



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CIVIL APPEAL NO. 152B OF 2019**

**JEFF MURANGIRI.....APPELLANT**

**VERSUS**

**SWS (Suing as the legal representative of the  
estate of NMK (deceased).....RESPONDENT**

**(An appeal from the Judgment and Decree of Hon. S. Abuya (S.P.M) in Meru CMCC No.68 of 2019 delivered on 30/10/2019)**

**JUDGMENT**

1. Before the trial court was a claim commenced by a Plaintiff dated 19/3/2019, in which the respondent sued the appellant seeking general damages under both the Law Reform Act and Fatal Accident Act, special damages, costs of the suit and interests thereon.
2. The gist of the claim was that on or about 25/12/2016, the deceased was a pillion passenger, on a motor cycle, along Meru-Chuka Road, at Nkubu when the appellant so carelessly, recklessly and/or negligently drove the motor vehicle registration number KBY 861 W that it lost control, veered off the road and rammed on the motorcycle thereby fatally injuring the deceased. As a consequence, it was alleged, the deceased healthy and precious life was cut short with an additional consequence that, both his estate and dependants suffered great loss and damage and therefore claimed damages.
3. In support of her case the respondent, **PW1** testified that the deceased was her son who had just completed his secondary school education at a school whose particulars were withheld. The deceased was a bright student, having scored a C- in KCSE, and aspired to become a teacher. He used to help the mother milk and feed the cows and also with shamba work. She produced the documents in the list of documents dated 19/3/2019 as exhibits in court in support of her case, which were marked accordingly. Mr. Kariuki for the appellant who was in attendance opted not to subject the testimony of the respondent to any cross examination. That evidence thus remain unshaken.
4. The appellant however strenuously denied the claim by his statement of defence dated on 16/4/2019 and prayed for the respondent's suit to be dismissed. He however closed his case without calling any witnesses hence the statement of defence remained but mere and bare allegations.
5. After conclusion of the trial, in which liability was agreed at 80:20 in respondents favour the trial court found that the respondent had proved her case on damages on a balance of probability and awarded general damages of Ksh. 50,000 for pain and suffering, Ksh.100,000 for loss of expectation of life, Ksh. 2,160,000 for loss of dependency, special damages of Ksh. 98,370 plus costs and interests.
6. Aggrieved by the said decision, the appellant filed his Memorandum of Appeal on 25/11/2019 listing 5 grounds of appeal. I perceive the appellant's contention to be two fold; that the sum awarded for loss of dependency was inordinately excessive; and the use of a multiplier approach instead of the global approach was erroneous or just inappropriate.
7. Directions were issued on 14/07/2020 that the appeal be canvassed by way of written submissions which were respectively filed. The appellant's submissions were to the effect that the use of the multiplier approach by the trial court was erroneous, considering the deceased was unemployed and unmarried with no child. According to him, the sum of Ksh.2,160,000 for loss of dependency should be substituted with a sum of Ksh.600,000. He faults the trial court for overly relying on the case of **Cherangany Hill Limited & anor v BWM (2018)eKLR**, in adopting the multiplier formula hence arriving at a wrong decision based on incomparable circumstances.
8. He further cited the cases of **PI v Zena Roses Ltd & anor (2015) eKLR**, **John Wamae & 2 others v Jane Kituku Nziva & anor (2017) eKLR**, **Mary Khayesi Awalo & anor v Mwilu Malungu & anor (1999) eKLR**, **Maingi Cecilia v John Mithika M'Itabari (Suing as the administrator of the estate of Erastus Kirimi Mithika-Deceased (2018) eKLR**, **Hahi Hauliers & anor v JKK(Suing as the**

**administrator to the estate of JK(2020)eKLR, John Mwangi Macharia v Jeniffer Keiya Mutegi (2020) eKLR, Wesley Kipkoech Kendagor v Unistar Transporters Ltd (2007) eKLR and Elvina Nyevu Garama & anor v Samson Kahindi Kitsao & anor (2020) eKLR** in support of his submissions that for minors, it is appropriate to adopt a global sum.

9. On her part, the respondent submitted that the method of assessment of damages was purely discretionary and varied from one court to another. She cited **MMG (administrator of the estate of ZG-Deceased) v Muchemi Teresa (2015) eKLR, Kenya Power & Lighting Company Ltd v EKO & anor (2018)eKLR, Transpares Kenya Ltd & anor v SMM(Suing as legal representative for and on behalf of the estate of EMM-Deceased(2015)eKLR** to support her proposition that the multiplier approach has previously been adopted to award damages, even for minors. Her position is that the trial court took into account the age of the deceased, academic capability and the dependants to arrive at the decision it did. She contended that award for loss of dependency was reasonable and within range of comparable awards. She relied on **Cherengany Hills Limited & anor v BWM (2018) eKLR and Kemfro Africa Limited T/A Meru Express Services(1976) & anor v Lubia & anor(1985)eKLR** among others to buttress those submissions. It was concluded that the appeal should be dismissed.

10. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. See **Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates (2013) eKLR**. The question is not what the appellate court would award had it tried the case, but whether the trial court acted on wrong principles. See **Gitobu Imanyara & 2 others v Attorney General (2016) eKLR**.

11. The principles on when an appellate court would interfere with the discretionary duty of assessment of quantum of damages are now trite as settled by the court of appeal in the case of **Catholic Diocese of Kisumu vs. Sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2 KLR 55** in the following terms:

**“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”**

12. The bone of contention in this appeal is on the sum of Ksh.2,160,000 awarded for loss of dependency. It is not in dispute that the deceased was only 18 years, full of good health, energetic and ready to begin his adult life. Evidence was led that the deceased was a bright student having scored a C- in KCSE. He was of great help to PW1, as he assisted her milk and feed the cows as well as perform other household chores. PW1 went on to state that the deceased wanted to become a teacher. She stated that, it would now be difficult to do all the farm work alone, without the help of the deceased. That evidence remained the truth as it was not subjected to any cross examination nor did the appellant give contrary evidence. There is no doubt that the parents of the deceased expected, and reasonably so, that their son would enter the job market and help them in their old age. That is what the court said in **Sheikh Mustag Hassan Vs Nathan Kamau transporters (1985) eKLR**

13. One cannot therefore underestimate what a fully healthy and energetic youth can achieve, either self or formally employed, within 30 or so years, especially with his achieved grades.

14. I hasten to add that the assessment of damages, even for loss of dependency, is at the discretion of the trial court. Similarly, the method adopted by the trial court in the said assessment is equally discretionary. It has innumerable been held that, the multiplier approach is not a principle of law or a dogma, but it is just a method of assessment of damages just like the global approach.

15. The trial court accurately and within its right, opted for a multiplier approach instead of the global approach. Even if the trial court were to use the global approach, in my considered view, the sum it would have awarded would have trickled down to Ksh.2,160,000 or thereabouts. The trial court properly applied a comparative approach to reach the decision it did, and it cannot be faulted for that. It is evident from the numerous decisions cited by both counsels that, loss of dependency is awardable even in cases of deceased who are minors.

16. It is thus my finding that the award was justly made and the faults against the trial court are not merited at all with the consequence that the appeal lacks merit and is dismissed with costs.

**DATED SIGNED AND DELIVERED AT MERU THIS 27<sup>TH</sup> DAY OF JULY 2021**

**PATRICK J.O OTIENO**

**JUDGE**

In presence of

Mr. Gitonga for respondent

Mr. Kariuki for the appellant.

**PATRICK J.O OTIENO**

**JUDGE**