**Chudasama v Social Service League and another**

**Division:** High Court of Kenya at Nairobi

**Date of Judgment:** 15 October 2004

**Case Number:** 995/00

**Before:** Lenaola and Makhandia AJJ

**Sourced by:** LawAfrica

**Summarised by:** M Kibanga

*[1] Medical negligence – Negligence – Plaintiff injured in road traffic accident – Plaintiff subsequently*

*transfused with blood of a wrong blood group – Pre-existing condition of road traffic accident injuries –*

*Whether the pre-existing condition contributing negligence.*

*[2] Quantum – Judicial precedent – Judicial precedent lacking to give guidance on quantum –*

*Principles that court should apply in deciding on quantum.*

*[3] Tort – Negligence Liability – Defendant wrongly transfusing plaintiff with wrong blood group –*

*Whether the defendant liable in negligence.*

**Editor’s Summary**

The plaintiff was injured in a road traffic accident in June 1983 as a result of which she was operated on by the first defendant in a hospital owned by the second defendant. The plaintiff’s blood group was O positive but the transfusion done at the hospital was with blood group O negative. When a second operation was done in February 1984 the plaintiff was again transfused with blood group O negative. In January 1989 it was discovered upon further tests that the plaintiff was blood group O positive. By this time she had undergone treatment on several occasions to rectify the anomalies arising from the road accident and the wrong transfusion. The plaintiff filed suit in January 1992 seeking general and special damages for the wrongful transfusion.

**Held** – The first defendant was wholly liable in negligence for the wrongful blood transfusion. Although the plaintiff had been injured in a road traffic accident and was being treated for the injuries, the injuries were only a factor contributing to the plaintiff’s ill health and the transfusion materially contributed to the injury and was clearly the cause of the injury complained of in the suit; *McGhee v National Coal Board* [1973] WLR I and *Alphacell Ltd v Woodword* [1972] AC 24 adopted. It did not matter that there was a pre-existing condition. There having been no local judicial precedents on quantum of damages in a matter of a similar nature, the Judge was to be guided by what he reasonably believed the ordinary citizen would regard as right and the prevailing circumstances *Mc Farlane and another v Jayside Health Board* [1999] 4 All ER 961; *Butter v Butter* [1984] KLR 225; *Luduwa v Ayuku and another* [1986] KLR 395 approved. The common sense approach would be useful in reaching a fair and just award. The plaintiff was awarded KShs 3 million as general damages for pain and suffering. The claims for future medical care and lost years were not specifically pleaded and strictly proved and were not awarded.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Butter v Butter* [1984] KLR 225 – **APP**

*Catholic Diocese of Kisumu v Tete* civil appeal 254 f 2001 – **C**

*Gichobi v BS Mohindra and Company Limited* High Court civil case 1958 of 1978 – **C**

*Kenya Bus Services Limited v Gituma* civil appeal number [2000] LLR 4027 (CAK) – **C**

*Luduwa v Ayuku and another* [1986] KLR 395 – **APP**

*Muya v Munene and another* High Court civil case 1377 of 1987 – **C**

*Southern Engineering Limited v Mutia* [1985] KLR 730 – **AP**

***United Kingdom***

*Alphacell Limited v Woodword* [1972] AC 24 – **A**

*Bonington Castings Limited v Wardlaw* [1956] AC 613 – **A**

*Mc Farlane and another v Tayside Health Board* [1999] 4 All ER 961 – **APP**

*McGhee v National Coal Board* [1973] WLR 1 – **A**

[2003] 3 All ER138

***United States***

*Brady v Brown* [1990] 2 Med LR – **C**

*Doe v*