



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI MILIMANI LAW COURTS**

**CIVIL CASE NO 387 OF 1987**

**NJERI MWANGI .....PLAINTIFF**

**VERSUS**

**JOHN WARUI WANYOIKE & ANNE W MBUGUA.....DEFENDANT**

**JUDGMENT**

In this action, the plaintiff claims special and general damages for loss, personal injury, pain and suffering sustained by the plaintiff in a road accident.

In paragraph 5 of her plaint, which was filed in court on 27th January, 1987, the plaintiff alleges that on 2nd March, 1986, at about 5.30 am, she was traveling as a passenger in a motor vehicle driven by the first defendant and owned by the second defendant. Along the Gilgil-Nairobi road, the first defendant drove the vehicle on to the wrong side of the road and collided with an approaching vehicle. The plaintiff alleges that the collision was caused by the negligence of the first defendant in driving on the wrong side of the road. In paragraph 4, the plaintiff alleges that at the material time the first defendant was acting as the servant or agent of the second defendant and, by implication, that the second defendant is to be held vicariously liable for the consequences of the negligence of the first defendant. Those consequences are set out in paragraph 7. The plaintiff suffered cerebral concussion, bruising of the chest and both shoulders, laceration of the right leg, bruising of the left leg and bruising of the right elbow. Special damages were claimed in the sum of Kshs ,500 which was, for some reason tht escapes me, Kshs 50 less than the amount specified in the particulars of Special Damages.

The defendant failed to enter appearance.

On the 10th day of March, 1987 the Deputy Registrar entered interlocutory judgment for the plaintiff against the defendants in the sum of Kshs 5,500 sSpecial Damages, and ordered general damages to be assessed. Onm the assessment of general damages, Mr Charles has appeared for the plaintiff. The defendants have not been present and have not been represented. The plaintiff has given evidence and has put in evidence, as exhibit 1, a report dated 26th March, 1986 and signed by Mr S C Patel, the Consultant Orthopaedic Surgeon. Mr Chawlar has also handed in written submissions, and referred the court to other cases.

From Mr Patel's report, and from the evidence of the plaintiff, it appears that the plaintiff suffered cerebral concussion and was unconscious when she was admitted to Naivasha General Hospital. The plaintiff was kept under head injury observation but fortunately her skull was not fractured, and she was released after two days. Of her other injuries, the most serious would appear to be item 3 in Mr Patel's report which is laceration of the right leg. This is likened by Mr Patel to full thickness burns. "Her right leg is swollen, and she has a large laceration 12 cms long and 6 cms deep." There is full thickness loss of skin and, at the time of Mr Patel's report, which was 26th March, 1986, the plaintiff was undergoing daily dressings. In evidence the plaintiff said that she was still receiving treatment at Kariobangi hospital.

Under the heading prognosis and opinion, Mr Patel says that the plaintiff will require daily dressings for a long time or may require surgical intervention in the form of skin grafting. Her leg is swollen because of the soft tissue injuries, associated with the laceration, and she is grossly limping and had to use a stick to walk. There will be a permanent soar on her leg. The plaintiff also suffers pain through the left calf being

bruised, and has pain in the front of her chest, pain in both shoulders, and pain in the right elbow. The plaintiff complained to Mr Patel of headaches and giddiness which Mr Patel considered to be a post concussion syndrome which would be likely to continue for a long time or might even deteriorate with the passage of time.

Mr Chawlar concludes his written submission by proposing that a sum of Kshs 225,000 would reasonably compensate the plaintiff for pain, suffering and loss of amenities. None of the cases cited by Mr Chawlar has an award of damages that approaches this figure, and I consider it to be excessive though I accept that the plaintiff has been badly injured, and that it is doubtful whether or not she will achieve a complete recovery. The possibility that she may have to undergo further surgery adds to the gravity of the case. In these circumstances, I assess general damages in the sum of Kshs 140,000.

The plaintiff has already been awarded judgment for special damages but I repeat that judgment here so that the complete judgment may be found in one place.

Accordingly, there will be judgment for the plaintiff against the defendants in the sum of Kshs 5,500 special damages together with interest thereon calculated at court rates from the date of filing suit viz 27th January, 1987 until the same are paid by the defendants to the plaintiff.

And there will be judgment for the plaintiff against the defendants in the sum of Kshs 140,000 general damages for personal injury, pain and suffering, together with interest thereon calculated at court rates from the date hereof viz 16 October 1987 until the same are paid by the defendants to the plaintiff.

And it is ordered that the defendants do pay to the plaintiff the costs of this suit such costs to be taxed if not agreed and to bear interest thereon calculated at court rates from the date of such taxation or agreement until the same are paid by the defendants to the plaintiff.

**October 16, 1987**

**BUTLER-SLOSS**

**JUDGE**