

Manyi v Gatheche

High Court, at Mombasa April 16, 1992
Wambilyangah J

Civil Suit No. 467 of 1991

April 16, 1992, Wambilyangah delivered the Judgment.

In this action the plaintiff's claim is for general and special damages for injuries which she sustained when a matatu KWH 048 in which she was traveling as a fare-paying passenger was involved in a road accident on the 4th September 1989. The defendant's liability in negligence is not in issue. I will now proceed to consider the aspect of quantum of damages.

According to the medical report which was produced in the proceedings the injuries which were sustained are as follows:-

1. Fracture of right clavicle.
2. Chest injury.
3. Contusion of right hand and right knee.

At the Coast General Hospital where he was taken she was given a figure of 8 bandage but was discharged on the same day and had to receive her subsequent treatment as an out-patient. After the process of healing had come to its end, the surgeon found that the fracture of the clavicle had fully healed and the movements of the joints involved was entirely normal. The surgeon then concluded his medical report as follows:-

Mr. Momanyi sustained the above named injuries on 4th September 1989. She was off work for 2 ½ months and has now fully recovered without any permanent incapacity.”

The plaintiff therefore basically deserves general damages for pain and suffering for the 2 ½ months during which the recuperation took place. Mr. Kariuki has in his submission referred me to the case of Shankat Abdul v Salim Mohamed and Another H.C.C.C. No. 823/87 in which Bosire J. awarded Shs.80,000/=. In my view the injuries suffered by the plaintiff in the present case fall within that category of uncomplicated fracture.

I find the award of Shs.80,000/= to be reasonable one and so I give it to this plaintiff as general damages for pain suffering and loss of amenities. I allow special damages Shs.1,100/= with costs and interest is given to the plaintiff against the defendant.