



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

CIVIL APPEAL NO. 15 OF 2019

[Appeal arising from the Judgment In the Chief Magistrate’s Court at Bungoma on 19th January 2018 by Hon. C.A.S. Mutai (SPM) In BGM Civil Case No. 343 of 2017]

VOLCAN HOLDINGS LTD.APPELLANT

VERSUS

GENTRIX NASAMBU WAMUKOKO

(Suing as Administrator of the Estate of

LOUREEN NABUCHA TARACHA DCD).....RESPONDENT

JUDGMENT.

By Plaintiff dated 15.9.2017 Gentrix Nasambu Wamukoko (suing us administrator of the estate of Loureen Nabucha Tracha - deceased) sued Volcan Holdings Limited seeking general damages under the Law Reform Act and Fatal Accident Act. The Plaintiff/Respondent claim was premised on the claim that the deceased Loureen Nabucha Taracha died in a road traffic accident involving Motor Vehicle KCC 045V along Webuye Bungoma road on 14.6.2017 due to the negligence of the appellant/defendant. The trial court upon hearing the evidence entered Judgment on quantum stating;

Since however the advocate for both parties did not propose this I will make an award as a Global figure of Kshs. 2,000,000/=.

The law requires that there be a deduction to this amount commonly known as a discount for accelerated payment to the widow in the event that a widow remarries. In this situation there is no widow but a parent namely the Father. A deduction by way of discount may be made but in circumstances of this case I make none.

4 Special Damages:

The Plaintiff has particularized the special damages as;

Limited grant	Kshs.20,000/=
Transport	Kshs.25,000/=
Coffin	Kshs.30,000/=
Copy of records	Kshs.550/=

The claim for special damages was well supported through the production of receipt. The same claim was not even disputed.

Judgment is therefore entered for the plaintiff against the defendant as follows:

Pain and Suffering	Kshs.35,000/=
Loss of expectation of life	Kshs.160,000/=

Lost years	Kshs.2,000,000/=
Special damages	Kshs.75,550/=
TOTAL	KSHS.2,270,550/=
LESS 20%	KSHS.454,110/=
BALANCE	KSHS.1,816,440/=

Aggrieved by the Judgment in Quantum the Appellant Volcan Holdings Limited preferred this Appeal on the following grounds.

1. **THAT** the learned trial magistrate erred in law and fact in assessing damages that were so inordinately high as to amount to a gross overstatement of the loss suffered by the deceased's estate and dependants.
2. **THAT** the learned trial magistrate erred in law and fact in applying the wrong principles in the assessment of damages.

By consent this appeal was canvassed by way of written submissions. Counsel for both parties filed their respective submissions. M/s Manani for the appellant submitted that the award of a global sum of Kshs.2,000,000/= for lost years under the Fatal accident Act was excessive and not comparable to awards made by courts in similar circumstances. He submitted that the trial Magistrate reasoned that the deceased was a bright student having scored a "B" Plain in her KCSE and joined Kenya Medical Training College to pursue a Course in Nursing. This, the appellant submits cannot be the basis for awarding excessively high award as the future prospects of the deceased was unpredictable. Counsel for the appellant urged this court to review the quantum of damages of Kshs. 2,000,000/= and substitute thereof with a global award of Kshs.700,000/=.

Mr. Mukisu for the Respondent submitted that the principles upon which an appellate court can interfere with the discretion of the trial court in an assessment of damages are well settled. He submits that the award is not excessive because it compares favourably with comparable awards where deceased were of same age and career path. In particular he relies in the persuasive decision at *Njuguna J in YH Wholesalers & Another -Vs- Kimani Kamau & Another 2013 eKLR and Joshua Mungania & Another -Vs- Gregory Omondi Angoya 2018 eKLR*.

From the appeal and submissions liability having been apportioned by consent, the main issue is whether the award of global sum of Kshs.2,000,000/= under Fatal Accident Act was so excessive and so high as to attract the interference of the award by the appellate court. The grounds upon which an appellate court can interfere with the discretion of the trial are now well settled. In *Butt Vs. Khan 1982 - 88 KAR* the court of Appeal stated;

"An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely wrong estimate. It must be shown that the Judge proceeded on wrong principles or that he misapprehended the evidence in some material respect and arrived at a figure which was either inordinately high or low."

The deceased in the case was aged 21 years; had passed her KCSE with grade "B" and was enrolled at Kenya Medical Training Centre to pursue a Course in Nursing. The deceased was an adult with a defined career path. The authorities referred to by the appellant relate to minors whose career path would not be defined without being speculative. In the present case the deceased age, and career path was known.

The award of Kshs.2,000,000/= under the loss of dependency is comparable to similar cases in same age range. I therefore do not find that the award is so excessive as to attract the interference of this court. I therefore find no merit in this appeal which is hereby dismissed with costs to the Respondent.

Dated and Delivered at Bungoma this 15th day of January, 2021

S.N. RIECHI

JUDGE