



DKB & HCB (Suing as legal representatives of the Estate of AKK (Deceased) v Jaoko (Civil Appeal E023 of 2021) [2023] KEHC 21399 (KLR) (27 July 2023) (Judgment)

Neutral citation: [2023] KEHC 21399 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E023 OF 2021**

**JR KARANJA, J
JULY 27, 2023**

BETWEEN

**DKB & HCB (SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF
AKK (DECEASED) APPELLANT**

AND

CALEB ODHIAMBO JAOKO RESPONDENT

JUDGMENT

1. The appellants were the plaintiffs in CMCC No.104 of 2019 at Kericho in which they sued the respondent/defendant Caleb Odhiambo Jaoko for special and general damages arising from a road traffic accident which occurred on 9th July 2018 at or near Kedowa area involving the respondents motor vehicle Registration No. KCB 253A and a motorcycle Registration No. KMEL 172X on which the deceased AKK was lawfully aboard. The appellants commenced the action as the legal representatives of the estate of the said AKK (deceased)

It was averred in the appellant's pleadings that the deceased was lawfully aboard the motorcycle when it violently collided with the respondent's motor vehicle which was at the time being driven by the respondent and/or his driver, servant, agent or employee so negligently and recklessly that it collided with the motorcycle thereby occasioning fatal injuries to the deceased.

2. The appellants contended that the vehicle was driven too fast in the circumstances with its driver failing to give way and failing to see in sufficient time to avoid the collision, the motorcycle, among other factors. The appellants therefore prayed for damages, costs and interest against the respondent who in his statement of defence denied all allegations made against him and contended that the accident indeed occurred, then it was solely and/or subsequently contributed to by the negligence on the part of the rider of the motorcycle, the owner of the motorcycle and the deceased pillion passenger aboard the motorcycle. He prayed for the dismissal of the case.



3. In the cause of the trial, the parties arrived at a consent on liability to the extent that liability be apportioned between the parties at the ratio of 60%:40% in favour of the respondent. Therefore, the only issue that was left open for determination by the court was the quantum of damages.

In that regard and after considering the evidence placed before it, the trial court made a total award of Kshs.528,000/= in favour of the appellants made up as follows:-

Pain & Suffering – Kshs.50,000/=

Loss of expectation of life – Kshs.200,000/=

Loss of dependency – Ksh.600,000/=

Special damages – Kshs.30,000/=

Sub-Total – Kshs.880,000/=

Less 40% contribution –Kshs.352,000/=

GRAND TOTAL –Kshs.528,000/=

4. Being aggrieved, the appellants preferred the present appeal on the basis of the grounds set out in the Memorandum of appeal filed herein on 22nd July 2021 which clearly indicates that the appeal is basically on the quantum of damages respecting loss of dependency. The appellant contend that the award of Kshs.600,000/= under that head was too low. This implies that they have no issues with awards made under the other heads.
5. The appeal was canvassed by way of written submissions which were filed on behalf of the appellants by Messrs Khan & Associates Advocates and by Omwenga & Co. Advocates, on behalf of the respondent. This court, having re-visited the evidential material placed before the trial court and considered the rival submissions was keen in finding out whether in awarding the impugned award of Kshs.600,000, the trial court took into account an irrelevant factor or left out of account a relevant factor or short of this, the award was so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage (see [Kemfro Africa Ltd t/a Meru Express Services & Another Vs. Lubia & Another](#) [1983]eKLR).
6. The appellant's arguments do not seem to suggest that the trial court failed to take into account a relevant factor or took into account an irrelevant factor but rather that the amount of Kshs.600,000/= was too low consideration being given to the fact that the deceased was 33 years and although unmarried had dependants and that the courts have awarded higher amounts even in situations where the deceased was a minor.
7. On the contrary, the respondent argued that it was pleaded that the deceased was 33 years old and was a casual labourer earning Kshs.20,000/= per month and that his parents depended on him yet there was no evidence to prove the alleged earning nor the alleged dependency. Therefore, the trial court could not adopt a multiplier approach in the assessment of loss of dependency and indeed adopted a global approach and awarded the impugned amount. The respondent contended that the trial court did not err in applying the global award.
8. Indeed, in this court's opinion, there was herein no proof of the deceased's earning either from employment or any other source. There was also no proof that his parents depended on him for their upkeep and welfare. They may have survived him but that did not necessarily mean that they depended on him. He may also have been the one who depended on them.



9. In the circumstances, the global approach in the assessment of damage for loss of dependency was most appropriate even though it could have been avoided along with the multiplier approach for lack of proof of dependency and/or earnings. However, given that under the Fatal/Accidents Act every action brought thereunder shall be for the benefit of the wife, husband, parent and child of the deceased, the appellants were entitled to damages for loss of dependency having brought this action for their benefit as parents of the deceased. The amount of Kshs.600,000/= awarded to them by the trial court was adequate and fair compensation for their loss of a son even though no amount of money can ever be sufficient to compensate for such a permanent loss of a human being.
10. In sum, it is this court's finding that the present appeal is devoid of merit and is hereby dismissed with costs to the respondent.

Ordered accordingly.

[DELIVERED, DATED AND SIGNED AT KERICHO THIS 27TH DAY OF JULY, 2023.]

J. R KARANJAH

JUDGE

