



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 322 OF 2009

ELIZABETH WANJIKU MUHARI.....1ST PLAINTIFF

PATRICK MURANGI MAINA.....2ND PLAINTIFF

-VERSUS-

HON. ATTORNEY GENERAL.....DEFENDANT

JUDGMENT

1. Elizabeth Wanjiku Muhari and Patrick Murangi Maina being the 1st and the 2nd Plaintiff's respectively, filed this compensatory suit against the Attorney, the Defendant herein, for the fatal injuries, Charles Muiga Maina, deceased suffered when he was knocked down along Thika Highway near Juja weighbridge by motor vehicle Registration No. GKA 454H while lawfully walking as a pedestrian along the same road.
2. It is said that the aforesaid motor vehicle was government owned and was being driven by one Simon Korir, the Defendant's authorized driver. When the suit came up for hearing, the Plaintiff suit was supported by the evidence of three witnesses while the Defendant and his witnesses did not attend court for hearing hence the Defendant's case was closed for lack of evidence.
3. Elizabeth Wanjiku Muhari (PW1) adopted the contents of her written witness statement as her evidence in chief. She told this court that she was the deceased's widow and that their marriage was blessed with three children namely: Gladys Mukuhi Muiga, Irene Njoki Muiga and Nancy Ndibo Muiga.
4. PW1 stated that the deceased was a teacher working with Teachers Service commission earning a monthly salary of ksh. 50,049. She produced in evidence as an exhibit the deceased's pay slip for the month of May, 2008.
5. The second witness to testify is Patrick Murangi Maina (PW2). He stated that he jointly with PW1 obtained a grant of letters of administration in respect of the estate of his father, the late Charles Muiga Maina who passed away at the age of 45 years.
6. PW2 also confirmed that the deceased worked at P.C Kinyanjui Technical Institute earning a monthly salary of Ksh 50,049/=. He said that the deceased's widow and children financially depended on the deceased and therefore they suffered loss when the deceased passed on as a result of the accident.
7. Willie Kabue Kanonga (PW3) appeared before this court and testified stating that on 28th July 2018 while on his way to Thika he witnessed the accident that involved the deceased and motor vehicle registration No. GKA 454H Toyota Land Cruiser near Juja weighbridge . PW3 claimed that the aforesaid motor vehicle was being driven at a very high speed and was coming from the direction of Thika town.
8. PW3 further stated that he saw the deceased whom he recognized as Mwalimu standing off the main road at a place where motor vehicles would make U turns to go towards Thika town. He said that he saw the G.K vehicle change lanes fast near where the pedestrian crossing was and in an attempt to make a U- turn it knocked down the pedestrian and the motor vehicle stopped about 3 meters ahead.
9. PW3 also stated that the pedestrian on being hit, fell down and became unconscious. PW3 further said that the. G.K vehicle took the injured person to hospital.
10. Two issues arose for determination. **First**, is on **liability** while the **second** issue is on **quantum**. On the first issue, the evidence of the eye witness namely; Willie Kabue Kanonga (PW3) is not controverted. He said he saw motor vehicle registration No GKA 454H, Toyota Land cruiser driven at a very high speed. He also said that he witnessed the aforesaid motor vehicle take a U- turn without giving indication

and in the process knocking down a pedestrian.

11. I am satisfied that the Plaintiffs have, on a balance of Probabilities proved that the driver of motor vehicle registration No GKA 454 H is solely to blame for the accident.

12. On quantum, the Plaintiff produced receipts showing that they spent a sum of ksh. 34,660/= on the deceased's funeral. However, the amount pleaded in the amended plaint dated 6th November 2019 is a sum of Ksh. 41,600. I will award a sum of Ksh 34,660 being the amount specifically pleaded and proved as special damages.

13. The second claim is in respect of claims under the Fatal Accidents Act and the Law Reforms Act. The Plaintiffs asked this court to award them a sum of ksh 100,000/= for loss of expectation for life and ksh. 100,000/= for pain and suffering. This court in the authorities cited has previously awarded a sum of ksh. 100,000/= for loss of expectation of life. I award the Plaintiffs Ksh. 100,000/= on this head.

14. In respect of pain and suffering, it is apparent from the death certificate that the deceased passed away on the same day. I award the Plaintiffs a sum of ksh. 30,000/= for pain and suffering.

15. The final claim by the Plaintiffs is a sum of ksh. 8,007,840 on loss of dependency. The Plaintiffs proposed a multiplier of 20 years and a ratio of 2/3 of the monthly pay of ksh. 50,049/= i.e $50,049 \times 12 \times 20 \times 2/3 = 8,007,840/=$.

16. I have considered the evidence tendered by the Plaintiffs. It is not in dispute that the deceased was aged 45 years when he passed on. He would have therefore worked up to the age of 60 years things remaining constant. I find a multiplier of 15 years to be appropriate.

17. The pay slip presented to this court show that the deceased earned a gross monthly salary of ksh. 50,049/=. However, the aforesaid figure is shown to attract statutory deductions of ksh. 9,777/10 as follows:

KNUT.....KSH 510/=,
PAYE.....KSH 8,947/10
NHIF KSH 320/=.
TOTAL.....KSH. 40,271/90

The net salary income therefore would be

Ksh 50,049 – 9,777/10 = 40,271/90.

18. I think the appropriate dependency ratio in the circumstances of this case should be 2/3. I therefore award the Plaintiffs a sum of ksh. 4,832,628/= tabulated as follows:

$40,271/90 \times 12 \times 15 \times 2/3 = 4,832,628/=$

19. In the end, Judgment is entered in favour of the plaintiffs and against the defendant as follows.

i) Special damages.....34,660/=

ii) General damages

a) Pain & Suffering.....ksh. 100,000/=

b) Loss of life expectancy.....ksh 100,000/=

c) Loss of Dependency.....ksh. 4,832,628/=

Net total.....Ksh. 4,997,288/=

iii) The aforesaid amount to attract interest at court rates from the date of Judgment until the date of full payment.

iv) Costs of this suit is given to the Plaintiffs.

Dated, Signed and Delivered at Nairobi this 28th day of February, 2020.

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J.K. SERGON

JUDGE

In the presence of:

.....for the 1st Plaintiff

.....for the 2nd Plaintiff

.....for the Defendant