



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CIVIL APPEAL NO. 77 OF 2018**

*(An appeal arising from the judgment and decree of the Hon. F. Makoyo,*

*Senior Resident Magistrate (SRM), in Butere SRMCCC No. 182 of 2013 of 3<sup>rd</sup> May 2018)*

**ABDULKARIM WAMBIA (suing as a legal representative of the Estate of the late**

**MOHAMMED MURENJI.....APPELLANT**

**VERSUS**

**IMA HAULIERS LIMITED.....RESPONDENT**

**JUDGMENT**

1. The suit at the trial court was initiated by the appellant herein against the respondent, for general and special damages, arising from a motor traffic accident involving a deceased pedestrian and a motor vehicle owned and controlled by the respondent. The respondent entered appearance, and filed a defence, in which it denied liability and attributed negligence on the deceased pedestrian.

2. The trial court heard three witnesses from the appellant and one from the respondent. In the end, the court found the respondent 100% liable for the accident. Compensation was awarded as follows:

Loss of expectation of life - Kshs. 100, 000.00

Loss of dependency - Kshs. 1, 282, 560.00

Pain and suffering - Kshs. 30, 000.00 and

Special damages - Kshs. 43, 200.00

3. The appeal herein turns on only one issue, the multiplicand of Kshs. 4, 577.00, which the appellant argues is contrary to the evidence. The sum of Kshs. 4, 577.00, according to the court, was the minimum wage of the deceased as at the date of his death. The evidence presented at the trial was that the deceased was a *boda boda* operator and a businessman. His income was placed at Kshs. 20, 000.00. No proof was presented on his earnings. It is not altogether clear where the trial court got the figure of Kshs. 4, 577.00. It would appear to be what the respondent proposed it in its written submissions, but I have not seen any basis laid for it. It would appear to be the minimum wage under the Ministry of Labour Regulation. In his written submissions, the appellant argues that the correct figure, under the 2012 Labour Regulations, should have been Kshs. 7, 915.00, for Kakamega municipality, and not Kshs. 4, 577.00, which, according to the appellant, covers other areas.

4. The appellant has not placed the 2012 Labour Regulations that he talks about to guide me in the matter. It is he who alleges, and the burden is on him to prove. It should not be the responsibility of the court to look for that material. Secondly, there is no proof that the accident happened within Kakamega municipality, for the municipality rates to apply. No evidence was led to the effect that the deceased was a resident of Kakamega municipality, or operated within the municipality.

5. Overall, no material has been placed before me, which points to there being any merit in the appeal. The same is for dismissal, and I hereby dismiss the same, with costs.

**DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF OCTOBER, 2021**

**W. MUSYOKA**

**JUDGE**