



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Appeal No. 556 Of 2012

FRANCIS MACHARIA..... 1ST APPELLANT

TITUS KAILI 2ND APPELLANT

- V E R S U S -

SAMUEL MUTUKUKIALA AND MARY MUMBUA NDUTU (suing on their

own behalf and as the Administrators of the estate of the late LUCIA

WANDIA MUTUKU..... RESPONDENT

(Being an appeal from the judgement of Hon. Lorot (Mr.) PM delivered on 26th September 2012 in Milimani Commercial Court CMCC no. 1853 of 2011)

JUDGEMENT

1. Samuel Mutuku Kiala and Mary Mumbua Nduu, the respondents herein suing as administrators of the estate of Lucia Wandia Mutuku deceased, filed a compensatory suit in the Chief Magistrate's Court at Nairobi against Francis Macharia and Titus Kaili as the 1st and 2nd appellants herein respectively for general and special damages arising out of a road traffic accident which occurred on 28/04/10 where the deceased succumbed to fatal injuries. The suit was heard and in the end, Hon. Lorot, the learned Principal Magistrate entered judgement for the respondents as against the appellants jointly and severally in the sum of ksh.865,285/= whose is tabulated as follows:

a. Pain and suffering	ksh.60,000/=
b. Loss of expectation of life	ksh.100,000/=
c. Lost years/loss of dependency	ksh.600,000/=
d. Special damages	ksh.105,285/=
Total	Ksh.865,285/=

2. Aggrieved by the award, the appellants preferred this appeal and put forward the following grounds in their memorandum:

1. The learned magistrate erred in fact and in law in finding that the plaintiff was entitled to damages that were too high in view of the circumstances.

2. The learned magistrate erred in fact and in law in failing to consider the defendants submissions on quantum.

3. The learned magistrate erred in fact and in law by not finding on liability.

4. The learned magistrate erred in law and in fact in awarding special damages as pleaded when some of the receipts were not admissible.

5. The learned magistrate erred in law and in fact in his assessment and award under loss of dependency.

6. The learned magistrate erred in fact and in law in his award on pain and suffering has excessive given that the deceased died instantly.

7. The learned magistrate erred in fact and in law in failing to consider conventional awards for general damages in similar cases.

3. The above mentioned grounds of appeal may be summarised into two main grounds namely:

1. Whether or not the learned trial magistrate erred in his finding on liability.

2. Whether or not the learned trial magistrate erred in his award on quantum

4. The 1st ground of appeal is whether or not the learned trial magistrate erred in his finding on liability. The appellants submits that the learned trial magistrate erred in law and in fact in holding the appellants 100% liable when there was clear, accurate, strong and compelling evidence adduced on record showing that the deceased was completely to blame for the accident. For this reason the appellants want the respondents to be held 100% liable. The appellants submit that the account of events provided by the DW1, DW2 and DW3 is more accurate and believable than the version provided by PW2.

5. The respondents submit that the trial magistrate properly considered the evidence and submissions from both sides in arriving at liability.

6. PW2 stated that the vehicle pulled out suddenly in a bid to avoid arrest by police and knocked down the deceased. PW2 further stated that he did not see visible injuries but the deceased was bleeding from the mouth. DW2 and DW3 stated that they reported that the deceased believed to be a tout fell off from the said motor vehicle, sustained no visible injuries but was bleeding from the mouth.

7. PW2 being the only eye witness, witnessed how the accident occurred. The trial magistrate properly arrived at the correct finding on liability and her finding should not be disturbed.

8. The second ground of appeal is whether or not the learned trial magistrate erred in his award on quantum. The appellants are contesting the award on loss of dependency. The appellants submit that the trial magistrate erred in employing the multiplier approach when he ought to have given a global award based on the circumstances and facts of the case, further there was no dependency as it was the deceased who depended on her parents.

9. The respondent submits that the appellants did not place before the learned magistrate material to guide the court determining the issue. They cannot therefore fault the trial magistrate by stating that he failed to consider the conventional award in similar cases yet, they did not place the said cases before the trial court.

10. The deceased was 21 years old at the time of death and was in college where she was training to be a teacher for early childhood. The minimum wage for such a teacher was ksh.3,000/= which was used to calculate dependency. The trial court adopted a working age of upto 25 years bearing in mind all the uncertainties in life. I find the award sound and within range. The deceased had a 1 year old boy and

both parents are still alive who had high expectations on their daughter and the deceased's son was going to be dependent on the deceased thus the de -pendency ratio of 2/3 is fair.

The final award for loss of dependency was arrived at as follows: $25 \times 12 \times 3,000 \times \frac{2}{3} = \text{kshs}600,000/=$

11. In the end the appeal is found to be without merit and is hereby dismissed with each party bearing its own costs.

Dated, Signed and Delivered in open court this 26th day of January, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent