



The 1<sup>st</sup> defendant was sued as the registered owner of motor vehicle registration number KBM 688J whereas the 2<sup>nd</sup> and 3<sup>rd</sup> defendants were sued as the registered owners of motor vehicle registration number KBV 225X at the material time. The plaintiff pleaded particulars of the injuries sustained and those of special damages. She prayed for judgment against the defendants for:

- 1) General damages;
- 2) Special damages of Ksh. 2,265,344.78/=;
- 3) Costs of this suit;
- 4) Interest on the above.

### **THE 1<sup>ST</sup> DEFENDANT'S DEFENCE AND NON APPEARANCE BY THE 2<sup>ND</sup> AND 3<sup>RD</sup> DEFENDANTS**

The record indicates that the 1<sup>st</sup> defendant entered appearance and filed a statement of defence. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants failed to enter appearance and file their defence. Consequently, on 22/8/2022, interlocutory judgment was entered against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. I will not delve further into the defence by the 1<sup>st</sup> defendant since there was a test suit on the issue of liability and the parties agreed to adopt the finding on liability in this suit.

### **CONSENT ON LIABILITY**

On 1/7/2025, the parties recorded a consent in which they adopted the finding on liability in the test suit being civil case No. 114 of 2015. Accordingly, liability was apportioned at 80% against the 1<sup>st</sup> defendant and 20% against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. The consent was adopted as an order of the court.

### **THE EVIDENCE**

#### **The Plaintiff's Case**

At the hearing of the Plaintiff's case, only the plaintiff testified. She adopted her statement filed in court as part of his testimony and produced several documents in evidence. Since there is a consent on liability, it is unnecessary to reproduce the plaintiff's testimony on the events related to how the accident occurred. The plaintiff testified that following the accident, she sustained severe injuries and was disabled.

**The 1<sup>st</sup> Defendant's Case**

The 1<sup>st</sup> defendant did not call any witness.

**MAIN ISSUES FOR DETERMINATION**

In my opinion, the main issues for determination are as follows:

- i. Whether the plaintiff sustained injuries and suffered loss as a result of the accident;
- ii. Whether the plaintiff is entitled to damages and if so, the nature and quantum thereof;
- iii. Who should bear the costs of this suit?

**THE PLAINTIFF'S SUBMISSIONS**

On quantum, the plaintiff submitted a sum of Ksh. 3,500,000/= in general damages for pain, suffering and loss of amenities and relied on the following authorities:

- a) ***Geoffrey Mwaniki Mwinzi v Ibero (K) Limited & another [2014] eKLR***, wherein the plaintiff was awarded General damages of Ksh 2,500,000/- for extensive compound fractures of the left tibia and fibula and extensive damage to the soft tissues of the left leg and fractured left collarbone;
- b) ***Ziporrah Nangila v Edoret Express Limited & 2 others [2016] eKLR***, wherein Ksh. 2,400,000/= was awarded to the plaintiff who sustained bilateral leg injuries, right wrist injury, fracture dislocation of the right ankle, comminuted compound fracture of the distal and fibula, fracture of the left distal and tibia and fibula and extensive skin loss with bones exposed in the right tibia.

For special damages, the plaintiff urged the court to award Ksh. 2,734,035/= as pleaded and proved. The plaintiff also prayed for costs and interest.

**THE 1<sup>ST</sup> DEFENDANT'S SUBMISSIONS**

The 1<sup>st</sup> defendant did not file any submissions despite being given time to do so.

## ANALYSIS AND DETERMINATION

I have carefully considered the evidence on record and given due regard to the submissions made by the plaintiff as well as the authorities relied upon.

### Quantum

The medical evidence on record indicates that the plaintiff sustained the following injuries following the accident:

- i. Fracture of the socket of the right hip;
- ii. Dislocation of the right hip joint;
- iii. Injury to the right sciatic nerves causing paralysis of the right foot; and
- iv. Abrasion on the right thigh.

Dr. Wokabi assessed disability of the right leg at 35%. That the plaintiff will never be able to walk far or fast and will not be able to do activities which would require strong grounding of both feet. The doctor further opined that there were high chances of the plaintiff developing arthritis. The injuries were classified as grievous harm in the P3 form. There is no contrary evidence with respect to the plaintiff's injuries. I find that there is sufficient evidence to prove that the plaintiff sustained injuries as a result of the accident. Given the consent on liability, the plaintiff is thus entitled to damages as against the defendants.

It is well established that the assessment of quantum of damages in a claim for general damages is a discretionary exercise and that such discretion must be exercised judicially having regard to the facts of the case within the context of existing legal principles. A case is decided purely on its own peculiar facts, although comparable injuries should receive similar awards. This Court has to bear in mind the principles that guide assessment of damages as espoused in *West (HI) and Sons Ltd v Shepherd [1964] AC 326* where Lord Morris said:

***“But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common constant, awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible, comparable injuries should be compensated by comparable awards. When all***

*this is said it still must be that amounts which are awarded are to a considerable extent conventional” .*

I am also guided by Lord Denning's decision in *Kim Pho Choo v Camden & Islington Area Health Authority*, [1979] 1, ALL ER 332 which was adopted in the case of *Nancy Oseko v Board of Governors Masai Girls High School* [2011] eKLR where Wendoh, J stated that:

*“In assessing damages, the injured person is only entitled to what is in the circumstances, a fair compensation, for both the plaintiff and the defendant. ....the plaintiff cannot be fully compensated for all the loss suffered but the court should aim at compensating the plaintiff fairly and reasonably but in the process should not punish the defendant.”*

The Court of Appeal in *Southern Engineering Company Ltd v Musingi Mutia* [1985] KLR 730 held that:

*“It is trite law that the measurement of the quantum of damages is a matter for the discretion of the individual Judge, which of course has to be exercised judicially and with regard to the general conditions prevailing in the country generally, and prior decisions which are relevant to the case in question to principles behind the award of general damages enumerated...The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion judgement and experience. In a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to the range and limits of current thought. In a case such as the present it is natural and reasonable for any member of the appellate tribunal to pose for himself the question as to award he, himself would have made. Having done so, and remembering that in this sphere there are invariably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment...It is inevitable in any system of law that there will be disparity in awards made by different courts for similar injuries since no two cases are precisely the same, either in the nature of the injury or in age, circumstances of, or other conditions relevant to the person injured. The most that can be done is to consider carefully all the circumstances of the case in question, and*

*to consider other reasonably similar cases when assessing the award...it need hardly be emphasized that caution has to be exercised when paying heed to the figures of awards in other cases. This is particularly so where cases are merely noted but not fully reported. It is necessary to ensure that in main essentials the facts of one case bear comparison with the facts of another before comparison between the awards in the respective cases can fairly or profitably been made. If however it is shown that cases bear a reasonable measure of similarity then it may be possible to find a reflection in them of a general consensus of judicial opinion. This is not to say that damages should be standardized or that there should be any attempt to rigid classification. It is but to recognize that since in court of law compensation for physical injury can only be assessed and fixed in monetary terms the best that Courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion."*

The following principles are germane in assessing damages for personal injury claims:

- i. An award of damages is not meant to enrich the victim but to compensate such a victim for the injuries suffered;
- ii. The award should be commensurate to the injuries suffered;
- iii. Awards in decided cases are mere guides and each case should be treated on its own facts and merit;
- iv. Where awards in decided cases are to be taken into consideration then the issue of or element of inflation has to be taken into consideration;
- v. Awards should not be inordinately too high or too low.

Based on the above principles, I proceed to assess the damages payable as follows.

### **General Damages for pain, suffering and loss of amenities**

I have considered the injuries sustained by the plaintiff. The plaintiff suffered injuries which were classified as grievous harm. In my opinion, the authorities relied upon by the plaintiff are in respect of injuries that were at variance with those suffered by the plaintiff herein and thus not comparable. On my part, I have considered the following authorities:

- 1) **Geoffrey Maraka Kimchong v Frechiah Hugiru [2020] KEHC 7558 (KLR)**- The plaintiff and appellant in the appeal sustained a cut wound on the cheek which was tender, blunt

trauma to the pelvis which was tender and a fracture of the right acetabulum. Ksh, 1,000,000/= was awarded on appeal in 2020;

- 2) **Cold Car Hire And Tours Limited & 2 others v Elizabeth Wambui Matheri [2015] KEHC 2538 (KLR)** - The plaintiff and respondent in the appeal sustained a comminuted fracture of the right acetabulum and dislocation of the right hip joint resulting in total hip replacement. An award of Ksh. 1,400,000/= made on 13/12/2011 was affirmed on appeal on 11/2/2015;
- 3) **Kennedy Ooko Ouma Dachi v Joseph Maina Kamau & another [2018] KEHC 7839 (KLR)** - The plaintiff and appellant in the appeal sustained several injuries, the most severe being a fracture to the acetabulum. An award of Ksh. 1,400,000/= was made in 2018;
- 4) **JANET MWOVA v MURIITHI MARTIN [2011] KEHC 1828 (KLR)**- The plaintiff sustained, fracture of the left acetabulum, fracture of the left pubic rim, dislocation of the left hip, chest contusion, several lacerations on the left upper arm, cut wounds above left eye, huge deep and disfiguring cut wound below the left eye, bed sores on both buttocks and injury to left sciatic nerve leading to left foot drop. An award of Ksh. 2,000,000/= was made in 2011.

Given the nature of the injuries sustained by the plaintiff herein, whose permanent disability of the right leg was assessed at 35% and the age of some of the awards in the above authorities coupled with the vagaries of inflation, I find that an award of Ksh. 2000,000/= in general damages would suffice. I award the same.

**Special Damages**

The plaintiff pleaded special damages as follows:

- a) Police abstract.....Ksh. 200/=
- b) Medical report.....Ksh. 2,000/=
- c) Medical expenses.....Ksh. 2,263,144.78/=
- Total.....Ksh. 2,265,344.78/=

It is trite law that special damages must be **specifically pleaded** and **strictly proved**. In ***Nizar Virani t/a Kisumu Beach Resort v Phoenix of East Africa Assurance Co. Ltd*** the court said: -

***“It has time and again been held by the Court in Kenya that a claim for each particular type of special damage must be pleaded”***

In *Ouma v Nairobi City Council [1976] KLR 304* after stressing the need for a plaintiff in order to succeed on a claim for specified damages, Chesoni J (as he then was) quoted in support the following passage from Bowen L. J’s Judgment on page 532 and 533 in *Ratcliffe v Evans [1832] 2Q.B. 524* an English leading case on pleading and proof of damage:

***“ The character of the acts themselves which produce the damage, and the circumstances under which those acts are done, must regulate the degree of certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”***

There was no receipt for the police abstract. The proved medical expenses amount to Ksh. 1,971,230.58/=. Ksh. 2,000/= for the medical report was also proven. The plaintiff produced receipts for taxi services but the claim was not specifically pleaded. It could not have been part of medical expenses. Consequently, I award special damages to the tune of Ksh. **1,973,230.58/=**.

**DISPOSITION**

In summary, I hold that the plaintiff has proven her case on a balance of probabilities as against the defendants. Consequently, I make the following awards:

- 1) General damages for pain, suffering and loss of amenities.....Ksh. 2,000,000/=
- 2) Special damages.....Ksh. 1,973,230.58/=
- Total.....**Ksh. 3,973,230.58/=**

The 1<sup>st</sup> defendant shall pay to the plaintiff the some of **Ksh. 3,178,584.464/=** whereas the 2<sup>nd</sup> and 3<sup>rd</sup> defendants shall pay **Ksh. 794,646.116/=**. The plaintiff is also awarded interest on the damages as well as costs of the suit. This shall be paid by the defendants in accordance with the apportionment on liability. The guiding principles in respect of interest are set out in section 26 of the Civil Procedure Act which provides that:

*“(1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.*

*“(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.”*

In the case of *Jane Wanjiku Wambui v Anthony Kigamba Hato & 3 others [2018] eKLR*, the court stated that:

*“First, at all times a trial court has wide discretion to award and fix the rate of interests provided that the discretion must be used judiciously. Given this discretion, an appellate Court is, therefore, enjoined to treat the original decision by a trial court with utmost respect and should refrain from interference with it unless it is satisfied that the lower court proceeded upon some erroneous principle or was plainly and obviously wrong. See *New Tyres Enterprises Ltd v Kenya Alliance Insurance Company Ltd [1988] KLR 380*.*

*Second, Under Section 26(1) of the Civil Procedure Act, the Court has discretion to award and fix the rate of interests to cover two stages namely:*

*a. The period from the date the suit is filed to the date when the Court gives its judgment; and*

*b. The period from the date of the judgment to the date of payment of the sum adjudged due or such earlier date as the court may, in its discretion fix.”*

Odoki, Ag. JSC, writing for the majority of the Supreme Court in the Ugandan case of *Omunyokol Akol Johnson v Attorney General (CIVIL APPEAL NO.6 of 2012, UGSC 4 (8th April 2015)* stated in part, as follows:

*“It is well settled that the award of interest is in the discretion of the court. The determination of the rate of interest is also in the discretion of the court. I think it is also trite law that for special damages the interest is awarded from the date of the loss, and interest on general damages is to be awarded from the date of judgment.....Therefore,*

***the trial judge should have awarded the appellant interest on general damages at the court rate from the date of judgment.***” (Emphasis supplied)

From the foregoing expositions of the law on this point, it is clear that much as the award of interest is discretionary, interest rates on special damages should be with effect from the date of the loss till payment in full while with regard to general damages this should be from the date of judgement as it is only ascertained in the judgement-see ***Jane Ovuyanzi Raphael (Suing as Legal Representative of Estate of Japheth Amaayi v Salina Transporters [2020] KEHC 618 (KLR)***. Consequently, interest on general damages shall accrue at court rates from the date of judgment/decree until payment in full and on special damages, from the date of filing suit to the date of judgment/decree.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 8<sup>TH</sup> DAY OF  
DECEMBER, 2025.**

**Y.A SHIKANDA  
SENIOR PRINCIPAL MAGISTRATE.**