



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
CIVIL CASE NO 58 OF 2015

1. E M K

2. R S I(suing on their own behalf

and as the administrators of the

estate of the late P M M).....PLAINTIFFS

VERSUS

E O O.....DEFENDANT

JUDGMENT

Introduction

The Plaintiffs sued the Defendant by a plaint filed on 4th December 2015 and amended on 6th February, 2017. The Plaintiffs sued on their own behalf and as administrators of the estate of the late P M M (hereinafter referred to as ‘the Deceased’), seeking recovery of damages under the Fatal Accidents Act and the Law Reforms Act. It was alleged that on or about 9th July, 2014 at about 12:30 pm, the deceased was lawfully travelling as a fare paying passenger aboard motor vehicle registration number KAZ 739W along Kivaa-Gitaru road when the Defendant carelessly drove the vehicle that it lost control, veered off the road and hit a tree occasioning the deceased fatal injuries. The Defendant was sued as the beneficial owner, user, possessor or controller and the insured of the said motor vehicle, which he was driving at the material time.

It was further averred that the Defendant was charged for dangerous driving vide traffic case number 1279 of 2014 and fined KShs. 19,000/=. Further, that by reason of the demise of the Deceased, the estate suffered loss and damage. The Deceased was alleged to have left behind the following dependants:

- a) E M K widower aged 51 years
- b) A K M I daughter aged 27 years
- c) E M I daughter aged 24 years
- d) R S I daughter aged 21 years

e) S M I son aged 19 years

f) C K M son aged 12 years

The Plaintiffs stated that the Deceased at the time of death was aged 51 years, enjoyed good health and lived a happy life. It was averred that he was employed by Kenya Electricity Generating Company (KenGen) and was earning a net sum of KShs. 108,390/= per month, and used to contribute substantially to the maintenance of his said dependants. That by reason of his death, his dependants have lost means of support and have suffered loss and damage. The deceased's life expectancy was also alleged to have been cut short.

The Plaintiffs also pleaded special damages of KShs. 71,900/= particularized as hereunder:

- a) Copy of records for the vehicle KShs. 500
- b) Post mortem fees KShs. 2,000
- c) Post mortem (professional fees) KShs. 20,000
- d) Letters of administration KShs. 1,400
- e) Funeral services KShs. 48,000

Total KShs. 71,900

In response thereto, the Defendant filed a defence dated 16th February 2016 that was amended on 20th February, 2017. The Defendant denied the Plaintiffs' claim in its entirety. On a without prejudice basis, the Defendant alleged that if the accident occurred and injuries sustained as alleged by the Plaintiffs, the same was solely as a result of the Deceased's negligence by failing to wear a safety belt.

The suit proceeded to full hearing on 31st October 2017, and the Plaintiffs called three witnesses, while the Defendant testified as the only Defence witness.

The Evidence

The first witness (PW1) called by the Plaintiffs was P.C John Mechumo who testified that Sergeant Lekursai and PC Mwaura recorded the occurrence of the accident in the occurrence book on 9th July, 2014 along Kivaa-Gitaru road. That according to the report, the Defendant was driving motor vehicle registration number KAZ 739W from Mutangulu area heading toward Gitaru. On reaching Mutangulu forest, he hit a pothole and lost control of the vehicle while he was on the road at the left hand side before it rammmed into a tree.

Further, that the following people were injured as a result of the said accident:

Elijah Oduor 47 years - complained of chest and head injuries

Patrick Mutua 48 years – head and chest injury

Charles Kyalo Nyamai 43 years – left leg and hand injuries and chest pains.

Wilberforce Awino 30 years- headache chest and leg injuries.

PW1 testified that the Defendant was the beneficial owner of the motor vehicle which had been insured by REAL Insurance Company. He stated that the OB number in which the report was made was OB 8 of 9th July, 2014. He stated that the accident occurred at 13:00 hours on 9th July, 2014, and that Patrick Mutua cannot be blamed for the accident since he was not the driver of the subject vehicle and was not in

control then.

PW1 testified that Sergeant Lekursai has since been transferred to Laikipia and that PC Mwaura retired from the police force in July, 2016. He produced the police abstract for the plaintiff as P. Exhibit 1.

On cross examination, PW1 stated that he did not have the police file and did not know what was said in the police file as to who was to blame for the accident. That according to the OB, the Defendant was to blame but that the police abstract indicated that the matter was still pending under investigation. He stated that it meant that it is not known who is to blame for the accident. Further that the information in the OB is recorded before investigations are carried out. on re-examination, he stated that the extract in the OB was made by Sergeant Lekursai after visiting the scene.

Charles Kyalo Nyamai (PW2) testified that the Deceased was seated next to the driver on the material day. Further that he and the Deceased were given a lift in the Defendant's motor vehicle. He stated that the road had potholes, and that when the driver attempted to avoid the said potholes, the vehicle swerved to the side of the road and hit a tree. PW2 testified that he got injured but managed to get out the vehicle. He stated that on lookers removed the Deceased from the vehicle, and the victims were taken to hospital in Gitaru.

Further, that the Deceased was still alive then and was in good health before the accident. PW2 testified that all the passengers wore safety belts at the material time, and he laid blame on the driver of the motor vehicle saying that he was driving fast and did not care for the safety of the passengers. He stated that he did not what relationship there was between the driver and the Deceased.

On cross examination, PW2 stated that he was seated at the back and could not see the front. That he could not see the speedometer but could tell that the vehicle was being driven fast. He stated that he complained to the driver. He affirmed that he was able to leave the vehicle after the accident. With regard to the Deceased's health, PW2 stated that he is not a doctor and could not certainly say that the deceased was in good health. He stated that he filed a case for recovery of the damages he suffered as a result of the accident, and has since been compensated.

In re-examination, PW2 stated that it is possible for one to see and feel when a vehicle is driven fast. He stated that the Deceased was fine when he entered the vehicle.

E M K (PW3) who is the Deceased's wife stated that she and Rachel Syokau took out letters of grant of administration (the Plaintiffs' Exhibit 4A) for which she paid KShs. 1,400/=. The receipt for KShs. 1,400/= was produced as the Plaintiffs' Exhibit 4B. She stated that PW 2 informed her that the Deceased had been involved in an accident. She went to the scene of the accident and was informed that he had been taken to hospital at Citam. At the hospital, she found the Deceased in a critical state and he could not talk. He was referred to Tentr hospital in Embu where she was informed that he could not be treated. He was then taken to Nairobi Hospital where he was admitted in Intensive Care Unit for 2 months but died later on 6th September, 2014.

PW3 testified that the Deceased was in good health before the accident and was aged 51 years at the time. She produced the deceased's death certificate as the Plaintiffs' Exhibit 6. She also produced a post mortem report as Exhibit 7 and funeral permit as Exhibit 8. PW3 also stated that she incurred a cost of KShs. 70,000/= being funeral expenses and produced a bundle of receipts to that effect at the Plaintiffs' Exhibit 9.

She stated that a search of the motor vehicle was later conducted at a cost of and showed the owner of the vehicle to be Anyimi Mathews. The search and receipt were produced as P. Exhibit 10A and B respectively. PW 3 also produced a demand letter and a postal receipt thereto as the Plaintiffs' Exhibits 11A and B. Further, that in response to the demand letter, her advocate received a letter (Exhibit 12A) and sale of agreement (Exhibit 12 B) showing that the Defendant bought the vehicle on 12th November, 2014 and was the owner at the material time.

According to PW3, when the matter was reported to the police, the abstract showed that the Defendant is the one who had taken out insurance for the vehicle. PW3 explained that she had 5 children with the deceased and proceeded to give their names and ages as pleaded in her amended Plaintiff, and produced their identity cards and birth certificates. She stated that at the time of the accident, Ann was in school studying community health, E M was at Technical Teachers College studying human resource, that E was at Kenyatta University, Machakos studying communication, S was in Form 4 and C in class 6. She stated that she was a housewife.

PW3 produced a letter from the chief on the Deceased's family as Exhibit 17. She stated that the deceased earned Kshs. 108, 390/= monthly with which essentially supported his entire family, and produced the Deceased's payslips for the months of July to September, 2014 as the Plaintiffs' Exhibit 18 A, B and C. She indicated that she moved to Kitui after the Deceased's death, and that none of her children are employed and all depend on her.

On cross examination, she stated that she did not witness the accident. Further, that she did not have the documents to show that the Deceased was admitted in hospital or documents to show that he was in good health before the accident. That from the salary advice in August, 2014, the deceased was paid Kshs. 76,830/= and in September, 2014 he was paid 385/=. She acknowledged that the net pay was different every month. That the salary advice shows that the deceased was to retire on 1st January 2023. She stated that she had no documents showing her children's schooling.

On re-examination, PW3 stated that the birth certificates she has produced show the father's name as P M. That the deceased's net pay was Kshs. 76,830/= after deductions and that the slip shows that his salary was KShs. 108, 390/=.

The Defendant (DW1) on his part testified that the Deceased was in the Defendant's motor vehicle on the material day. After about 4 kilometers from Kivaa the vehicle hit a pothole making it swerve slide and hit a tree. He stated that the condition of the road was bad. He denied that the Deceased and PW2 wore seatbelts and that he was driving fast. His testimony was that he was driving at 60 kilometers per hour, and none of his passengers complained about the speed. He denied that he was to blame for the accident.

On cross examination, DW1 stated that the Deceased did not have his seatbelt on. Further, that he was lifted from his seat and hit the windscreen as a result of the accident. On re-examination, he stated that he tried to control the vehicle, that is why he swerved but hit a tree that was next to the road.

The Issues and Determination

The Plaintiff and Defendant were directed to file written submissions. The Plaintiffs' learned counsel, S.N Ngare & Company Advocates, filed submissions dated 8th December 2017, while Humphrey & Company Advocates for the Defendant filed submissions dated 10th January 2018.

It is an undisputed fact that an accident occurred 9th July, 2014, and that the motor vehicle involved in the accident was owned by the Defendant. The issues left for determination are firstly, whether the Defendant was liable for the accident that occurred on 9th July, 2014 and if so to what extent. Secondly, whether a basis has been laid for awarding the Plaintiffs damages and if so, the quantum.

On the issue of liability, the Plaintiffs submitted that from the evidence of PW1, PW2 and DW1, it is clear that the Defendant is to blame for the accident. That the Deceased, being a passenger cannot be blamed for the accident since he had no control over the vehicle. To support this argument, the Plaintiffs cited **Boniface Waiti & Another vs Michael Kariuki Kamau [2007] eKLR**. Secondly, it was argued that there is evidence that the driver was driving at a high speed in the circumstances. This was derived from PW2's testimony that he could tell that the vehicle was driven fast, and the Defendant's evidence that he was driving at a speed of 60 KPH yet the road was in a deplorable state. It was submitted that a similar inference was made in **Ann Mukami Muchiri vs David Kariuki Mundia [2008] eKLR**.

Thirdly, it was submitted that from the circumstances of the accident, it is clear that the Defendant did

nothing to avoid the accident. That had DW1 been driving at a reasonable speed on a deplorable road, the accident would not have occurred. In support thereof, the plaintiff cited the decisions in **Agnes Akinyi Okeyo vs Marie Stopes – Kenya, [2004] eKLR** and **Felista Wanjiku Gichu v. Akamba Bus Service & another [2001] eKLR**.

Lastly, that the Defendant failed to discharge the evidential burden by not adducing evidence that the Deceased failed to wear a safety belt and is therefore to blame for the accident. In this regard, the Plaintiffs relied on **John Wainaina Kagwe v. Hussein Dairy Limited [2013] e KLR**. The Plaintiffs in the end urged this court to find the defendant 100% liable for the accident.

The Defendant's submissions on this issue were that PW1 noted that he could not determine who was at fault. That although PW2 stated that DW1 drove fast, on cross examination he acknowledged that his view of the speedometer was blocked since he was seated at the back. Further, that PW2 admitted that the driver was trying to maneuver on the said road thereby the accident is attributed to the bad road. According to the Defendant, the evidence by PW2 that he was able to get out of the vehicle and of DW1 that the deceased on impact was thrown to the windscreen of the vehicle reaffirmed the position that the Deceased was injured due to not fastening the seatbelt. Therefore, that 30% liability should be apportioned to the Plaintiffs. In support thereof, the defendant relied on **Oscar Omondi Onoka vSH.S. Amin & Co. Ltd [2011] eKLR** .

On the issue of quantum of damages, the Plaintiffs suggested an amount of Kshs. 100,000/= for loss of expectation of life, the Deceased's life having been cut short at the age of 51 years ,and Kshs. 200,000/= for enduring pain for a period of two months. On loss of dependency, it was submitted that the Deceased earned Kshs. 108, 309/= per month and could have worked until 60 years and lived past retirement age. The Plaintiff proposed a multiplier of 11 years and cited the decisions in **Cornelia Elaine Wamba vs Shreeji Enterprises Ltd & others [2012] eKLR** and **Board of Governors of Kangubiri Girls' High School & another vs Jane Wanjiku Muriithi & Another [2014] eKLR**.in support thereof.

The Plaintiffs urged the court to apply a multiplicand of Kshs. 108,309/= being the Deceased's monthly earning, and a dependency ratio of $\frac{2}{3}$ was suggested on grounds that the dependants fully relied on the Deceased, his children are still school goers and PW3 is a housewife. The loss of dependency was said to therefore work as hereunder:

$$\text{Kshs. } 108, 309/= \times 12 \times 11 \times \frac{2}{3} = 9,531,192/=$$

The Plaintiffs also sought special damages as pleaded, and submitted that the said were proved by way of receipts tendered in evidence as Exhibits 4B, 9 and 10.

The Defendant on the other hand suggested an award of KShs. 150,000/= for pain and suffering guided by **Makario Makonye Monyancha vs Hellen Nyangena, [2014] eKLR**. On loss of expectation of life, the defendant cited **Beatrice Agola Opondo v. Swaleh Salim Said, Mombasa HCCC No. 74 of 2002**, and suggested an amount of KShs. 100,000/=.

On loss of dependency, the Defendant acknowledged that the deceased was aged 51 years, was married and had children who depended on him, and suggested a dependency ratio of $\frac{2}{3}$. On the multiplicand, the Defendant relied on the approach in **Easy Coach Limited vs John Thomas Akalongo & Another [2014] eKLR** that where there existed several payments made to the deceased for two contracts, the two known salaries are added and the amount the Deceased would have used on himself subtracted. The Defendant then calculated the multiplicand as follows:

July, 2014 salary + August, 2014 salary less 50%

$$\text{KShs. } 78,272 + \text{KShs. } 108,390 = 186,662/2 = \text{KShs. } 93,331/=$$

For the multiplier, the defendant suggested 8 years arguing that the Deceased was in formal employment

and was to retire on 1st January, 2023. The loss of dependency was thereby worked as:

$$93,331 \times 12 \times 8 \times \frac{2}{3} = \text{KShs. } 5,973,184/=$$

The defendant pointed out that where a claimant succeeds in a claim made under both the Law Reforms Act and the Fatal Accidents Act, the award made under the Law Reforms Act must be deducted in full from the award made under the Fatal Accidents Act as the Deceased's estate cannot benefit twice. The Defendant further acknowledged that the Plaintiffs proved special damages of Kshs. 71,900/= as pleaded.

I have considered the evidence and arguments made by the parties on the two issues. On the issue of liability, I have evaluated the evidence given in the trial Court, and note in this regard that the Plaintiffs in their Complaint alleged that the Defendant was driving without due care and/or attention; he failed to keep any proper lookout; failed to exercise the care and skill reasonably expected of a driver in the circumstances; veered off the road; and that he failed to brake, swerve, slow down or control the motor vehicle; drove at excessive speed and that he drove a defective motor vehicle. They have also relied on the doctrine of *res ipsa loquitur*. This doctrine is applicable where a party claims that the fact of the accident happening speaks for itself. The party must however prove the facts which gave rise to inference of the doctrine.

What then were the facts proved by the Plaintiffs from their evidence? Firstly, that the deceased died as a result of an accident involving vehicle registration number KAZ 793W, which was being driven by the Defendant as testified by PW1, PW2 and the Defendant himself. Secondly, that the said motor vehicle was owned by the Defendant. Thirdly, that the accident occurred when the said motor vehicle veered off the road and hit a tree on the side of the road.

Do these facts then speak to the allegations of negligence on the part of the Appellants? In my view a reasonable man would answer in the affirmative, particularly in light of the evidence that the deceased the motor vehicle veered off the road during daytime, and hit a tree. In addition, the Defendant testified that the road had potholes and therefore ought to have exercised additional care and driven at a speed that would enable him negotiate and avoid the potholes without losing control. There was thus sufficient evidence to show on a balance of probability that the Defendant was to blame for the accident.

However in light of conflicting evidence as to whether the Defendant was wearing a safety belt, and particularly in light of the severe injuries he sustained from the accident, I apportion 20% liability to the Deceased.

On the second issue of the damages to be awarded, in order to properly assess damages under the Fatal Accidents Act, it is necessary to determine the deceased's income, the dependency ratio of his dependants and the multiplier to be used. This Court is guided by the manner of assessment of damages for loss of dependency as aptly explained by Ringera J. (as he then was) in **Beatrice Wangui Thairu v Hon. Ezekiel Barngetuny & Another, Nairobi HCCC No. 1638 of 1988** as follows:

The principles applicable to an assessment of damages under the Fatal Accidents Act are all too clear. The court must in the first instance find out the value of the annual dependency. Such value is usually called the multiplicand. In determining the same, the important figure is the net earnings of the deceased. The court should then multiply the multiplicand by a reasonable figure representing so many years purchase. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life of the deceased, the expectation of life and dependency of the dependants and the chances of life of the deceased and dependants. The sum thus arrived at must then be discounted to allow the legitimate considerations such as the fact that the award is being received in a lump sum and would if wisely invested yield returns of an income nature."

In addition, only the deceased's wife, children and parents are entitled under upon proof of dependency under section 4(1) of the Fatal Accidents Act, and PW3 who was the Deceased's wife produced the birth certificates of the Deceased's children aged 27, 24, 21, 19, and 12 years at the time of the Deceased's death and all school-going, and testified as to their dependency on the deceased for their subsistence and

housing.

PW3 also gave evidence that has been disputed by the Defendants that the deceased was employed at Kenya Electricity Generating Company (KenGen) Ltd, and produced payslips showing that his net pay that ranged from Kshs 108,390/= to 76,830/= for the months of July 2014 and August 2014. The salary of September 2014 showed a debit of 385.51. However, as this is the month the deceased died on 6th September 2014, it cannot be taken into account.

In this regard, the average monthly net income of the Deceased from the two payslips for July and August 2014 produced as exhibits, was Kshs 92,610/= per month. The parties were agreed on a dependency ratio of two-thirds (2/3) which is reasonable in light of the evidence adduced on dependency. I also note in this regard that the judicial authority relied upon by the Defendant of **Easy Coach Limited vs John Thomas Akalongo & Another [2014] eKLR** is inapplicable to this case as the deceased therein was a young man aged 24 years, and who was not married and on a 3-month contract employment.

Lastly, on the multiplier, the deceased was aged 51 years when he died as shown in the death certificate produced by PW3 as an exhibit. Everything being equal he would have worked to the official retirement age of 60 years. But due allowance must be given for the vagaries, vicissitudes and uncertainties of life, and due regard must also be had of the fact that the payment under this head is also being made in a lump sum. The Plaintiffs' advocates propose a multiplier of 11 years while the Defendant's advocates proposed 8 years. I find that a multiplier of 8 years would be reasonable. Damages for loss of dependency under the Fatal Accidents Act will thus work out at Kshs 92,610/= X 12 X 8 X 2/3 = Kshs 6,157,440/=.

As regards damages awarded under the Law Reform Act, the principle is that damages for pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death. In addition a Plaintiff whose expectation of life has been diminished by reason of injuries sustained in an accident is entitled to be compensated in damages for loss of expectation of life.

In **Rose vs Ford, (1937) AC 826** it was held that damages for loss of expectation of life can be recovered on behalf of a deceased's estate. Further, in **Benham vs Gambling, (1941) AC 157** it was further held that only moderate awards should be granted under this head for the following reasons:

“In assessing damages for this purpose, the question is not whether the deceased had the capacity or ability to appreciate that his further life on earth would bring him happiness, the test is not subjective and the right sum to award depends on an objective assessment of what kind of future on earth the victim might have enjoyed, whether he had justly estimated that future or not. Of course no regard must be had to financial losses or gains during the period of which the victim has been deprived. The damages are in respect of loss of life, not loss of future pecuniary prospects.”

The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs 100,000/- while for pain and suffering the awards range from Kshs 10,000/= to Kshs 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death. In the present appeal PW2 testified that the deceased died after a period of hospitalization of about two months. I therefore award Kshs 150,000/= as damages for pain and suffering and Kshs 100,000/= as damages for loss of expectation of life.

On the submissions by the Defendant that the damages awarded under the Law Reform Act be subtracted from the award made under Fatal Accidents Act, I am guided by the law and practice where a claimant get awards for loss of life both under the Law Reform Act and the Fatal Accidents Act as explained by the Court of Appeal in **Hellen Waruguru Waweru (suing as the legal representative of Peter Waweru Mwenja (Deceased) vs Kiarie Shoe Stores Limited [2015] eKLR** as follows:

“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.

21. The confusion appears to have arisen because of different reporting of the Kenfro case (supra) which was heavily relied on by Mr. Kiplagat. The version he relied on is from [1982-88] 1 KAR 727 which concentrates on the decision of Kneller JA in extracting the *ratio decidendi*. The same case, however, is more fully reported in [1987] KLR 30 as Kenfro Africa Ltd t/a Meru Express Services 1976 & Another -VS- Lubia & Another (No. 2) and the *ratio decidendi* is extracted from the unanimous decision of all three Judges. It was held, *inter alia*, that:-

“6. An award under the Law Reform Act is not one of the benefits excluded from being taken into account when assessing damages under the Fatal Accidents Act; it appears the legislation intended that it should be considered.

7. The Law Reform Act (Cap 26) section 2 (5) provides that the rights conferred by or for the benefit for the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of the deceased persons by the Fatal Accidents Act. This therefore means that a party entitled to sue under the Fatal Accidents Act still has the right to sue under the Law Reform Act in respect of the same death.

8. The words 'to be taken into account' and 'to be deducted' are two different things. The words in Section 4 (2) of the Fatal Accidents Act are 'taken into account'. The Section says what should be taken into account and not necessarily deducted. It is sufficient if the judgment of the lower court shows that in reaching the figure awarded under the Fatal Accidents Act, the trial judge bore in mind or considered what he had awarded under the Law Reform Act for the non-pecuniary loss. There is no requirement in law or otherwise for him to engage in a mathematical deduction.”

I note in this regard that the evidence by PW3 was that the Deceased used to meet all the family expenses. There were thus other beneficiaries of his estate who will benefit from the award of loss of expectation of life other than the dependants getting compensation under the Fatal Accidents Act.

Lastly, it is trite law that for special damages to be awarded, they must be specifically pleaded and also strictly proved. It was held as follows in ***Maritim & Another –v- Anjere (1990-1994) EA 312*** at 316 in this regard:

“It is now trite law that special damages must not only be pleaded but must also be specifically proved and those damages awarded as special damages but which were not pleaded in the plaint must be disallowed.”

The Plaintiffs pleaded special damages of Kshs 71,900/= . The Defendant agreed that these special damages were proved by production of receipts.

I accordingly enter judgment for the Plaintiffs against the Defendant as follows:

1. The Defendant is found 80% liable for the accident that occurred on 9th July 2014 involving motor vehicle registration number KAZ 739W with contributory negligence by the Deceased of 20%.

2. The damages awarded in favour of the Plaintiffs as against the Defendant are as follows:

Damages awarded under the Law Reform Act..... KShs 250,000/=

Damages awarded under Fatal Accidents Act..... Kshs 6,157,440/=

Special damages..... Kshs. 71,900/=

Sub total..... Kshs 6,479,340/=

Less 20% contributory negligence..... Kshs 1,295,868/=

Total Award..... Kshs 5,183,472/=

3. I apportion the damages under the Fatal Accidents Act (Kshs 6,157,440/=less 20% = Kshs 4,310,208/-) as follows: –

- (i) E M K..... Kshs 1,110,208/=
- (ii) A K MI Kshs 400,000/=
- (iii) E M I..... Kshs 500,000/=
- (iv) R S I..... Kshs 600,000/=
- (v) S M I..... Kshs 700,000/=
- (vi) C K M..... Kshs 1,000,000/=

4 The general damages will carry interest at court rates from the date of judgment while the special damages will attract similar interest from the date of filing suit.

5. The Plaintiffs shall have 80% of the costs of the suit.

Orders accordingly.

Dated, signed and delivered in open court at Machakos this 8th day of March 2018.

P. NYAMWEYA

JUDGE