REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL DIVISION

CIVIL APPEAL NO. 55 OF 2018

BETWEEN

SEREMO KORIR..1ST APPELLANT

STEPHEN KIRIANKI NKANYAANA...2ND APPELLANT

AND

SS (suing as the legal representative of the estate ofMS,deceased)......RESPONDENT

(*Being an appeal from the Judgment and Decree of Hon. Wechuli P, Senior Resident Magistrate in Tigania Civil Case Number 99 of 2012 read and delivered on 13.7.2017*)

JUDGMENT

The Appeal

1. The appellants, having been dissatisfied with the decision of the trial court aforementioned lodged this appeal on 14.6.2018 seeking orders that the appeal herein be allowed with costs and that this court sets aside the lower court's decision and replace the same with a reasonable assessment of damages. The appellants relied on the following grounds set out in the Memorandum of Appeal dated 4.6.2018 THAT:-

> *The learned senior resident magistrate erred in law and fact in making an award of general damages that was excessively high that there must be an erroneous estimate of the damages payable to the Respondent herein*

> *The learned senior resident magistrate erred in law and fact and/or misapprehended the law in arriving at an award of Kshs. 1,680,000/- under the head for loss of dependency and which amount was excessively high in the circumstances of the case.*

> *The learned senior resident magistrate misdirected himself into using wrong principles in arriving at a multiplicand of Kshs. 1,200/- as the deceased's monthly income and which amount was based on no pleading and no evidence hence engaging in pure guess work and speculative calculations which are not aided by evidence or the law*

> *The learned senior resident magistrate further misdirected himself into using wrong principles in arriving at a multiplier of 35 years and which whole process of assessment was without basis*

> *The learned senior resident magistrate erred in law and fact in failing to consider the submissions made by the appellants on the issue of quantum and legal authorities provided thereof*

> *The learned senior resident magistrate misdirected himself into applying the multiplier method in the assessment and award of general damages for a minor child and in making an award that is obviously against the weight of the evidence tendered during trial.*

> *The learned senior resident magistrate erred in law and fact in failing to apply and follow the principle ratio of decidendi and stare decis thus ignoring the established principles of law applicable in assessment of damages payable to an estate where the deceased was a minor*

> *The learned senior resident magistrate totally misdirected himself into applying unknown and/or wrong principles of law in arriving at his said decision on the multiplicand and on the multiplier and which influenced him into arriving at an erroneous and*

unreasonably high award under the head for loss of dependency

The learned senior resident magistrate erred in law and fact in failing to take into account the award made under the Law Reform Act while making the award under the Fatal Accidents Act as the beneficiary under both Acts were one and the same person.

Respondent's Case

2. The respondent had filed the instant case in the lower court seeking general and special damages together with costs, arising out of a road traffic accident that occurred on the 02.05.2011 involving the deceased, who was cycling off Meru-Maua road near calabash hotel; and *Toyota* Saloon, motor vehicle registration number KBK 524C which was owned by the 1st appellant and was being driven by the 2nd appellant on the material day. The respondent claimed that the accident occurred along Meru-Maua road , where the 2nd appellant so carelessly drove, the said *Toyota* saloon, motor vehicle registration number KBK 524C that it fatally knocked down the deceased.

3. The Respondent stated that the 1st appellant is vicariously liable for the negligence of the 2nd appellant and relied on the doctrine of *res ipsa loquitor.*

Appellant's Case

4. The appellants filed a joint statement of defence denying the contents of the Plaint and blaming the deceased for being negligent. The appellants relied on the doctrine of contributory negligence.

Judgment of the Trial Court

5. In his Judgment delivered on 13.7.2017, the learned trial magistrate held that the appellants were liable for the accident that occurred after both parties recorded a consent in the trial court apportioning liability as between the appellants and the respondent in the ratio of 65:35 in favour of the respondent.

6. On quantum , the learned trial magistrate entered the final judgment against the appellants as follows:

General damages: pain and suffering – Kshs. 25,000/-

Loss of expectation of life – Kshs. 100,000/-

Loss of dependency – Kshs. 12,000 x 12 x 35 x 1/3 = 1,680,000/-

TOTAL……………………………….Kshs. 1,805,000/-

Less 35%..Kshs. 1,175,250/-

Plus costs and interest

7. It is the said judgment that forms the basis of the instant appeal.

Duty of this Court

8. Firstly, as a first appellate court, this court has a duty to examine matters of both law and facts and subject the whole of the evidence to a fresh and exhaustive scrutiny, drawing a conclusion from that analysis bearing in mind that this court did not have an opportunity to hear the witnesses first hand and test the veracity of their evidence and demeanor. This is captured by **Section 78 of the Civil Procedure Act** which espouses the role of a first appellate court which is to:***’…… re-evaluate, reassess and reanalyze the extracts of the record and draw its own conclusions.’*** This was buttressed by the Court of Appeal in the case of **Peter M. Kariuki v Attorney General [2014] eKLR** where court stated that:

“We have also, as we are duty bound to do as a first appellate court, reconsider the evidence adduced before the trial court and revaluated it to draw our own independent conclusions and to satisfy ourselves that the conclusions reached by the trial judge are consistent with the evidence. See **Ngui V Republic, (1984) KLR 729 And Susan Munyi V Keshar Shiani, Civil Appeal No. 38 Of 2002** *(unreported).”*

9. In **Ndung’u Dennis V Ann Wangari Ndirangu & Another(2018)** the learned Judge quoted the case of **Selle & another V Associated Motor Boat Co Limited & others(1968) EA 123** in restating the duty of the court in a first appeal as follows:

“ I accept counsel for the respondent’s proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to

estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally (**Abdul Hammed Saif–vs- Ali Mohamed Sholan (1955), 22 E.A.C.A. 270).”**

10. The Court in the **Ndung'u Dennis case (supra)** went further in reiterating that position by referencing the Court of Appeal for East Africa in ***Peters –vs- Sunday Post Limited [1958] EA 424*** where Sir Kenneth O'Connor stated as follows:-

> ***"It is a strong thing for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case, and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution; it is not enough that the appellate court might itself have come to a different conclusion. I take as a guide to the exercise of this jurisdiction the following extracts from the opinion of their Lordships in the House of Lords in Watt –vs- Thomas (1), [1947] A.C. 484."My Lords, before entering upon an examination of the testimony at the trial, I desire to make some observations as to the circumstances in which an appellate court may be justified in taking a different view on facts from that of a trial judge. For convenience, I use English terms, but the same principles apply to appeals in Scotland. Apart from the classes of case in which the powers of the Court of Appeal are limited to deciding a question of law (for example, on a case stated or on an appeal under the County Courts Acts) an appellate court has, of course, jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this is really a question of law) the appellate court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at during the trial and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial judge as to where credibility lies is entitled to great weight. This is not to say that the judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given."***

Issues to be Determined

Whether the learned trial magistrate applied the wrong principles in awarding quantum to the respondent

11. The crux of the appellants' appeal is on the award of quantum by the learned trial magistrate which they claim was excessively high and that there must have been an erroneous estimate of the damages payable to the respondent. The appellants have also challenged the multiplicand of Kshs. 12,000/- and the multiplier of 35 years that were applied , stating that the same was not aided by evidence or the law.

12. The appellants further challenged the learned trial magistrate's assessment of general damages for a minor child stating that the learned trial magistrate ignored the principles of law applicable in assessment of damages payable to an estate where the deceased was a minor.

13. The appellants also stated that the learned trial magistrate did not take into account the award made under the Law Reform Act while making the award under the Fatal Accidents Act as the beneficiary under both Acts was one and the same person.

14. In the case of **Tobias Odoyo Oburu v Callen Kwamboka Okemwa & another (suing as the legal representatives of Obed Okemwa Obwoge) (Deceased) [2018] eKLR D.S MAJANJA J** held that:

> *"In **Board of Governors of Kangubiri Girls High School & Another v Jane Wanjiku Muriithi & Another NYR CA Civil Appeal No. 35 of 2014 [2014] eKLR**, the Court of Appeal held that the choice of multiplier is a matter of the court's discretion which must be exercised judiciously. Likewise, in **Roger Dainty v Mwinyi Omar Haji & Another MSA CA Civil Appeal No. 59 of 2004 [2004] eKLR**, the Court also held that the determination of the multiplier is a question of fact to be determined from the peculiar circumstances of the case.."*
>
> *(See* **Sammy Kipkorir Kosgei v Edina Musikoye Mulinya & another [2017] eKLR)**

15. In the case of **Mombasa Maize Millers Limited v W I M suing as the representative of J A M (Deceased) [2016] eKLR D.S. MAJANJA J** held that:

> *"In the judgment, the learned magistrate deducted the sum awarded for loss of expectation of life under the **Law Reform Act** on the basis of the principle of duplication of awards. This approach was erroneous and I would do no better than quote what the Court of Appeal stated in **Hellen Waruguru Waweru (suing as the legal representative of Peter Waweru Mwenja (Deceased) v Kiarie Shoe Stores Limited NYR CA Civil Appeal No. 22 of 2014 [2015] eKLR** that;*
>
> *[20] This Court has explained the concept of double compensation in several decisions and it is surprising that some courts continue to get it wrong. The principle is logical enough; duplication occurs when the beneficiaries of the deceased's estate under the **Law Reform Act** and dependants under the **Fatal Accidents Act** are the same, and consequently the claim for lost years and dependency will go to the same persons. It does not mean that a claimant under the **Fatal Accidents Act** should be denied damages for pain and suffering and loss of expectation of life as these are only awarded under the **Law Reform Act**, hence the issue of duplication does not arise."*

16. In the case of **Mini Bakeries (Nairobi) Limited v Oscar Ogada Orengo & another [2018] eKLR D.S. MAJANJA J** held that:

*"The third issue concerns the so-called duplication of awards under the **Law Reform Act** and the **Fatal Accidents Act** leading to double compensation. Damages for lost years under the **Law Reform Act** are recoverable for the estate of the deceased where the deceased died before he could institute an action. Under **section 2(5)** of the **Act** such damages are recoverable for the benefit of the estate and are in addition to any rights conferred on dependants of the deceased by the **Fatal Accidents Act**. A claim under the **Fatal Accidents Act** is made by the dependants of the deceased who claim for loss of the support of the deceased during his lifetime.*

*Although the principles of assessment are similar, the court cannot make an award for lost years and loss of dependency as the benefits would ultimately devolve to the same parties under both Acts and this would amount to double compensation. This principle was explained by the Court of Appeal in **Kemfro v A. M. Lubia & Another [1982-1988] KAR 727** as follows;*

[T]he net benefit will be inherited by the same dependants under the Law Reform Act and that must be taken into account in the damages awarded under the Fatal Accidents Act because the loss suffered under the latter Act must be offset by the gain from the estate under the former Act.

*The principle does not mean that a claimant under the **Fatal Accidents Act** should be denied damages for pain and suffering and loss of expectation of life as these are only awarded under the **Law Reform Act** hence the issue of duplication does not arise regarding that aspect of the award. The Court of Appeal clearly elucidated this point in **Hellen Waruguru Waweru suing as the legal representative of Peter Waweru Mwenja (Deceased) v Kiarie Shoe Stores Limited NYR CA Civil Appeal No. 22 of 2014 [2015] eKLR..........."***

17. The Court of Appeal in the case of **Roger Dainty v Mwinyi Omar Haji & another [2004] eKLR** held that:

"We do not, with respect, agree with Mr. Satchu that courts have established as a matter of practice the appropriate multiplier to be applied to different age groups of victims of accidents. What is a reasonable multiplier in our jurisdiction is a question of fact to be determined from the peculiar circumstances of each case."

……………………………………

"It has not been shown that in the circumstances of this case, the learned Judge either erred in law or proceeded on a wrong principle or that she misapprehended the evidence in some material respect. There is no justification for interfering with the Judge's of determination of the reasonable multiplier."

18. In **Simon Taveta v Mercy Mutitu Njeru civil Appeal 26 of 2013 [2014] eKLR** the Court of Appeal observed thus:

"The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past."

19. The Court of Appeal in **Gitobu Imanyara & 2 others v Attorney General [2016] eKLR**, cited the case of **Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini v. A.m. Lubia and Olive Lubia** (above) at p. 730 where **Kneller J.A.** said:-

***"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 either 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. See Ilango V. Manyoka [1961] E.A. 705, 709, 713; Lukenya Ranching And Farming Co-Operatives Society Ltd V. Kavoloto [1970] E.A, 414, 418, 419.** This Court follows the same principles."*

20. The Court further made reference to the case of **Gicheru V Morton and Another (2005) 2 KLR 333** where the Court stated:

"In order to justify reversing the trial judge on the question of the amount of damages, it was generally necessary that the Court of Appeal should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of the Court, an entirely erroneous estimate of the damage to which the Appellant was entitled."

***See also* Major General Peter M. Kariuki v Attorney General- Civil Appeal No. 79 of 2012.**

21. The Court further referenced the venerable **Madan, JA *(as he then was),*** on the difficulties that confront a judge in assessment of general damages in the context of personal injuries claims as follows in **Ugenya Bus Service V Gachiki, (1976-1985) Ea 575**, at page *579:*

"General damages for personal injuries are difficult to assess accurately so as to give satisfaction to both parties. There are so many incalculables. The imponderables vary enormously. It is a very heavy task. When I ponderingly struggle to seek a reasonable award, I do not aim for precision. I know I am placed in an inescapable situation for criticism by one party or the other, sometimes by both sides. I also therefore do not aim to give complete satisfaction but do the best I can."

22. In the lower court's judgment, the learned trial magistrate applied the minimum wage scale of Kshs. 12,000/- as the multiplicand. The

learned trial magistrate further held that the deceased was a pupil based on a letter from the deceased's school and that the deceased was 12 years old, a fact that was not contested. It was the appellants' submission that where the issue of the amount earned by a deceased and their profession is unsettled, courts adopt a lump sum/global sum instead of delving into estimating incomes and professions. On the other hand, the respondent submitted that the learned trial magistrate had the discretion to either adopt the multiplier method or the global assessment method.

23. In the case of **Chen Wembo & 2 others v I K K & another (suing as the legal representatives and administrators of the estate of C R K (Deceased) [2017] eKLR, C Meoli J** held that:

> " *This debate is not in any way surprising, primarily because, the exercise of awarding damages for lost years in respect of a minor deceased person necessarily poses a challenge to the courts, involving as it does a fair amount of speculation.*
>
> ***Sitati J*** *eloquently highlighted the court's dilemma in the case of* ***Charles Ouma Otieno & another -Vs- Benard Odhiambo Ogecha (Suing As Brother And Legal Representative And Administrator of The Estate Of The Late Oscar Onyango Ogecha (Deceased) [2014] eKLR:***
>
> ***"I am of the considered view that the learned trial magistrate fell into error in making awards under separate heads. As it were, the future of the deceased who was aged 14 years old as at the time of the accident was uncertain. There was no knowing what he would have become had he lived his life to the full; nor how much he would earn; nor was there any way of knowing whether or not he would be able to support his brother, the respondent herein. The answer on the first issue is that the trial court fell into error in assessing damages under various heads instead of awarding a lump sum.***
>
> ***The second issue for determination is whether the trial court erred in applying a dependency ratio in the case of a 14 year old boy who was still in school. The appellants have submitted that because the respondent was only a brother to the deceased, it was unlikely that the deceased would have spent a bigger portion of his earnings on the respondent once he (deceased) got a job. Further that the dependency ratio adopted by the trial court was not proved. Reliance was placed on the case of H. Young & Company EA Ltd. & another -vs- James Gichana Orangi – Kisii HCCA NO.207 of 2009. In the said case, the learned trial magistrate awarded damages totalling Kshs.323,300/= under various heads in respect of the death of the deceased who was aged 11 years at the time of death. On appeal, Musinga J (as he then was) set aside the award of Kshs.323,300/= and in lieu thereof made a lump sum award of Kshs.300,000/= subject to 25% contribution."***

24. *In her decision,* ***Sitati J*** *made a single global award of damages under the Law Reform Act and Fatal Accidents Act.*

25. *While grappling with the same question in an appeal before her* **Ngenye J** *observed in* ***Oshivji Kuvenji & Another -Vs- James Mohammed Ongenge [2012] eKLR*** *that:*

> ***"In as much as the Appellants in the instant case argue that a global sum would be the best suited to the deceased aged only six (6) years at the time of her death, I have not come across an authority that has overturned a decision of the trial court on account of granting general damages based on expected earnings and tabulated on a multiplier. It is clear that neither the High Court nor the Court of Appeal has adopted a uniform principle on how to tabulate general damages where the deceased is a minor.***
>
> ***Even as early as 1986 as is in the Case Luduwa (Suing by her next friend) And Another -VS- Ayuku & Another, (1986) KLR, 394, a Judgment of Apaloo, J – High Court, the Court considered that an award of only Ksh. 8,000/= under loss of expectation of life in the case of a minor aged only one month who had died alongside her mother. In granting the figure the court said that she lived for just a month and her prospects of a future happy life are less than her mother's. However loss of dependency was awarded for death of her mother which was tabulated based on her average earnings and a multiplier of twenty five (25) years used. Nothing was awarded for lost years or loss of dependency in respect of this minor."***

26. ***Ngenye J*** proceeded to allow damages under the Law Reform Act for pain and suffering and loss of expectation of life. She also awarded a global sum as damages in respect of lost dependency under the Fatal Accidents Act.

> **……………………**while noting that -
>
> "*There is therefore no golden rule in the assessment of damages in respect of a deceased minor. The heads, global or mixed approaches have been applied in superior courts. What is beyond doubt is that irrespective of the age of a deceased child, and whether or not there is evidence of his pecuniary contribution*, damages are payable to his parents/dependents - See decisions of the Court of Appeal in ***Kenya Breweries Limited -Vs- Saro [1999] KLR 408*** *and* ***Sheikh Mushtaq Hassan -Vs- Nathan Mwangi Kamau Transporter & 5 Others [1986] KLR 457; [1986] eKLR***.
>
> *Equally, there can be no dispute that the estate of a deceased minor is entitled to damages for pain and suffering, loss of expectation of life, funeral expenses etc, under the Law Reform Act. I would therefore agree with Mr. Waigwa's submission that the adoption of a heads approach in the award of damages in respect of a deceased minor is not ipso facto evidence that the award is excessive or erroneous. Indeed the Appellants at the close of their submissions sought to persuade the court to use a multiplier approach in arriving at damages payable under the head of lost dependency.*
>
> ……………………………….

The deceased was aged 12 years at death. There is no evidence that he was in school or as to the level of his abilities and therefore future prospects. The award in respect of lost dependency in my view was excessive and erroneous. I hereby set it aside and substitute therefor a global award under the Fatal Accidents Act in the sum of Shs 600,000/= bearing in mind the awards under the Law Reform Act. I have upheld general damages for loss of expectation of life, pain and suffering whose total is Shs 100,000/=. Special damages had been agreed at Shs 35,000/=."

27. In this case, I am in agreement with the submissions of the respondent that courts have the discretion to apply either the 'global sum', 'separate heads', or 'mixed' approaches in awarding damages and that it is not cast in stone that just because the deceased was a minor, then courts can only apply the global/lump sum approach.

28. It is in evidence in this case that the deceased was 12 years old and was in class 7. There was no evidence indicating his performance in school or that he would grow up to be enterprising as was stated by the respondent in his plaint. Much of what was presented invited the trial court to largely speculate. It is my considered view that in the absence of weighty and sufficient evidence, it is difficult for a court to adopt the multiplier and multiplicand approach in awarding loss of dependency under the Fatal Accidents Act. I therefore find that the learned trial magistrate erred in applying a multiplicand of Kshs. 12,000/- and a multiplier of 35 years as there was scanty evidence to support such an award. It is further my considered view that a lump sum global award would have been appropriate in the current circumstances for loss of dependency under the *Fatal Accidents Act* and as Madam J. A noted that in these matters we are not aiming at precision. A global award of Kshs.500,000/- would, in my view, suffice.

29. Regarding the appellant's complainant that the learned trial magistrate failed to consider and adopt the written submissions of the appellants , the Court of Appeal, in the case of **Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another [2014] eKLR** held that:

> "*Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties' "**marketing language**", each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed there are many cases decided without hearing submissions but based only on evidence presented."*

30. The aforementioned position has been adopted by this court in various cases including **Miguna Miguna v Standard Group Limited & 4 others [2016] eKLR; Waltraud Melichar v Jacob M. Nguthu [2018] eKLR ; In re Estate of Philip Mokaya Gesanda (deceased) [2018] eKLR; Alfred Pengo Mamboleo v Oserian Development Co. Ltd & another [2018] eKLR** among others.

31. Section 3 of the Evidence Act Cap 80 Laws of Kenya defines evidence as:

> ***" Evidence denotes the means by which an alleged matter of fact the truth of which is submitted to investigation is proved or disproved; and without prejudice to the foregoing generally includes statements by accused persons, admission and observation by the court in its judicial capacity."***

32. In essence therefore, the learned trial magistrate was not bound or obligated to consider and/or adopt the submissions of the appellants or the respondent for that matter since those submissions did not constitute evidence. This ground of appeal by the appellants thus fails.

33. The appellants submitted that the trial court's award of Kshs. 125,000/- for loss of expectation of life and pain and suffering under the *Law Reform Act* which was a double benefit in that the beneficiaries were the same and that the said award ought to have been deducted from the award under the *Fatal Accidents Act* . As has been consistently held by the courts, it only becomes double compensation when *the beneficiaries of the deceased's estate under the **Law Reform Act** and dependants under the **Fatal Accidents Act** are the same*. In this case, the respondent was a father to the deceased and he stated in the plaint that he had brought this action on behalf of himself and the mother of the deceased under both the *Law Reform Act* and *Fatal Accidents Act*. Section 4(1) of the *Fatal Accidents Act* provides as follows;

> ***"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 [and shall ….. be brought by and in the name of the executor or administrator of the person deceased]……"***

34. From the above, the respondents are all family and would benefit from both the *Fatal Accidents Act* and the *Law Reform Act* as they will also be beneficiaries of the deceased's estate. In the foregoing, I find that the learned trial magistrate was in err for awarding the sum of Kshs. 125,000/- as loss of expectation of life and not deducting it from the final award as the parents would still benefit from the estate of the deceased.

Conclusion

35. In conclusion, I am in agreement with the appellants that the learned trial magistrate misapplied the principles of awarding damages in adopting the multiplier and multiplicand approach instead of the global award/ mixed approach in the circumstances of this case. There was no justification or evidence to support the learned trial magistrate's choice of multiplicand and multiplier and thus he ought to have adopted the global award system and then used his discretion to enter an award under the loss of dependency head. I find that a global award of Kshs. 500,000/- would be appropriate in the circumstances. Similarly, I am in agreement with the appellants that the suit, having been brought by the respondent on behalf of himself and the deceased's mother, they both stand to benefit under both the *Law Reform Act* and *Fatal Accidents Act* which would amount to double compensation, if no deduction is made.

36. In summary, I find this appeal meritorious and the same be and is hereby allowed. I set aside the judgment of the learned trial court on

quantum and now enter judgment in favour of respondent against the appellants jointly and severally with costs and interest as follows:-

General damages under Fatal Accidents Act

Loss of dependency - Kshs.500,000/=

(Less 35%) - Kshs.shs.175,000/=

Net Award - Kshs.325,000/

37. The respondent shall have interest on the award from the date of judgment of the trial court. He shall also have costs of the suit. As regards costs of this appeal, each party shall bear their own costs.

38. It is so ordered.

Judgment written and signed at Kapenguria

RUTH N. SITATI

JUDGE

Judgment delivered, dated and countersigned in open court at Meru on this 25th day of July 2019

RUTH N. SITATI

JUDGE

In the Presence of

N/A for Mithega for Appellants

Thangicia for Kitheka for Respondents

Mwenda - Court Assistant