



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT MOMBASA**  
**CIVIL CASE NO 484 OF 1989**

**WALTER OBARA OGOL ..... PLAINTIFF**

**VERSUS**

**NOAH MBUGUA NJOROGI.....RESPONDENT**

**JUDGMENT**

The plaintiff in this case, Walter Obara Ogol, was injured as a result of a road traffic accident which occurred on the 31st May 1989. The defendants admit 80% liability and the question I have to decide is one of damages only.

At the time of the accident the plaintiff was 42 years of age. He was and still is employed by KPA as a clerk. The injuries which he sustained are listed in the medical report dated 2nd August 1989 by Dr Khandwalla as follows:-

1. fracture on the right orbital margin of the head;
2. rupture of a cronio - claviclar ligament with subluxation of the right shoulder joint;
3. fracture of the right 4th rib, left 1st and 2nd ribs;
4. soft tissue injury on the back;
5. cut wounds on the posterior aspect of the neck and back;

Following the accident he was admitted to Pandya Memorial Hospital for 7 days. Whilst he was there surgical toilet of the wounds was done and the strapping was applied over the right shoulder. The strapping was removed after 2 weeks. He resumed work one month after the accident.

The medical opinion in that report was that he had sufficiently improved from his head injury, injury to the right shoulder, injury to the ribs and chest and soft tissue injuries. It also showed that scars would persist permanently. The last paragraph of the medical report reads:

“The right shoulder has started to develop arthritis. Deformity of the clavicle at the lateral aspect due to the rupture of the acromio claviclar ligament is also permanent.”

According to the medical report dated 8th January, 1993 by Dr Rasik Patel his major complaint was that also his shoulder aches at times when it is cold or rainy; and X-rays which were taken on the 8th January,

1993 of the shoulder and acro-clavicular joints showed mild peri-arthritis had developed, and one of the chest showed post-traumatic deformity of the 4th right rib. The conclusion of Dr Rasik Patel is this:

“The right scars and the occasional pain that he has of the right shoulder due to peri-arthritis shall be permanent.”

Mr Ringera for the plaintiff contends that an award of Shs 60,000/= would constitute a reasonable and fair recompense for the injuries. He cited two cases which, in his view, had comperable features to the present one. The first case is that of *Saidi Abdalla v Ocean Freight Co Ltd & another* HCCC No 309 of 1984 (Msa) is one where an award of Shs 55,000/= as general damages were awarded to a 39 year old labourer who had suffered a partial subluxation of the right sterno clavicular joint without a joint. He was an out patient for 2 weeks, off duty for 2 weeks. At the end of the healing process he was left with a lump in the chest and was unable to carry heavy objects and consequently he had to give up his work as a labourer and became a vendor of raw cassava.

The present case is not just of one sublaxation of the shoulder joint as in the cited case, but is also of fractures of the head and of 3 ribs, besides the wounds and soft tissue injuries. In the second case of *James M Mungai v Mary W Chege & Another* HCCC 1584 of 1984 the plaintiff sustained a fracture of the right 8th, 9th ribs, cuts to the back of the head and a blunt injury to the right leg.

He was semi-conscious at the time of the accident but lost consciousness on arrival at the hospital for about 11/2 hours. He was in hospital for five days. At the time of the assessment of the damages it was proved that although the fractures had united he complained of pain on the right side and had problems in lifting weights. Also, the injury to his leg cause him pain on long walks, but the prognosis showed that these symptoms would later disappear completely.

He was awarded Shs 30,000/= as general damages for pain, suffering and loss of amenities.

It is only by adding up the awards in both cases cited by Mr Ringera that one gets roughly closer (if that is possible) to “compensation which would give the injured reparation for the wrongful act and for all the material and direct consequence of the wrongful act.” But it has also to be borne in mind that these awards were made 5 or so years ago. The purchasing power of the Kenya shilling was then much stronger than it stands currently.

The plaintiff in the present case is still retained in his employment but the fact that the peri-arthritis in the right shoulder is a permanent feature has to be taken into account. On the whole this is a case where the healing process has been considerably successful.

It is settled law that before an award of general damages is made in a case like the present one, the Court has to bear in mind and consider “the bodily injury sustained, the pain undergone, the effect on the health of the sufferer according to its degree and its probable duration as likely to be temporary or permanent, the expenses incidental to effect cure or lessen the amount of pain, and the pecuniary loss.” See *Philips v London & South Western Ry Co* (1879) 4 QBD 406. Doing the best I can in the disclosed circumstances of this case I assess general damages at Shs 160,000/=. I allow Shs 4,630/= being medical expenses incurred and Shs 4,140/= being the charges to be paid for repairing the damaged scooter. The total award of Shs 168,770/= is then reduced to Shs 135,016/= on account of the plaintiff 20% contributory negligence.

I accordingly give judgment to the plaintiff against the defendant for Shs 135,016/= with costs and interest.

Dated and Delivered at Mombasa this 10<sup>th</sup> day of May, 1993

**I.C.C WAMBILYANGAH**

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**JUDGE**