**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CIVIL APPEAL NO. 133 OF 2017**

**1. SAMUEL NYORO.................................................................................................1ST APPELLANT**

**2. HARRISON RUGATI MUGO............................................................................2ND APPELLANT**

**VERSUS**

**JOYCE WANJIKU KAMAU & MILICENT NJERI THUO**

**(Suing as the Legal Representatives of the estate of Kamau Muturi (Deceased).....RESPONDENTS**

**{Being an appeal against the Ruling of Hon. S. K. Arome (Mr.) – RM Kiambu**

**dated and delivered on the 27th day of July 2017 in the original Kiambu**

**Chief Magistrate's Court Civil Case No. 360 of 2016}**

**JUDGEMENT**

This appeal challenges the quantum of damages awarded to the respondent for loss of dependancy under the Fatal Accidents Act. Liability was agreed by the parties in the ration 80%:20% in favour of the respondents. The appeal does not contest the awards made under the Law Reform Act. The appeal is premised on grounds that: -

> **"1. The Learned trial Magistrate misdirected himself in both law and fact in awarding manifestly excessive and undeserved general damages under the Fatal Accidents Act of Kshs. 600,000/=;**
>
> **2. The Learned Trial Magistrate erred in fact in failing to analyse and apply the law to the evidence before him leading to adoption of a higher global award resulting to an excessive award of Kshs. 600,000/=.**
>
> **3. The Learned Magistrate erred in fact and in law in his judgment by making his own assumptions, suppositions and conjecture thereby finding that the Plaintiffs were entitled to the excessive general damages hence arriving at a decision based on wrong premises;**
>
> **4. The Learned Magistrate erred in fact and in law in failing to consider the Defendants' submissions and more specifically on the quantum by completely disregarding them thereby exempting himself from arriving at a decision based on merit;**
>
> **5. The Learned Magistrate erred in fact and law in finding that the Respondent was entitled to a global sum that was too high in view of the age of the deceased."**

The gravamen of the appeal as can be discerned from the grounds and the submissions of Counsel for the appellant is that the respondent was not entitled to damages for loss of dependency as the deceased was 78 years old. Counsel submitted that given the age of the deceased the appellant should have but did not prove dependency.

Being a first appellate court I have, as I am entitled to do, re-considered and evaluated the evidence in the trial court so as to arrive at my own independent conclusion while keeping in mind that I did not see or hear the witnesses ***(see Kamau v Mungai & another [2006] 1 KLR 150).***

Before I get into the merits of the appeal however I should first deal with the issue raised by Counsel for the respondent regarding the competency of this appeal. It is Counsel's contention that this court has no jurisdiction to entertain this appeal because the decree or order appealed from was not included in the Record of Appeal. Counsel for the appellant did not file a response on this issue. Be that as it may my finding is that the appellant having included the judgement appealed from sufficiently complied with **Order 42 Rule 13 (4) (f) of the Civil Procedure Rules** hence the appeal is competent and is properly before this court.

On the merits of the appeal, while the principle is that for one to benefit from an award where the deceased was advanced in age, as in this case, one needed to prove dependancy, the circumstances of this case are distinguishable. In the case of **Livingstone Mwambugu Mwakhungo & another v Sarah Anyango Jaoko [2016] eKLR, Gerald Mbale Mwea v Kariko Kihara & another [1997] eKLR** and **John Wamae & 2 others v Jane Kitutu Nziva & another [2017] eKLR** where the courts set aside the awards of the lower courts on the ground that loss of dependancy was not proved the beneficiaries were all adult children with their own sources of income. In the case giving rise to this appeal the award was made to among others the wife of the deceased (the respondent). It is not unreasonable to expect that even at 78 years the deceased would still have been fending for his wife more so given that he was a driver. The award made under the **Fatal Accidents Act** goes to the benefit of a parent, spouse or children but does not extend to the grandchildren and as the children of the deceased did not prove dependancy they cannot benefit from the award either directly or through their children. The award is therefore for the benefit of the wife (widow) of the deceased solely. As for the quantum itself I find that the trial Magistrate was guided by a correct principle which was that of a global award as opposed to the multiplier/multiplicand method, and as the quantum itself is reasonable and not inordinately excessive I would have no justification to interfere with it. In the upshot I find the appeal has no merit and dismiss it with costs to the respondent. It is so ordered.

**Signed and dated in Nyamira this 16th day of December 2020.**

**E. N. MAINA**

**JUDGE**

**Judgement dated and delivered in Kiambu Electronically via Microsoft Teams on this 18th day of December 2020.**

**MARY KASANGO**

**JUDGE**