REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL APPEAL NO. 140 OF 2016

JOHN MUCHIRI NJOROGE.....1ST APPELLANT

COMMUTTERTRAIN SHUTTLE TRANSPORT CO.LTD.....2ND APPELLANT

VERSUS

MONICAH ASAMI (Suing as administratix of

the estate of STEPHEN FRANK ODOI-Deceased

and for his .....RESPONDENT

(*Being an appeal from the judgment delivered by Hon. E. K Usui Senior Principal Magistrate*

delivered on the 29/02/2016 in Milimani CMCC 8001 of 2013)

JUDGMENT

1. Monicah Asami in her capacity as administratix of the estate of Stephen Frank Odoi -deceased *(the respondent)* sued John Muchiri Njoroge and Commutertrain shuttle Transport Co. Limited *(the 1st and 2nd appellants)* by filing a plaint in the Milimani Chief Magistrate's court civil suit No. 8001 of 2013 vide a plaint dated 5th November 2013 praying and seeking the following orders:

a. General damages for

i. Pain and suffering.

ii. Loss of expectation of life

iii. Loss of dependency

iv. Lost years.

b. Special damages at Kshs. 423,825/=.

c. Costs and Interests.

2. The appellants filed a joint statement of defence dated 19th May 2015 denying the claim in the plaint. The matter proceeded to full hearing and Judgment was finally entered against the appellants as follows:

Liability 100%

Loss of dependency Kshs. 4,800,000/=

Pain and suffering Kshs. 50,000/=

Loss of expectation of life Kshs. 100,000/=

Special damages Kshs.16, 780/=

Costs and Interests.

3. Aggrieved by the Judgment, the appellants filed this appeal through Mohamed Madhani & Co. Advocates raising the following grounds:

a) *That the learned magistrate erred in law and in fact by finding the appellants 100% liable for the accident subject matter hereof contrary to the evidence on record.*

b) *That the learned magistrate erred in assessing general damages for loss of dependency at Kshs. 765,250/=, pain and suffering at Kshs. 50,000/=, and loss of expectation of life at Kshs. 100,000/= which assessment when viewed against the evidence adduced, is manifestly excessive and inordinately high so as to amount to a miscarriage of justice.*

c) *That the learned magistrate erred in finding that the deceased earned an average income of Kshs. 150,000/= per month, which assessment when viewed against the evidence adduced is manifestly excessive and the same was not specifically proved.*

d) *That the learned magistrate erred in law in holding that the respondent had proved dependency when indeed there was no evidence supporting dependency by the children or the grandchild.*

e) *That the learned magistrate erred in law and in fact in adopting a multiplier of eight years bearing in mind that the deceased was much advanced in age (65 years), which finding is contrary and out of keeping with the evidence and other findings in similar circumstances.*

f) *That the learned magistrate erred in law and in fact in failing to evaluate the evidence in its totality and in failing to take consideration of submissions and authorities submitted by the appellants.*

g) *That the said assessment and award of general damages is out of keeping with other Kenyan awards for comparable /similar fatal claims.*

h) *That the learned magistrate erred in law and in fact by failing to appreciate the provisions of Cap 405.*

i) *That the learned magistrate erred in law and in fact by failing to adhere to the prescribed limits of compensation for motor vehicle accident victims outlined in the schedule to the insurance (Motor Vehicle Third Party Risks Act Cap 405 Laws of Kenya) as required under section 10 of the said Act as read together with section 3 of the insurance (Motor Vehicle Third Party Risks) (Amendment) Act, 2013.*

4. Directions were given that the appeal be canvassed by way of written submissions. Accordingly, the parties complied and filed their respective submissions.

5. A summary of the evidence adduced before the lower court will suffice.

6. The respondent who testified as PW1 stated that on or about the 21st day of April 2012, the deceased was lawfully travelling as a fare paying passenger in the motor vehicle KAY 655Q Isuzu bus when the 1st appellant acting for the 2nd appellant negligently drove, managed or controlled the said motor vehicle causing it to overturn. As a result, the deceased sustained fatal injuries. The respondent who is the deceased's wife sued the appellants. The trial magistrate entered an interlocutory judgment against the appellants, which was set aside but reinstated on application after further default by the appellants.

7. The respondent produced a grant of letters of administration *(exhibit1)* to confirm she had capacity to sue, a police abstract to confirm the accident occurred on the alleged date, the motor vehicle registration number and the deceased who's named as one of the passengers in the said motor vehicle. She also produced a list of documents confirming that the 2nd appellant is the registered owner of the motor vehicle and further produced a supplementary list dated 12/10/15 filed in court on 14/10/2015 for proof of earnings.

8. In their filed defence the appellants denied the respondent's claim and insisted that the said accident was solely contributed to by the negligence of the deceased. They further denied the alleged injuries, loss, damages, particulars of special damages. Besides their filed defence the appellants did not call any witness.

9. The appellants' submissions were filed by K.R.K Advocates and are dated 12th August 2020. Mr. Kuria for the appellants submitted that the memorandum of appeal raises (9) grounds which he condensed into three (3) main grounds as follows:

a) *The learned magistrate erred in finding that the deceased earned an average income of Kshs. 150,000/= per month, which assessment when viewed against the evidence adduced is manifestly excessive and the same was not specifically proved.*

b) *The learned magistrate erred in law in holding that the respondent had proved dependency when indeed there was no evidence supporting dependency by the children or the grandchild.*

c) *The learned magistrate erred in law and in fact by adopting a multiplier of eight (8) years bearing in mind that the deceased was advanced in age (65 years) which finding is contrary and out of keeping with the evidence and other findings in similar circumstances.*

10. Counsel has relied on the case of **Butt v Khan (1977) KAR 1** where Law JA gave guidance on the principle that governs an appellate court in considering a request to review an award of general damages by stating thus:

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

11. In the foregoing, counsel submitted that the trial court erred in law by awarding manifestly excessive damages of Kshs. 4,800,000/= for loss of dependency. That the trial court used the wrong multiplicand and multiplier by stating as follows at page 200 of the record of appeal:

"*The deceased died at 65 years. He was an artist. I was satisfied by the documents produced in court that he worked as such. Some bank statements produced in court indicated that he earned Kshs. 765,250/= that month. No other statements were produced in court. His nature of work is that it never has constant income. Given his lifestyle for example the area where he lived and that he was still paying rent, I find on average he earned Kshs. 150,000/=per month. His children though young when he died are now grown ups. His wife is still alive and testified that she supports a grandchild. I will adopt a dependency ratio of 1/3 as writers and designers are known to carry on with their career until old age. Given the incontigencies of life, I will adopt a period of 8 years as his remaining years of work"*

12. He further submitted that the principles applicable to an assessment of damages under the Fatal Accidents Act (Chapter 32 of Laws of Kenya) are all too clear. On this he relied on the case of **Chunibhai J Patel and Another v PF Hayes and Others (1957) EA 748 ,749** where it was stated:

"*The court should find the age and expectation of the 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 the dependency which must then be capitalized by multiplying by a figure representing so many years' purchase. The multiplier will bear a relation to the expectation of earning life of the deceased and the expectation of life and dependency of widow or children (dependants).... The resulting sum (which must depend upon a number of estimates and imponderables) will be the lump sum the court should apportion among the various dependants."*

13. He relied on the case of ***Beatrice Wangui Thairu v Hon. Ezekiel Barngetuny & another – Nairobi HCCC. No. 1638 of 1988*** (unreported) and was cited with approval in ***Easy Coach Bus Services & Another v Henry Charles Tsuma & another (suing as the administrators and personal representatives of the estate of Josephine Wenyanga Tsuma-deceased) (2019) eKLR)*** where it was held:

"*The court must in the first instance find out the value of the annual dependency. Such value is usually called the multiplicand. In determining the same, the important figure is the net earnings of the deceased. The court should then multiply the multiplicand by a reasonable figure representing so many years purchase. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life of the deceased, the expectation of life and dependency of the dependants and the chances of life of the deceased and dependants. The sum thus arrived at must then be discounted to allow the legitimate considerations such as the fact that the award is being received in a lump sum and would if wisely invested yield returns of an income nature."*

14. Counsel reiterated that statutory deductions must be factored in when computing what is available to the dependants from the deceased. On this he relied on the case of **Simon Kiplimo Murey & 3 others vs Kenya Bus Management Services Limited & 4 Others (2014) eKLR,** where Justice Majanja in addressing the issue of dependency under the Fatal Accidents Act quoted the court of Appeal in ***Jacob Ayiga Maruja & another v Simeone Obayo*** **CA Civil Appeal No. 167 of 2002 [2005] eKLR** which observed as follows;

"*We do not subscribe to the view that the only way to prove the profession of a person must be by production of certificates and that the only way of proving earning is equally the production of documents. That kind of stand would do a lot of injustice to very many Kenyans who are even illiterate, keep no records and yet earn their livelihood in various ways. If documentary evidence is available, that is well and good. But we reject any contention that only documentary evidence can prove these things*".

15. Justice Majanja went on to state as follows"

"*I now turn to the issue of the net income. The learned magistrate correctly pointed out that plaintiff was bound by the pleadings which showed that the deceased's salary was Kshs. 20,000/- although the proved salary was Kshs. 40,000/-. Although the statutory deductions were not disclosed, the court could readily ascertain these from the relevant law. I would estimate that statutory deductions such as income tax, NSSF and NHIF would amount to about one third of the gross salary leaving a net income of about Kshs. 26,000/- less a reasonable sum the deceased would spend on himself. The appellant, in the pleadings and submissions, accepted that the amount pleaded and proved is Kshs. 20,000/- and the same should have been awarded as the net income. I therefore find and hold that the multiplicand is Kshs. 20,000.00."*

16. Learned counsel submitted that it was crucial to establish the net earnings of the deceased at the trial stage, which the respondent failed to do. Only account statements that demonstrated he earned an income of Kshs. 765,250/= were availed. He further submitted that the trial magistrate used a multiplicand of Kshs. 150,000/= which was too high for the six month account statements and ought to have been placed at

a figure of Kshs. 80,000/= which is a fair estimate of the income earned by the deceased.

17. On the issue of the multiplier counsel argued that the figure of 8 years old applied by the court was on the higher side as the deceased was 65 years old at the time of death. Despite the difficulty faced by the courts in arriving at a multiplier she suggested a multiplier of 2 years. He referred to the following cases for comparison:

> **(i)** In **Mboi Gathua Kaburo vs John Waruthi Mwangi 1990-(**unreported**)** a multiplier of 6 years was adopted for a deceased who was 63 years old.
>
> **(ii)** In **David Bore vs Johnson Masika (1998) eKLR** a multiplier of 5 years was adopted for a deceased who was 62 years old.
>
> **(iii)** In **Hardev Kaur Dhanoa v Multiple Hauliers (E.A) Ltd (2013) eKLR** a multiplier of 6 years was adopted for a deceased who was 62 years old.

18. She therefore urged the court in the light of the difficulties posed by assessment of damages to consider awarding a lump sum award. On this she relied on the case of **Mwanzia v Ngalali Mutua Kenya Bus Limited** quoted with approval in **Albert Odawa v Gichumu Githenji Nku HCCA No. 15 of 2003 (2007) eKLR** Justice Ringera (as he then was) was of the following view

> *"The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are known or are knowable without undue speculation; where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do."*

She therefore suggested a sum of ksh 1,000,000/= for loss of dependency.

19. On the second issue of dependency counsel submitted that the respondent failed to prove dependency. He contended that grandchildren do not fall within the definition of who a dependant is. On this he cited section 4 of the Fatal Accidents Act (Chapter 32 of Law of Kenya) provides that:

> *"Every action brought by virtue of the provisions of this Act shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused..."*

20. He further submitted that the children of the deceased were grown up and were married except one who was in school and that the respondent did not produce receipts for payment of school fees or any other requirements.

21. The respondent's submissions are dated 27th July 2020. Her counsel Mr. Kaburu for the respondent submitted that the ground of liability in the appeal is misconceived because the interlocutory judgment entered against them was set aside but reinstated and as such the judgment settled the issue of liability. He further submitted that the deceased was a passenger in the appellants' vehicle and that the defence did not adduce any evidence of any negligence on the part of the deceased. Further, their counsel told the court that they were not disputing liability. He urges this court to dismiss that ground.

22. On the ground of assessment of damages counsel submitted that the awards were within the level of awards made under the two heads and the court arrived at them after noting that the deceased died on the spot and had been of good health. On this he relied on the case of **Kemfro Africa Ltd t/a Meru Express Service & Another v A.M Lubia & another (1982-88)1 KAR 727,** where it was stated:

> *"The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that wither that the Judge in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage."*

23. He further relied on the following authorities;

> ***a)*** *Simon Muchemi Atako v Gordon Osore [2013] eKLR.*
>
> ***b)*** *Sosines Orindo v Emkay Builders Ltd (2019) eKLR*
>
> ***c)*** *H. West & Son Limited v Shepherd (1964) AC 326 at 353*
>
> ***d)*** *Joseph Gachuhi Muthanji v Mary Wambui Njuguna (2014) eKLR citing Mrao Limited v First American Bank of Kenya Ltd & 2 Others (2003) KLR 125*

24. On the issue of loss of dependency counsel submitted that the trial court took into account relevant factors and relied on facts supported by evidence both oral and documentary. He further submitted that oral evidence is not of a lesser probative value and neither is documentary evidence superior to oral evidence. On this he cited Section 62 of the Evidence Act Chapter 80 Laws of Kenya which provides that: -

"All facts, except contents of documents, may be proved by oral evidence"

25. He submitted that the respondent told the court how much had been spent on electricity, water and fees since she knew those facts and gave direct evidence which was not controverted. He argued that the record of appeal did not have all the bank statements and invited the court to look at exhibits from the original file. He relied on the case of **Kimatu Mbuvi v Augustine Munyao (2006) eKLR** where the Court of Appeal warned about overreliance on documentary evidence as the only means of proof of profession, or income of a person.

26. He contended that the bank statements produced showed that between November 2011 to June 2012, the deceased's account had total credits of Kshs. 1,121,099/= and debits of Kshs. 1,327,118/= making an average of Kshs. 140,137 (credits) and Kshs.165,889/= debits. He therefore submitted that the figure of Kshs. 150,000/= adopted by the trial court was reasonable but on the lower side and he urges the court not to disturb it as no error of exercise of discretion has been demonstrated.

27. On ground 4 of the appeal, counsel submitted that at the trial court they applied a multiplier of 1/3 yet in the appeal it is alleged there was no proof of dependency. Counsel argues that the choice of a multiplier is in the court's discretion as it also depends on the circumstances of the case. On this he relied on the case of **Kenya Horticultural Exporters Limited v Julius Munguti Maweu (2010) eKLR.** He therefore urges the court to dismiss the appeal against the award for loss of dependency as it was on the lower side. He cited the case of **Rahab Wanjiku Gitonga v Almas Njoroge & another Nakuru HCCC No. 59 of 1997** where the court used a multiplier of 8 years for a deceased farmer who was aged 64 years.

28. Counsel urges the court to dismiss grounds 8 and 9 which are an afterthought and meant to abuse the court process. The same he argues were not raised in the pleadings or submissions.

Analysis and Determination

29. This being a first appeal this court has a duty to re-examine and re-consider the evidence on record and arrive at its own conclusion. See the case of**:**

(i) Abok James Odero t/a A. J. Odera & Associates v John Patrick Machira t/a Machira & Co. advocates [2013] eKLR (ii) Gitobu Imanyara & 2 others v A. G. [2016] eKLR.

30. Having considered the grounds of appeal, evidence on record and both submissions and authorities cited, I find the issues falling for determination to be as follows:

i) whether the appellants were 100% liable for the accident.

ii) Whether the award of damages was excessive as claimed.

31. On the first issue there is not much on record. The appellants did not enter appearance nor file defence on time. An interlocutory Judgment was entered on 21st July 2014. The same was set aside on 23rd January 2015 with certain conditions which were not complied with by the appellants. The interlocutory Judgment was then reinstated. On 24th August 2015 when the matter came for hearing counsel for the appellants (Miss Kimunya) was not ready to proceed.

32. The record for 25th August 2015 shows this:

Hearing at 12.30 P.m

At 12.45 P.M

Coram as earlier (sic)

Mr. Kaburu for the plaintiff

Mrs. Kimunya for the defendant

Mrs. Kimunya

Mr. Kaburu did not receive our defence on protest. I am aware he would do away with the interlocutory Judgment. Defence was filed late. I was on leave. Someone was handling my files. I ask court to admit the defence as duly filed. The special damages are on the high side

Mr. Kaburu

When she agrees on liability then I will agree.

Mrs. Kimunya

We are not disputing liability.

Mr Kaburu

I got Judgment. They conceded. We set aside Judgment. They defaulted. We obtained Judgment again. Hearing notice was served in April. Nothing was done about it.

Court

Given the record, there is no good reason to adjourn the matter. The defendant has been put to ensure that justice is done. The matter is adjourned to enable the defendant organize her case.

Hearing on 4/11/2015.

Hon. E.K Usui

S.P.M

24/8/2015

33. In the Judgment at page 199-200 of the record of appeal the learned trial magistrate states thus:

> *"I am satisfied that the plaintiff has a valid claim against the defendant. Interlocutory Judgment has been obtained against the defendants. The deceased was a passenger. I find the defendant is to blame and find it 100% liability." (sic)*

34. After entry of the interlocutory Judgment and after counsel for the appellants telling the court that they were not disputing liability the appellants can't turn around to dispute the same. I therefore find no merit in ground no.1 of the appeal.

35. I now move to the second issue which is on the award of damages. Awarding damages is largely an exercise of judicial discretion and the instances that would make an appellate court interfere with that discretion are well established. In **Butt –vs Khan (1977)1KAR** as cited at paragraph 10 of this Judgment.

36. The trial court awarded Kshs. 100,000/= for Loss of Expectation of Life and Kshs. 50,000/=for Pain suffering both under the Law Reform Act. It was pleaded that the deceased died on the spot. The evidence of PW1 was that she decided to visit the scene of accident on the material day, where she saw two bodies but did not want to check on them. She remained in denial, checking on medical facilities for her husband. The next day it was confirmed that the deceased was one of those who had died on the spot. The death certificate shows the date of death as 21st of April 2012 which is the same day of the accident.

37. In the case of **Sukari Industries Limited V Clyde Machimbo Juma Homa Bay HCCA NO. 68 of 2015 [2016] EKLR** the deceased died immediately after *the accident and the trial court awarded Kshs. 50,000/= for pain and suffering, on appeal Majanja J. held that:*

> *"[5] On the first issue, I hold that it is natural that any person who suffers injury as a result of an accident will suffer some form of pain. The pain may be brief and fleeting but it is nevertheless pain for which the deceased's estate is entitled to compensation. The generally accepted principle is that nominal damages will be awarded on this head for death occurring immediately after the accident. Higher damages will be awarded if the pain and suffering is prolonged before death. According to various decisions of the High Court, the sums have ranged from Kshs 10,000 to Kshs 100,000 over the last 20 years hence I cannot say that that the sum of Kshs 50,000 awarded under this head is unreasonable."*

In my view the award of Kshs. 50,000/= for pain and suffering is not manifestly excessive in the instant case and is in line with awards given in similar cases.

38. The trial court awarded Ksh. 100,000/= for loss of expectation of life. In the case of **Mercy Muriuki & Another –Vs- Samuel Mwangi Nduati & Another (Suing as the legal Administrator of the Estate of the late Robert Mwangi) (2019) eKLR** the Court observed that: -

> *"The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs. 100,000/- while for pain and suffering the awards range from Kshs. 10,000/= to Kshs. 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death."*

The appellants have not shown any thing so outrageous about the award of ksh. 100,000/= for loss of expectation of life and I will therefore not interfere with the said award.

39. The deceased was a 65 year old artist. The trial court was satisfied by the documents produced in court that he worked as such. It was indicated that the nature of his work was such that it did not have constant income and he had commitments which he fulfilled. I have keenly considered the arguments for and against the use of the multiplier and indeed superior courts are split on the appropriateness of the multiplier approach in such cases and as such, the lower court cannot be faulted for choosing one over the other as long as its justified.

40. In this particular case, the trial court adopted a dependency ratio of 1/3 given that writers and designers are known to carry on with their career until old age and the deceased had a wife and children. The court also adopted a multiplier of 8 years. There is no dispute that the deceased was survived by a widow who is a direct dependent under the Fatal Accidents Act. The grand child would obviously benefit through the grandmother since no evidence was laid to show why she was taking care of the child yet his mother was alive. Her contribution

to the upkeep of the child was not stated.

41. On the issue of the multiplier, I have considered the cited authorities alongside the following:

a) In **Alice Mboga v Samuel Kiburi Njoroge Nakuru HCCC No.357 of 1999** the deceased was aged 53 years. He was a printing technician at Egerton University. The court used a multiplier of 10 years holding that "he would have been required to retire in two years' time. But the nature of his work is such that he would have worked for private firms past 65 years."

b) In **Stephen Onsumu Kibagae –vs-Rebeka Mwango Simion & Anor [2014] eKLR,** a multiplier of 9 years was upheld on appeal, for a deceased who was 57 years old.

c) In **Sokoro Plywood Limited & Another –vs- Njenga Wainaina (2007) eKLR**, the High Court, while sitting on appeal, upheld the decision of the lower court to adopt a multiplier of 10 years in a case where the deceased was 60 years old.

42. Alongside the age of the deceased I have also taken into account life's other vicissitudes not restricted to ill health that could cut short one's working life. For such vicissitudes I would adopt a multiplier of five (5) years. I find no reason to make me interfere with the dependency ratio of 1/3.

43. On the issue of the average income, the appellants were of the opinion that the sum of Kshs.150, 000/= was on the higher side. This is because the evidence adduced by the respondents on bank statements was not sufficient. They were of the opinion that the average income should have been kshs. 80,000/=.

44. The respondent on the other hand, is of the opinion that the figure of Kshs. 150,000/= adopted by the trial court was reasonable but on the lower side and urges the court not to interfere with it. She testified that the deceased was entirely responsible for family provisions.

45. I have perused the original record and the record of appeal at pages 127– 136 (at the bottom) which are the deceased's statements of account from standard chartered bank from 1st November 2011 – 30th June 2012. The credits in the said account are well captured by the appellants' counsel at paragraph 15 of his written submissions as follows:

a) In November 2011, the credit in the deceased account was Ksh. 31,500/=

b) In December 2011, the credit in the deceased account was Ksh. 402,589.55

c) In January 2012, the deceased account was credited with Ksh. 45,000/=

d) In February 2012, there were no credits in the deceased account

e) In March 2012, the credits in the deceased account were ksh 138,910

f) In April 2012, the deceased account was credited with Ksh. 221,400 and

g) In May 2012, the deceased account was credited with Kshs. 101,250/=

46. Other than the above I have not seen any statement showing that he earned Kshs 765,250/= in the month of his demise as stated by the learned trial Magistrate. The Hon. Magistrate rightly found that the deceased's nature of work never had a constant income. She then found that on average he earned Ksh. 150,000/= which she used as the multiplicand.

47. Considering the above I am of the view that there was not sufficient material placed before the court for it to fully determine the deceased's monthly earnings. A monthly average of the credits comes to about Ksh. 134,000/= for 7 months. A wider period would have placed the court in a better position to determine the deceased's monthly earnings. I am sure the Bank would have availed that if it had been requested to. After balancing all the above I adopt a multiplicand of Kshs. 120,000/= which works out as follows: 120,000 x 12 x 5 x 1/3 = 2,400,000/=

48. The award should therefore work out as follows;

Pain & suffering.....Kshs . 50,000/=

Loss of expectation of life.....Kshs. 100,000/=

Loss of dependency.....Kshs. 2,400,000/=

Special damages.....Kshs. 16,780/=

Total.....Kshs. 2,566,780/=

49. I set aside the judgment by the lower court and substitute it with one in favour of the appellant in the sum of Kshs. 2,566,780/= (Kenya

shillings two million, five hundred and sixty six, seven hundred and eighty only) plus costs and interest.

Orders accordingly.

DELIVERED ONLINE, SIGNED AND DATED THIS 23RD DAY OF SEPTEMBER, 2021 NAIROBI.

H. I. ONG'UDI

JUDGE