



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CIVIL APPEAL NO. 100 OF 2017

CORAM: D.S. MAJANJA J.

BETWEEN

JOHN MWIKA LIMBERIA suing as the

legal representative of the estate of

STEPHEN KATHURIMA LIBERIA.....APPELLANT

AND

JOSEPH KOBIA KAGWARA.....RESPONDENT

(Being an appeal from the Judgment and Decree of Hon.G. Sogomo, SRM

dated 29th November 2016 at the Principal Magistrates Court

at Tigania in Civil Case No. 151 of 2013)

JUDGMENT

1. The deceased, a pedestrian, was knocked down and died in an accident that took place on 11th April 2012 along Ngundune - Ithatene Earth road when the respondent's driver drove motor vehicle registration number KAH 938P negligently. Following the accident, the deceased's personal representative claimed damages under the *Law Reform Act (Chapter 26 of the Laws of Kenya)* and *Fatal Accidents Act (Chapter 32 of the Laws of Kenya)*. The issue of liability was settled in the ratio of 70:30 against the respondent. Following assessment of damages, the trial court awarded Kshs. 120,000/- for loss of expectation of life and Kshs. 35,2000/- as special damages. The court did not make any award under the *Fatal Accidents Act*. It is this award that has now precipitated this appeal.

2. The thrust of the appellant's case as set out in the memorandum of appeal, written and oral submissions is that the trial magistrate failed to give consideration to the claim for loss of dependency despite the pleadings and evidence supporting such a claim. The respondent's position is that the trial magistrate appreciated the principles and evidence and was right in making the award.

3. As this is an appeal on the quantum of damages, I must keep in mind the general principal upon which this Court, as an appellate court, will interfere with an award of damages. In *Bashir Ahmed Butt v Uwais*

Loss of expectation of life Kshs.	120,000/-
Loss of dependency Kshs.	300,000/-
Special damages Kshs.	35,200/-
Total Kshs	475,000/-
Less 30%	
TOTAL Kshs. ...	332,575/-

10. The amount shall accrue interest from the date of judgment in the subordinate court. The appellant shall have the costs of the appeal which I assess at **Kshs. 30,000/-**.

DATED and DELIVERED at MERU this 31st day of May 2018.

D.S. MAJANJA

JUDGE

Mr Rimita instructed by Maitai Rimita & Company Advocates for the appellant.

Mr Kariuki instructed by Mithega & Kariuki Advocates for the respondent.