per month for 25 years.

Looking at the latter prayer the plaintiff has produced no documentary evidence to show that she earns Ksh.5,000/- or proof through corroboration evidence of this.

The defendants intended to call their witnesses but they were absent and not in court. They submitted that there was no negligence proved.

They nonetheless prayed for an award of Ksh.500,000/- and Ksh.350,000/- as to defendant No.1 whilst defendant No.2 said the contributory negligence be bone by the 1st defendant at 70%. He recorded an award of Ksh.500,000/-. I note from the Special Damages a prayer for an artificial leg had been made

I here enter judgment for the plaintiff against the two defendants jointly and severally for pain, suffering and loss of amenities at Ksh.900,000/-.

I also note that special damages has been agreed at Ksh.126,017/-.

The plaintiff shall have the cost of this suit.

Dated this 26th day of October, 1998 at Nairobi.

M.A. Ang'awa

Judge

26.10.98