



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT KISUMU

CIVIL APPEAL 90 OF 1996

SECURICOR (K) LTD.....APPELLANT

AND

ESTHER OLIECH.....RESPONDENT

(Appeal from the judgment of the High Court of Kenya at Kisumu (Wambilyangah, J.)

dated 14th February, 1996

IN

H.C.C.C. NO 287 OF 1992)

JUDGMENT OF THE COURT

This is an appeal by the defendant against the judgement of the superior court (Wambilyangah, J.) delivered on February 14, 1996 whereby he awarded to the plaintiff (the Respondent) special damages of Ksh. 120,000/- and general damages of Ksh. 600,000/-.

The injuries sustained by the plaintiff as a result of the accident on February 15, 1990 are not in dispute. These were head injury, neck injury (Whiplash) chest injury to right lower limb in that she sustained mid-shaft fracture of right femur. She was on crutches for a period of three years.

The award of general damages, in our judgement, does not err in any principle and is not so excessive as to warrant an interference by this court. The award is commensurate with the injuries sustained by the plaintiff.

Different considerations, however, apply to the award of special damages. With respect, these cannot be sustained. It is settled law that special damages must be specifically pleaded or strictly proved. Neither was done. And a submission to that effect was made on behalf of the appellant in the superior court. This notwithstanding, the special damages were awarded but these must be, as they hereby are, set aside.

Accordingly and, per the reasons above stated, the appeal is allowed and the decree of the superior court is varied by deleting the figure of Shs. 504,700/- and substituting therefore the sum of Shs. 420,000/- with interest thereon at 12% from February 14, 1996 until payment in full. The appellant shall have one-fourth

costs of this appeal.

Dated and delivered at Kisumu this 21st day of June, 1996.

J.E. GICHERU

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JUDGE OF APPEAL

A.B. SHAH

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR