



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL CASE NO. 865 OF 2005**

**PELTER BOYANI ANURI.....PLAINTIFF**

**GLADYS MONYANGI MOSETI.....PLAINTIFF**

(Suing for & on behalf of the estate of **Kennedy Anuri John**)

**VERSUS**

**PETER NDUNG’U CHACHA.....DEFENDANT**

**JUDGMENT**

1. The Plaintiffs instituted this suit under the Law Reform Act and the Fatal Accidents Act for the benefit of the estate of the deceased, Kennedy Anuri John. The deceased died in a road traffic accident on 22<sup>nd</sup> May, 2004.
2. The parties herein recorded a consent on liability at 50% against the Plaintiffs and 50% against the Defendant. The case then proceeded for assessment of damages.
3. Pelter Bonyani Anuri (PW1) adopted her witness statement and gave evidence that she was the wife of the deceased and stated that they had three children together. That the children were minors aged 8 -12 years at the material time. Her further evidence was that she was a housewife and the deceased who worked at Kenyatta University provided for the family. She produced documents in support of her case.
4. The Defendant did not call any witnesses.
5. I have considered the evidence and the submissions filed by the respective counsel for the parties.
6. The certificate of death produced as an exhibit reflects the date of death as 24<sup>th</sup> May, 2004 at Mater Hospital. PW1’s evidence is that the accident occurred on 22<sup>nd</sup> May, 2004 and that she found the deceased at the hospital’s Intensive Care Unit. The deceased must have therefore undergone pain and suffering. The age of the deceased has been stated in the death certificate and in the evidence of PW1 as 37 years at the material time. Taking into account comparable awards, I assess the award for pain and suffering at Ksh.50,000/= and Ksh.100,000/= for loss of expectation of life.
7. Dependency is a question of fact to be established by way of evidence. In this regard, as stated by the Court of Appeal in the case of **Hellen Waruguru Waweru (suing as the Legal representative of Peter Waweru Mwenja (deceased) v Kiarie shoe Stores Ltd & 2 others [2015] eKLR:**

**“The court should find the age and expectation of working life of the deceased and consider the ages and expectations of life of his dependents, the net earning power of the deceased (i.e. his income less tax) and the proportion of his net income which he would have made available for his dependents. From this it should be possible to arrive at the annual value of dependency which must then be capitalized by multiplying by a figure representing so many years ... As emphasized above, the net income determines the multiplicand and it is only net of statutory deductions”**

8. The copy of the deceased’s pay slip produced for the month of May, 2004 reflect a gross pay of Ksh.33,187/=. The Income Tax deduction as per the Pay As You Earn (PAYE) entry is Ksh.4,327/=. Although there were other deductions totaling Ksh.32,445/= leaving a Net pay of Ksh.742/=. those other deductions went to loans , shares, benevolent fund, advances etc and were part of the benefits enjoyed by the deceased. I will therefore adopt a multiplicand of Ksh.33,187 less Ksh.4,437/= which comes to Ksh.28,860/=.

9. The deceased died at the age of 37 years. He could have worked for another 23 years up to the age of 60 years retirement age. However, the imponderables of life must be taken into account and the fact that the award herein will be in a lumpsum. I have also taken into account comparable awards. I adopt a multiplier of 18 years.

10. The uncontroverted evidence from PW1 is that the deceased was married and had three minor children. The birth certificates were produced. PW1’s evidence is that the family was fully dependent on the deceased although she now works as a casual worker. Although the Net pay in the payslip produced is Ksh.742/= there are several entries for loans and advances which were availed to the deceased for his use. I do not therefore agree with the submissions by the defence that the only money available to the deceased was Ksh.742/= per month. The deceased must have however used some of the income for his personal expenses. I adopt a dependency ratio of 2/3. The total dependency therefore comes to  $Ksh.28,860 \times 12 \times 18 \times 2/3 = Ksh.4,155,840/=$

11. The special damages pleaded for funeral expenses, Police Abstract, Death Certificate and Burial Permit have been proved as per the receipts produced and come to a total of Ksh.21,120/=.

12. The total award is as follows:

(a) Pain and suffering	Ksh.50,000.00
(b) Loss of expectation of life	Ksh.100,000.00
(c) Loss of dependency	Ksh. 4,155,840.00
(d) Special damages	Ksh.21,120.00
<b>Total</b>	<b><u>Ksh.4,326,960.00</u></b>
Less 50% contribution	Ksh.2,163,480.00
	<b><u>Ksh.2,163,480.00</u></b>

13. The upshot is the judgment is entered for the Plaintiffs against the Defendant for Ksh.2,163,480/= plus costs and interest.

**Date, signed and delivered at Nairobi this 28<sup>th</sup> day of January 2021**

**B. THURANIRA JADEN**

**JUDGE**