REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.782 & 1187 OF 1982 (CONSOLIDATED)

M & 2 OTHERS.....PLAINTIFF

VERSUS

PATTANI.....DEFENDANT

JUDGMENT

The plaintiffs in civil case numbers 710 of 1982 and 1187 of 1982 which have been consolidated are a mother and her two children. At the time of filing the suit the children were minors and therefore sued through her as their next friend. They have all sued the defendant claiming from him special and general damages arising from a traffic accident which occurred along Sports Road in Westlands Nairobi on December 16, 1979. They contended that the accident occurred due to the negligence of the defendant.

On that day the plaintiff, A M, was driving her vehicle Registration number KRH 555 along the main Sports Road in Westlands Nairobi. In that vehicle were her son I M, her daughter T M, her mother and grandmother.

According to plaintiff's evidence, while driving along Sports Road on the day in question around 4.15 pm she approached a junction on David Osieli Road and hooted, looked right and left and she slowed down before crossing the junction. When she saw there was no vehicle on either side of David Osieli Road she pressed the accelerator to proceed, but before she crossed the junction on the other side of Sports Road she heard a loud bang at the right rear of her car which then swang to the left side and overturned. She became unconscious and did not know what happened thereafter. She regained consciousness at Aga Khan Hospital when she discovered that she had bandages all over her head. She was seen at that hospital by Dr Suleman and later examined by Drs Shashi Patel, Prof J Daar and Dr Bal. Dr Shashi Patel also examined I and T. According to the plaintiffs, they suffered serious injuries as a result of the accident for which they were seeking damages from the defendant.

The defendant on the other hand did not admit liability. He said on his part that he was driving his vehicle registration number KNG 324 along David Osieli Road on the afternoon in question when this accident occurred. That he was going at 20 to 30 km per hour and that when he approached the junction of Sports Road he saw a "yield" sign just before the junction. He slowed down considerably and reduced his speed to about 10 km per hour. That when he reached the dotted lines he stopped. He looked on his left and right and saw no vehicle on Sports Road. Then he started to move ahead but suddenly on the left side of Sports Road at a corner he saw a vehicle which was coming at a considerable speed. He braked suddenly but the other vehicle moved at an accelerated speed and that his front right hand side caught the rear right hand side of the plaintiff's vehicle. So according to him it was the plaintiff's vehicle which was being driven negligently and at such a high speed that the plaintiff should be blamed for the accident.

This accident occurred at a junction of two roads and the right side of David Osieli Road is such that as one approaches the junction he drives downhill. The junction is noted as a black spot. The case for the plaintiff as to what happened at the accident scene, giving rise to the accident rests on the evidence of 3 witnesses: namely, T M (PW 1), N A (PW 2) and Master I M (PW 4). To some extent the evidence of Inspector Stanley Mwangi (PW 5) was also relevant. According to T, as her mother approached the junction of Sports and David Osieli Roads she slowed down her vehicle, hooted, looked left and right and seeing no vehicle on either side of David Osieli Road she proceeded. This witness also said she too looked left and right and did not see any vehicle and therefore she advised her mother to proceed. But all of a sudden she heard a loud bang at the rear of her mother's vehicle and that by this time their vehicle had almost completed passing the junction.

N (PW 2) the driver of vehicle KHR 555 on the day in question repeated the same thing. According to her Sports Road is a major road while David Osieli Road is a minor road. That as one approaches the junction on either side of David Osieli Road there is a "yield" sign and broken white lines near the mouth of the junction. She told the court that on the day in question at 4.15 pm, she was driving her husbands vehicle - already stated above - from the town direction towards her home. That she was doing between 40-45 kmph, that since she had driven along Sports Road several times, it had been her habit to hoot whenever she approached the junction and that on the day in question when she approached it she hooted, slowed down, looked left and right and when she saw no vehicle on either side of David Osieli Road she proceeded. She said further that it was not easy for one on Sports Road to see far on either side of David Osieli Road unless one stops at the mouth of that road because of high hedges. But from where she was she did not see any vehicle on either side of David Osieli Road and that is why she proceeded to cross the junction. But before she completed crossing she heard a bang on the rear side of her vehicle. It was sudden and her vehicle swang to the left side and overturned. She then became unconscious and did not know what happened until she found herself at Aga Khan Hospital.

According to the young man I (PW4) he was not able to explain what happened but said that on the day in question he was travelling with his mother in the vehicle registration number KRH 555 and that he was sitting at the back seat. That the vehicle was involved in an accident that day and he was injured. He did not know how the accident occurred. The evidence of Inspector Stanley Mwangi (PW5) was that he was on duty in a patrol mobile vehicle when he received a call from Nairobi Area Control Room to proceed along Sports Road at the junction with David Osieli Road and visit an accident scene. He proceeded to the scene and found two vehicles there involved in an accident. These vehicles were registration numbers KNG 324 and KRH 555.That he only found one of the drivers at the scene. That this was the defendant. This witness drew up a sketch plan of the scene and indicated there on the positions of the two vehicles and the place he considered the impact took place. He also indicated the directions the vehicles were travelling the width of both Sports and David Osieli Roads and so on and so forth.

Another piece of evidence which also could assist the court as to what took place at the scene was that of the defendant. He told the court that he was driving his vehicle on David Osieli Road on the day and time in question with his wife. That he was doing 20-30 kmph and that when he approached the junction of Sports and David Osieli Roads he saw a "yield" sign. He slowed down as he approached the junction of the roads and reduced the speed further to 10 kmph and that at the dotted white lines he stopped. He looked right and left and saw no vehicle on Sports Road and then he proceeded on to cross Sports Road. Suddenly on his left side of Sports Road at a corner, he saw a vehicle coming at a considerable speed. That as his vehicle was only pulling off he braked hard but the other vehicle came at an accelerated speed so that his vehicle caught the rear right hand side of the plaintiff's vehicle. According to the defendant, the plaintiff's vehicle was being driven at around 50-60 kmph when the accident occurred. He did not hear any hooting or other warning sign at all.

As one can see, therefore, each side pleads innocence as far as this accident is concerned. Each of N M (PW2) and the defendant has testified that he – she was driving normally, not fast, not without due care and attention, that she or he was not driving without consideration of other road users, and each one of them blames the other in driving at an excessive speed and so forth.

The main issue here is is it the defendant's negligence which caused this accident? Secondly, did the

plaintiff's negligence contribute to it? If so in what proportion? Thirdly, quantum of damages, if any!

I have heard all the evidence adduced in this case and perused through the record of the evidence more than once. I have also perused through written submissions submitted to me by lawyers for the parties. The sketch plan drawn by the Inspector of Police Stanley Mwangi shows the scene of impact at the centre of the junction of Sports and David Osieli Roads. It is normally difficult to determine the place of impact of an accident particularly as in this case where there were no clear skid or tyre marks. But according to inspector of Police Stanley, he determined the place of impact by looking at the area where pieces of glasses had dropped. This is not the first time I have heard police saying he determines the scene of impact by glass drops. It has been said in a number of cases that on impact fine particles of glass or body work drop from the colliding objects. This may include windscreen glass, headlamp glass or door glasses.

The sketch plan also shows that after impact vehicle KRH moved 70 feet away before overturning while vehicle KNG moved 27 feet away stopping almost across the mouth of David Osieli Road. On this plan is shown also that the vehicle number KRH 555 left skid marks some distance after impact while vehicle number KNG 324 left none. These on a balance would tend to show either that vehicle number KRH 555 could have been driving at a much higher speed than vehicle number KNG 324 or that even if vehicle KNG 324 was driving at a much higher speed it did not brake at all. The evidence shows that vehicle number KRH 555 was being driven at between 40-45 kmph while vehicle number KNG 324 was being driven at between 20-30 kmph. This evidence on the other side would tend to explain how vehicle number KRH 555 left skid marks after impact. But according to the defendant the plaintiff N M was driving her vehicle at the speed of between 50 and 60 kmph This evidence was to some extent supported by the evidence of N herself which was given in Traffic Case No 904 of 1980 (part of the evidence in this case) where she said she was driving her vehicle at 50 kmph. As can be seen, therefore, the plaintiff N M was driving her vehicle at a much higher speed than the defendant as the latter's evidence of the speed at which he was driving his vehicle was not challenged.

Clearly, the plaintiff N M was driving her vehicle on a major road, Sports Road. The defendant was driving his vehicle on a minor road, David Osieli Road. Both parties agreed that there was a "yield" sign on either side of David Osieli Road. When approaching the junction apart form the "yield" sign on the minor road there are also white dotted lines on each side of it at the mouth of the junction. The "yield " sign is really an order to the driver approaching that sign to give way to the traffic on the major road which he is approaching ahead.

The question I ask is whether, on the evidence adduced in this case, the defendant obeyed that order. According to him, he had seen the "yield" sign, slowed his speed and by the time he was approaching the dotted white lines he was only going at 10 kmph. He then said he stopped at the dotted white lines. From the sketch plan taken at the scene it would be seen that the white dotted lines are at the mouth of the junction and if any person stopped there he should have been able to see the other side of Sports Road and it would not have been difficult to see an approaching vehicle on that road altogether while at the white dotted lines. The defendant then said that when he saw there was no approaching vehicle he pulled off slowly and moved 6 feet into Sports Road before he saw plaintiff driving her vehicle at high speed and that he braked hard. This could not have been the case because if it was so it would not have been possible for his vehicle to have gone across Sports Road to spot where it was eventually found stationary after impact and particularly if he held hard onto its brakes as he said. Even so, according to the evidence adduced by both parties, it was the defendant's front right part which hit the plaintiff's vehicle at the rear right side. If the defendant braked his vehicle in such circumstances as he explained, his vehicle would either have been moved to the right of the junction immediately or stopped at impact point. In all these circumstances it is most probable that the defendant, on spotting the plaintiff's vehicle, hurried to cross the junction having of course, ignored the "yield" sign only to hit the plaintiff's vehicle at its rear right side at the place the accident took place. Admittedly, the defendant said that he had never travelled on David Osieli Road before. This being the case, he must as well not have bothered about any signs on that road or he may not even have known there were any major road ahead of him, and thus crossed the junction presuming that all was well ahead of him.

A "yield" sign according to Kenya Highway Code and Traffic Regulations represents an order to a driver

approaching the sign to give way to traffic on the major road ahead. On the evidence as I find, the defendant herein did not give way. He drove across Sports Road without stopping at the junction and ensuring there was no on coming traffic entitled to precedence as a result of which the plaintiff's vehicle KRH 555 collided with the front right hand side of the defendant's vehicle KNG 324. I have no doubt the defendant drove his vehicle in what I would call a grossly negligent manner.

The defendant could not convince this court that he kept sufficient lookout for road users on Sports Road and in particular when he says he completely stopped at the dotted white lines on David Osieli Road, that he looked left and right along Sports Road and saw no vehicle being driven thereon and that he saw plaintiff's vehicle when he was pulling off but that he then held hard onto his brakes on realising the danger posed by the over speeding plaintiff's vehicle. If all this happened surely this accident could not have taken place or if it did and the defendants car pushed by impact to where it ultimately rested, skid or tyre marks would have been noticed along its path more so as the defendant had held hard onto the brakes of his vehicle.

I take into account that the defendant had not driven on David Osieli Road before as he himself said, and so he was a stranger thereon on December 16, 1979. As the evidence indicated, there were high hedges on either side of David Osieli Road which therefore made it difficult for any driver approaching the "yield" sign to see vehicles approaching the junction on Sports Road. But he himself testified that the stopped at the mouth of the junction which indeed should have enabled him to see the plaintiff's vehicle. That he was not able to see plaintiff's vehicle lends credence to the finding that this defendant did not comply with the "yield" sign, neither did he stop at the dotted white lines on David Osieli Road as he alleged in his evidence.

I am not able to agree with the defendant that at the "yield" sign and the dotted white lines he reduced the speed to 10 kilometres per hour; and particularly that towards the "yield" sign his vehicle was going downhill it is not too remote that it gained more speed and this caused the vehicle to cross the Sports Road without the necessity of keeping the proper look out for the plaintiff's vehicle which happened to be travelling along that major road.

Even so, the defendant admitted further that apart from it being his first time to drive on David Osieli Road on December 16, 1979 he was not familiar with the junction where the accident subject to this case occurred. In these circumstances it is most unlikely he would have been on his guard about the Sports Road, the junction of which he was approaching, to take all the precautions he alleged he took. Yet being on a minor road it was incumbent upon him to take extra care and take a proper look-out for the road users on the major road – the plaintiff's included - and to give them the right of way; *Oluoch v Robinson* [1973] EA 108 at page 109.

And what of the plaintiff N M? She knows Sports and David Osieli Roads well as she lives along the former and near the junction. She said she had travelled along the Sports Road several times and knew that it was a major road while David Osieli Road was a minor one. She was aware of the hedges which obscure vision on the right side of David Osieli Road such that a drive on Sports Road cannot see any far. That being on the major road she had the right of way and not a driver on David Osieli Road who at the time happened to be the defendant. She was right in this respect as the "yield" sign on David Osieli Road as one approaches the junction of the two roads indicates.

She was on the major road. She knows the junction very well and even termed it as a "black spot". She took that the defendant on the minor road was to take notice of the fact that she had the right of way. By the manner she testified she was convinced that the defendant was wholly at fault to emerge from the minor to a major road without regard that he had to give way to her. She drove at between 40-45 kmph and defendant thought she was doing between 50 and 60 kmph. In the traffic case number 904 of 1980 in which she gave evidence against the defendant who had then been charged with the offence of dangerous driving, she said she was doing 50 kmph per hour. Defendant who was accused in that case was acquitted due to failure of a key witness to turn up. The case was dismissed and defendant acquitted on no case to answer.

Such a person who insisted on defendant recognizing her right of way, says as she approached the junction of Sports and David Osieli Roads she hooted, looked left and right, slowed down by removing her foot from the accelerator and then seeing no car on the left or right, she proceeded!! Then suddenly her vehicle was banged on the right rear side and she moved some 70 feet before her vehicle overturned! Could she be credible in this respect? She alleged she was driving on the left kerb of the road and yet when one looks at the sketch plan drawn by Senior Sergeant Stanley Mwangi (PW5) one finds that the actual point of impact was a little bit more to the right side than to the left and considering that her vehicle was only 4 feet in width then she was not driving on the left kerb at all! The sketch plan shows too that the plaintiff's vehicle never skidded immediately after impact and had to move a short distance before doing so, yet this driver says she kept a proper lookout for the users of David Osieli Road to the point of taking off her foot from the accelerator! And that her vehicle moved 70 feet before coming to a halt supports the view that the plaintiff was driving her vehicle KRH 555 very fast. That one is driving on a major road does not mean she is entitled to ignore traffic approaching the junction from the minor road and to assume, which the plaintiff did herein, that such traffic would always conform to the "yield" sign. *London Passenger Transport Board v Upson* [1949] 1 All ER 60.

My finding is that the plaintiff did not slow down while approaching the junction; neither did she look to the left or right to see whether any vehicle was approaching the same from either side of David Osieli Road. Thus she did not keep a proper look-out to either side of David Osieli Road and this is why in fact, she never saw the defendant's vehicle approach until after she had been banged. After all she insisted that it was the driver on the minor road to give her the right of way!

The plaintiff knew the junction in question to be a black spot and ought to have realized, and it is common experience, that road users sometimes do not obey traffic signs; thus guarding herself against such person who might have emerged from either side of David Osieli Road without slowing down and or stopping in compliance with the "yield" sign and/or white dotted lines at the mouth of such junction; she was thus negligent in failing to do so. *Zarina A Shariff v Noshir P Sethna* [1963] EA 239 at p 248. The possibility of danger emerging at that junction on either side of David Osieli Road was reasonably apparent in view of the fact that visibility was obstructed by high hedges and it was incumbent upon the plaintiff to take extra precautions. This was not a case where the plaintiff should have taken that it was only a mere possibility that danger would emerge, which would never occur to the mind of a reasonable person! *Fardon v Harcourt Rivington* [1932] All ER REP 81.

The plaintiff in this case should not have relied absolutely on the fact that she was on a major road and had the right of way which I feel she did. She was bound to exercise the right of being on the main road in a responsible way. She had to watch and conform to the movement of other traffic in the offing, and should have taken due care to avoid colliding with the defendant. I have no doubt in my mind that anyone driving on a major road is entitled to go on that road in proper position and is entitled to keep his proper place on that road and to do so in reliance on side road traffic behaving itself as the rules of the road desired until it may be at the very last moment some observations of a gross – infringement by other calls for special attempt to deal with it. The driver on a major road as the plaintiff was is not expected, say, to slow down to pace of 15 miles an hour in broad daylight, when approaching a side road or otherwise share the blame for any collision which may occur.

But here the plaintiff omitted to take due care for the safety of the defendant and as a prudent driver she ought to have guarded against possible negligence of the drivers on the minor road, defendant included, as experience shows such negligence to be common. *Grant v Sun Shipping Co Ltd* [1948] All ER 238. Though therefore the defendant was mainly to blame for the accident of December 16, 1979, and ought to compensate the plaintiff therefor; the plaintiff contributed in some measure to it and I put her contributory negligence at 30%.

As for damages, I would put these under 3 heads namely, special damages; general damages for pain, suffering and loss of amenities, and as the plaintiff put it, loss of future earnings. Regarding special damages, the plaintiffs have claimed Shs 37,540 for medical report fees; medical expenses; hospital and travel charges; loss of value of vehicle number KRH 555; excess paid to insurance company, towing charges and valuation fess. As to the first item, the plaintiff N was taken to Aga Khan Hospital

immediately after the accident where, according to the evidence of Dr Suleiman (DW3) she remained under observation until December 22, 1979 when she was allowed to go home. It is most likely she continued to attend treatment as an out-patient there after though this was not brought out in evidence. Then she was examined by a number of Doctors including Dr Shashi Patel – twice, Dr Bal once, Professor Dar once, and of course by Dr Suleman once.

Apart from her own treatment and examination, her children T and I, who sued in this case through her, also received injuries for which they must have been treated at the same hospital and elsewhere and later examined by Dr Shashi Patel. It would be expected in normal circumstances that expenses incurred during treatment be explained by production of receipts to support any medical fees paid but though in this case this was not done, there was no dispute either through the statement of defence filed herein or by defence evidence in court. And in my own judgement the claim of Shs 7,760 for medical report fess, medical expenses and medicines is reasonable and so is the claim for Shs 5,500 for hospital and travel expenses. The same argument goes for loss of value of the car KRH 555, Shs 23,000; excess paid to insurance Shs 1,000, towing charges Shs 175 and valuation fees Shs 105 making a grand total of Shs 37,540. I therefore award the plaintiffs Shs 37,540 as special damages.

Regarding pain, suffering and loss of amenities, I shall first deal with the young boy, I. He gave evidence in this case as PW4 and testified that he had been injured in the accident of December16,1979; that he did not know how the accident occurred but he had stitches on the hand and head and that as a result of the injury on the head, this plaintiff experiences running nose. Dr Shashi Patel who examined him on February 25, 1982 said in his report that this plaintiff sustained laceration of the scalp and multiple lacerations over the back of left shoulder in a road traffic accident, on December 16, 1979. That he was treated in Casualty Department of Aga Khan Hospital and all the lacerations were stitched but that he had been left with permanent scars ... Scars particularly over the back of the left shoulder have formed keloids and this could obviously need surgical excision and radiotherapy in future.

He added that because of the lacerations over the scalp he must have developed bruising of head at the same time and this is still responsible for his headaches and running nose and that this is likely to continue for sometime.

Regarding T, she said she was injured on the right middle finger and both knees. That because of the injury on the finger she cannot write for a long time and that up to the time she was giving evidence in this case she was still feeling severe pains; that whenever she walks for a short distance she feels pains. That going up and down stairs is painful and that she cannot swim, play tennis or badminton.

T was examined by Dr Shashi Patel twice, on May 24, 1982 and July 12, 1983. According to this Doctor’s report, as a survivor of the accident this plaintiff had developed traumatic capsuilities of both knees giving rise to pain in both knees worse on walking even short distances while climbing or coming down stairs, inability to cross the legs while sitting or inability to put pressure on both legs and she cannot even run, wear high heel shoes or play sports, swim or kneel while doing prayers. According to the doctor the problems had increased in intensity since the accident and were likely to continue for a long time. That she cannot kneel while doing prayers due to chondromalasia patellae which is due to subarticular damage to the patella articular surface due to impact of bruising and this will continue for a long time or may even deteriorate in future as she is likely to develop osteorthritis in the patello femoral compartment of both knee joints in future. That the laceration of the right middle finger was stitched but she was left with a permanent ugly looking scar and this will require a revision by a plastic surgeon in future.

But as far as I can find, the future of these two youths is not affected by the accident. T is already studying in Canada doing an advanced science course and she intends to do dentistry as her future career. I is now in form 1and he too hopes to go and study in Canada. At the time of the accident T was about 15 years old while I was 7 years old. Though the doctor says the injuries suffered may deteriorate in future, there is every hope that the situation will improve as the youths grow up to be mature people. Therefore for each of these youths I would award Shs 40,000 for pain suffering and loss of amenities.

As regards N, I shall start with the claim for loss of future earnings. She told the court that she used to

work in her husband's shop as a secretary and general administrator firstly at Radio Shack Ltd and at Sound Equipment. That she earned a salary of Shs 5,000. That since the accident she no longer works and that the after effects of the accident had affected her working life; that she no longer helps her husband at the shop and so forth.

During cross-examination, it came out that though this plaintiff was given an entry permit as an electronic specialist with Messrs Radio Shack Ltd., she had no qualifications whatsoever as an electronic specialist. Most of the certificates produced to this court had nothing whatsoever to do with electronics. The certificates related to typewriting, Dictaphone typing, correspondence and report writing; course in home nursing and French *etcetera*.

Moreover, being a non-citizen N did not obtain a work permit to work in Kenya in whatever capacity in salaried employment. She did not produce evidence to establish that she was being paid Shs 5,000 either by Radio Shack (K) Ltd as an electronic specialist or with Sound Equipment as a Secretary and /or administrator. In the circumstances the plaintiff did not establish on a balance of probabilities that she was entitled to damages of Shs 307,500 being loss of future earning since the accident. Consequently this claim would not succeed.

Regarding damages for pain suffering and loss of amenities, the accident subject to this case occurred around 4 pm on December 16, 1979. Immediately she was rushed to Aga Khan Hospital for treatment she was seen for the first time by Dr Suleiman at around 5 .00 pm and in his report he described her as fully conscious when he saw her. Though therefore in other reports this plaintiff is said to have been unconscious for 12 hours, it is only reasonable to take the report of Dr Suleiman as authoritative in this respect to find that by 5 pm when this doctor saw her she was fully conscious. Even Professor Dar said the plaintiff was unconscious for 30 minutes which would be more reasonable considering that Dr Suleiman saw her after about one hour. She was admitted in the hospital for observation for the head injuries from December 16, 1979, to December 22, 1979 a period of 6 days.

According to the opinion of Dr Suleiman the plaintiff suffered an injury to her occipital region which was mainly to the skin and deeper tissues but not involving bones – thus there were no fractures, that it was possible she sustained concussion at the time of the injury and this would account for loss of memory she complains of. That pain in the cervical spine was possibly due to a whiplash injury.

According to this doctor, concussion tends to follow an indefinite course, usually if there were no fractures as was the case herein and there was no molecular damage to the substance of the brain, then recovery is complete in time. Whiplash injury without fractures follows a similar course and may or may not have any permanent disability. Professor Dar supported presence of concussional and whiplash injuries, lack of concentration, memory deficiency and temper manifestations. Dr Bal was mainly concerned with N's hearing problems. According to him this plaintiff has definitely hearing problems following the accident and that the handicap is adequate enough to interfere in her day to day activities.

That her percetive loss is obviously permanent and cannot be corrected by medical or surgical treatment. He is of the view that if hearing deteriorates further she might have to use a hearing aid which would bring a lot of psychological trauma to the mind of the patient. The loss here is more pronounced in the right than in the left ear. This plaintiff complained to Dr Shashi Patel of constant headaches, poor memory, irritability, ringing sensation in right ear, loss of hearing on the right ear, pain in neck, recurrent colds, pain in right knee while sitting for a while, cannot kneel to pray in mosque, gidiness, cannot sleep well, pain in scar of scalp in cold; difficulty in attending phones, scars, lethargic after accident and so forth.

As to difficulty in hearing, the court observed that this plaintiff while in the witness box had no difficulty at all in answering any question from either her counsel or that of the defendant. For instance, at no time was any question repeated to her. And as to difficultly in attending phone calls, the plaintiff answered in cross-examination that she had been able to speak to her children in the United States on phone on a number of times without any problem. Though, therefore, the accident may have had some effect on her hearing capacity, yet that effect was exaggerated during her evidence and also in the medical evidence.

In this case, the plaintiff N sustained no fractures. But she sustained cerebral concussion, laceration of the scalp, pinna of left ear, and right thumb and bruising of cervical spine and right knee with abrasion in front of right knee joint. She was admitted to Aga Khan Hospital from December 16, 1979 to December 22, 1979 for observation of the head injury, she has developed headaches, gidiness, poor memory, insomnia and pain in occipital scar in cold in the form of post concussional syndrome which is likely to continue for some time or may even deteriorate with the passage of time. She also sustained a whiplash injury which may gradually improve in future as well as an injury on right ear and so on and so forth.

These are by no means serious injuries which the plaintiff suffered as a result of the accident of December 16, 1979 in which the defendant was largely to blame. Considering the evidence and circumstances of this case and taking into account defence medical report and evidence and the 30% contributory negligence on the part of this plaintiff, I feel an award to her of Shs 180,000 for pain suffering and loss of amenities is reasonably adequate. See *Elizabeth Wairimu Mururu v Emmy Mwatha Annah* H CCC NO 2938 of 1979 (unreported). In the ultimate result I would enter judgement for the plaintiffs' against the defendant in the sum of Shs 297,540 together with interest and 3/4 costs. This is the order of this court.

Dated and Delivered in Nairobi this 25th day of June 1985.

D.K.S.AGANYANYA

JUDGE