



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 316 OF 2014

VICTOR HOSEA LETTING (Suing as an administrator

Of the SYLVIA JEPCHIRCHIR - Deceased).....PLAINTIFF

V E R S U S

ANWARALI & BROTHERS LIMITED.....1ST DEFENDANT

GEORGE OCHIENG ONYANGO2ND DEFENDANT

JUDGEMENT

1) Victor Hosea Letting in his capacity as the legal representative of the estate of Sylvia Jepchirchir deceased, filed this suit to recover damages from Anwaralli & Brothers Ltd and George Ochieng Onyango being the 1st and 2nd defendants respectively for the fatal injuries the deceased sustained when the defendant's truck registration no. KAT 946Y ZD 0863 hit motor vehicle registration no. KAL 049L in which the deceased was a passenger.

2) When this suit came up for hearing, learned counsels recorded a consent on liability in which the defendants agreed to shoulder 80% liability while the plaintiff agreed to shoulder 20% liability. The suit therefore proceeded to hearing on quantum of damages.

3) The plaintiff (PW1) was the only witness who testified in this suit. PW1 told this court that the late Sylvia Jepchirchir was his wife at the time of her death. PW1 also stated that the deceased was an army officer based at Thika, 12 Engineers Headquarters Squadron and had worked for 4 years at the time of her death.

4) It is said that she was in good health and diligently carried out her duties as an army officer.

5) In his oral evidence and written statement PW1 averred that the deceased was a lawful passenger in motor vehicle registration no. KAL 049L and that on 3.6.2012 at a place called Kwa Maji, the aforesaid motor vehicle was crashed by truck registration no. KAT 946Y ZD 0863.

6) PW1 stated that the driver of the aforesaid truck pleaded guilty to a charge of careless driving. The deceased is said to have sustained severe injuries from which she died 6 weeks after the accident.

7) The plaintiff testified and produced in evidence as an exhibit a medical report indicating that the deceased suffered severe traumatic brain injury with hypoxic cerebral injury and that she succumbed to those injuries thus passing away on 18.7.2012.

8) It is the evidence of PW1 that the deceased was aged 27 years at the time of her death and that her monthly salary was ksh.41,837/= and was paying taxes amounting to ksh.2,592/= leaving a net figure of ksh.39,245/=. The plaintiff said that the deceased used to support him financially. At the close of evidence learned counsels appearing in this matter were invited to file submissions.

9) In the plaint, the plaintiff sought for remedies under both the Law Reform Act and the Fatal Accidents Act as follows:

i. General damages for pain and suffering

ii. General damages for loss of expectation of life.

iii. General damages for loss of dependency

iv. Special damages of ksh.339,695/=

v. *Costs of the suit*

vi. *Interest at court rates*

10) The parties to this dispute agreed to fix special damages at ksh.209,695/=. On general damages for pain and suffering, the plaintiff urged this court to award him a sum of ksh.250,000/= arguing that the deceased suffered extreme pain for six weeks before passing on. The plaintiff cited the case of **Benedeta Wanjiku Kimani =vs= Changwon Cheboi (2013) eKLR** in which this court awarded ksh.200,000/= where the victim died after four months. The defendants on the other hand proposed a figure of ksh.100,000/=. The defendants cited the case of **James Mutuma Kiriimi =vs= P.C.E.A Kikuyu Hospital & Another (2017) eKLR** where this court awarded ksh.200,000/= for a victim who died 3½ months after an operation.

11) It is not in dispute that the deceased sustained serious injuries as a result of the accident which confined her to Intensive Care Unit (ICU) the deceased passed away six weeks after the accident. I agree that the deceased suffered great pain. In the authorities cited by both the plaintiff and the defendants, the victim passed away about 3 to 4 months after the accident and or operation. In the case before this court the deceased died after 1½ Months. She endured great pain for a shorter time. Consequently I think a sum of ksh.150,000/= is reasonable.

12) On the claim for general damages for loss of expectation of life, the plaintiff urged this court to award the estate ksh.200,000/=. The plaintiff cited the case of **P. K. K. =vs= George Omondi & 2 others (2016) eKLR** and that of **Violet Jeptum Rahedi =vs= Albert Kubai Mbogori (2013) eKLR** where in both cases this court awarded ksh.150,000/=.

The defendant cited the case of **Marwanga Jeffern =vs= Jeckton Ochieng and Another (2015) eKLR** where this court awarded ksh.100,000/=.

13) Having considered the rival arguments and the authorities cited, it should be noted the deceased passed away at a very young age. In the circumstances, there was true expectation of life which was lost and cut short by the accident. I think a fair award in this case is a sum of ksh.150,000/= which I make.

14) On loss of dependency, the plaintiff proposed a dependency ratio of ½ arguing that the same is reasonable. The plaintiff further proposed a multiplier of 35 years. In the end, the plaintiff sought to be paid ksh.8,241,450/= which is tabulated as follows:

$$39,245 \times 12 \times 35 \times \frac{1}{2} = 8,241,450/=$$

15) The plaintiff relied on the case of **Wilson Nyamai Naeto & Another =vs= China Wuyi Ltd & Another (2017) eKLR** where this court adopted a multiplier of 27 years for a deceased who was aged 30 years.

16) The defendants on the other hand proposed that the dependency ratio be 1/3 since the deceased spent most of her earnings on her personal expenses. The defendant cited the authority of **The Independent Assessor =vs= Michael O'brien Vincent Hickey and Another (2004) ewca civ 2035** in which it was held that the modern practice was to deduct a percentage from the net income figure to represent what the deceased would have spent exclusively on himself.

17) The conventional figure of a married couple was said to be 33% and 25% where there were children. The defendants proposed a multiplier of 15 years to be fair and reasonable in view of the uncertainties and contingencies of life.

18) Having considered the rival arguments, I have come to the conclusion that a fair multiplier is 33 years. It is not in dispute that the deceased was aged 27 years and all things remaining constant she would have retired at the age of 60 years.

19) It is apparent that the deceased was married but died without children. It is not in dispute that she supported the plaintiff. I agree with the defendants' suggestion that being a young person and without children she would spend more of her earnings on herself. I think a reasonable dependency ratio is 1/3. In the end I award the plaintiff ksh.5,180,340/= tabulated as follows $39,245 \times 12 \times 33 \times \frac{1}{3} = 5,180,340/=$

20) The plaintiff has also prayed to be granted costs and interest at court rates. Being a successful litigant, I award the plaintiff costs. I am also satisfied that the awards should attract interest from the date of judgement until full settlement of the claim.

21) In the end, judgment is entered in favour of the plaintiff and against the defendants as follows:

i. General damages for pain & Suffering	ksh. 150,000/=
ii. General damages for loss of expectation of Life	ksh. 150,000/=
iii. General damages for loss of dependency	ksh.5,180,340/=
iv. Special damages	<u>ksh. 209,695/=</u>
Gross total	<u>ksh.5,690,035/=</u>
Less 20% contribution	<u>ksh.1,138,007/=</u>

Net total

ksh.4,552,028/=

v. Costs of this suit.

vi. Interest on (i) – (iv) at court rates from the date of judgment until full settlement.

Dated, Signed and Delivered in open court this 28th day of February, 2019.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant