



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CIVIL APPEAL NO. 35 OF 2019

GEN INVEST LIMITED.....1ST APPELLANT

DR. SUSAN MBOYA.....2ND APPELLANT

JOSEPH OCHIENG OGWANG.....3RD APPELLANT

VERSUS

ROBERT KIPNGETICH

(Suing as Legal Representative

of Damaris Chepkirui (Deceased).....RESPONDENT

(Being an appeal from the Judgment and decree of

Hon. B. R. KIPYEGON (SRM) in KERICHO CMCC 165

and 262 of 2018 (Consolidated) which were delivered on 30/10/2019)

JUDGEMENT

1. This is a consolidated appeal from the Judgment and decrees of Hon. B. R. KIPYEGON in KERICHO CMCC NO.165 and 262 of 2018 which suits arose out of the same accident.
2. The Respondent ROBERT KIPNGETICH sued the three Appellants in the two suits in respect of injuries he sustained on 17/07/2017 while travelling Motor Vehicle Reg. No. KCA 030 R when the Motor Vehicle collided with Motor Vehicle Reg. No.KBK 738H resulting to serious injuries to the Respondent and fatal injuries to DAMARIS CHEPKIRUI (deceased)
3. The brief summary of the case is that the Respondent was travelling with late wife (DAMARIS CHEPKIRUI) IN Motor Vehicle Reg. No.KBK 738 h as fare paying passengers when Motor Vehicle Reg. No.KCA 030 R emerged from the opposite direction while overtaking another Motor Vehicle at a sharp corner and it hit Motor Vehicle Reg. No.KBK 738 H head-on.
4. The Respondent sustained hip dislocation and nose cut leading to admission at Siloam Hospital for a week. DAMARIS CHEPKIRUI (deceased) was also admitted at Siloam Hospital and she was later transferred to Eldoret for two months before she succumbed to the injuries on 1/9/2017.
5. The Respondent obtained letters of Administration in respect of his wife and filed KERICHO CMCC.262 of 2018 as her personal representative seeking compensation.
6. The Appellants were sued as registered owner, beneficial owner and driver of Motor Vehicle Reg. No. KCA 030 R and in their Joint Defence averred that the accident was as a result of gross contribution or negligence on the part of the Respondent and the driver of Motor Vehicle Reg. No.KBK 738 H.
7. The Court entered Judgment in favour of the Respondent against the Appellants jointly and severally as follows in KERICHO CMCC. No.165 of 2018.

(i) General Damages pain and suffering - 700,000/=

(ii) Special Damages; Medical Report - 5,000/=

(iii) Motor Vehicle Search - 550/=

(iv) Treatment Expenses - 60,000/=

Total = 766,254/=

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8. The court awarded damages as follows in KERICHO CMCC. NO. 262 of 2018:-

(i) Pain and suffering - Kshs.150,000/=

(ii) Loss of Expectation of Life - Kshs.400,000/=

(iii) Loss of Dependency - $31,197 \times 12 \times 24 \times \frac{1}{3}$ Kshs.2,994,912/=

(iv) Special Damages - Kshs.385,500/=

Total = Kshs.3,930,412/=

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9. The Respondents are aggrieved with the Judgment and have appealed to this Court on the following grounds which are identical in both Appeal No.35 and 36 of 2019.

(i) The Learned Trial magistrate erred by arriving at a finding on liability, which was not supported by evidence.

(ii) The Learned Trial Magistrate erred in Law and fact in basing findings on irrelevant matters.

(iii) The Respondent's case was not proved on balance of probability as is required by Law.

(iv) The Trial Magistrate should have found that there was no basis on which the Appellant could be blamed for the incident alleged and injuries sustained.

(v) The Learned Trial Magistrate's assessment of compensation was inappropriate and irregular vis-à-vis the circumstances of the case.

(vi) The Learned Trial Magistrate erred on all points of fact and law in as far as both liability and assessment of quantum is concerned.

(vii) The quantum awarded by the Trial magistrate was inordinately too high in the light of the circumstances.

10. The parties filed written submissions in the two Appeals which I have duly considered. The Appellants submitted that the Respondent and the Deceased were not wearing seat belts and further that they failed to prove negligence on the part of the Appellants. Further that the Post Mortem Report was not produced.

11. On the issue of quantum of damages, the Appellants submitted that the award was Excessive and further that in respect of Appeal No.35 of 2019, the Court was not right in applying a multiplier of 24 and a salary of Kshs. 31,197/= without evidence.

12. The issues for determination in this appeals are as follows:-

(i) Whether the Respondent proved his case to the required standard on liability.

(ii) Whether the award of damages was lawful.

13. I find that there is evidence that the Motor Vehicle belonging to the Appellants was overtaking when the accident occurred. There is evidence that the accident occurred at a sharp corner and that the 3rd Appellant who was driving Motor Vehicle Reg. KCA 030 R was entirely to blame for the accident. This evidence remains uncontroverted and it leads me to conclude that the respondent proved his case on the balance of probability just as the learned magistrate found. I find that liability against the appellant had been proved.

14. I find that the findings on liability were proper and I find no reason to interfere with the same.

