



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

**AT NAIROBI
CIVIL CASE NO. 1186 OF 1996**

RUTH LILLIAN NYAWIR OKOTH PLAINTIFF

VERSUS

PHILIP OLAGO ODENY DEFENDANT

JUDGEMENT

The plaintiff was travelling as a passenger in the defendant's motor vehicle on the 14th March, 1995 from Kisumu to Nairobi. At the Eldoret-Nakuru junction the driver drove into the main road without slowing or stopping. A vehicle travelling from Nakuru side collided with the defendant's motor vehicle.

The defendant was served with a hearing notice but did not attend at the hearing. On the evidence before me I hold that the plaintiff has proved her case against the defendant.

The plaintiff testified that she became unconscious after the accident. She came to while at Molo District Hospital. She was then transferred to Nakuru General Hospital for one night then transferred to Avenue Nursing Home in Nairobi where she was hospitalised for one month.

She sustained fracture of right femur, fracture of ankle joint right foot. Fracture of right hip joint, fracture of pelvic bones. Had a lot of pain in the head and neck. She could not move her head. The right jaw was injured and was painful. Right arm was numb. The bladder was ruptured and a lot of blood was passing out. She was discharged on crutches which she used till 1996 when she now used only one.

She continued to visit the doctors to assess her progress. She also went for physiotherapy.

She had refractured the femur when she fell in the bathroom in 1995.

The plaintiff was 27 years at the time and a secondary school teacher. She uses pain killers as she still experiences severe headaches especially at the back. She rarely writes on the board, cannot stand for long. The ankle swells most of the time. Cannot walk for long and when she sits for long the hips pain.

She was attending a post graduate course at the University of Nairobi and had to graduate a year late. Prior to the accident she used to play basket ball. This is now not possible. She was examined by Mr. Joab Bodo, Consultant-Orthopaedic Surgeon who in his report of 21st February, 1997 was of the opinion that the fractures of the pelvis are well united both in the superior pubic ramus and right inferior pubic ramus with no displacement. The right hip joint is normal. The fracture of the right femur is also well united with normal flexion and extension in the right knee joint. The fracture of the lower end of the tibia is well united and she has no complaints over it. The plate in the right femur will be removed after December 1997. He was of the view that the plaintiff requires further urological examination to determine the cause of frequent micturition. She will also have to undergo further surgery for removal of the plate from the

right femur at a costs of Kshs.80,000/=.The doctor did not see the need for the hip replacement as the fracture she had was in the superior pubic ramus and did not involve the acetabulum.

The plaintiff was also examined by Dr. S.O. Owinga, Consultant Surgeon and Dr. N.H. Bhanji, Consultant General Surgeon and Traumatologist.

The plaintiff sustained multiple injuries and most have experienced a lot of pain and discomfort. She was a sports woman in earlier days, proof of this has been tendered in evidence. She cannot engage in sports such as her favorite basket ball.

I assess damages for pain, suffering and loss of amenities at Kshs.950,000/=.

The plaintiff has claimed lost earnings and anticipated income. It is true that the plaintiff was in hospital for sometime. The plaintiff however produced two payslips one for January 1995 and the other for January 1997. The two payslips do not show or prove that the plaintiff was on half salary. No deduction in this respect is indicated on any of the payslips produced in evidence. I therefore disallow this aspect of the claim for lack of proof.

There has been a claim for diminished earning capacity. The payslips show that her salary has gone up. She has since also graduated. I will disallow this aspect also for lack of proof.

As regards further medical care, both Dr. Bodo and Dr. Bhanji and even Dr. Owinga agree that the plate in the femur will have to be removed and the cost was agreed at Kshs.80,000/=. I award this sum.

The plaintiff has been attending physiotherapy sessions. I saw her give evidence and observed her conditions. The doctors have recommended that she continues with physiotherapy. She testified that she attends three sessions per week which calculate at 12 sessions per month at Kshs.500/= per session comes to Kshs.6,000/= per month.

I assess damages under this heading for 3 years which wroks out at $Kshs.6000 \times 12 \times 3 = Kshs.216,000/-$.

Plaintiff has produced a big bundle of receipts amounting to Kshs.644,010/= in support of her claim for transport when visiting the various doctors and hospitals, receipts for treatment and drugs, physiotherapy and hospitalization.

Counsel for the defendant in his submission contends that some receipts are duplicates and I should disallow them.

This sort of argument cannot be allowed at this stage. Parties had ample time when dealing with summons for directions to agree and exchange documents. They did not do this. At the time of the hearing counsel should have objected to the production of the documents in question. This was not done. It is asking too much of a Judge to sit down and start scrutinising every bit of receipt that is tendered in evidence without objection from the opposite side. This is the work of the advocates. It should have been done at the preliminary stage before the hearing. I award Kshs.644,010/= as special damages.

I therefore enter judgement for the plaintiff against the defendant as follows:-

(i) General damages -	Kshs. 950,000/=
(ii) Future medical expenses	Kshs. 296,000/=
(iii) Special damages -	<u>Kshs. 644,010/=</u>
TOTAL -	<u>Kshs.1,890,010/=</u>

The plaintiff shall also have the costs of the suit and interest.

Delivered this 16th day of December, 1997.

J.V. JUMA

JUDGE