



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 176 OF 2015

PETER SURUNGAI SABILA

OMAR JUMA OMALLAH.....APPELLANTS

VERSUS

PETER MWANGI MUCHIRI

GEOFFREY MURAGURI MUCHIRI

(Suing on their own behalf and on behalf of the estate of the late

DAVID IRUNGU MUCHIRI (DECEASED).....RESPONDENT

J U D G M E N T

Liability

1. The only witness that gave an account on how the accident occurred was PW 3, Blasio Mwanyecho Blasio. His evidence that he witnessed the accident occurred and that the motorcycle rider had indicated intention to make a turn when the motor vehicle hit it from behind. This piece of evidence when put together with the evidence in the police abstract that the driver of the motor vehicle was charged convicted and fined by a traffic court, are, in the absence of any evidence in rebuttal, sufficient proof that the defendant was to blame for the accident.

2. In the judgment, the trial court having reviewed the evidence rendered itself as follows:-

“Evidence adduced herein shows that Omar was charged with causing death by dangerous driving of motor vehicle registration No. KBK 278Z following its collision with the deceased’s motorcycle and was convicted and fined Kshs.20,000. There is no evidence that the conviction was overturned on appeal to a higher court. As pointed out by the Plaintiff’s advocates in their submissions, the Traffic Courts decision is conclusive evidence that Omar was guilty of the offence as charged by dint of Section 47A of the Evidence Act Chapter 80 of the Laws of Kenya. For the purposes of these proceedings, he is also liable to compensate the estate of the deceased for the death. The defence Counsels submissions that the deceased contributed to the causation of the accident is thus baseless.”

3. While the trial court may be faulted on the finding that the conviction by the traffic court without being reversed was a conclusive determination on the liability, that fault would only be sound if the Appellant

had led evidence to contrast the evidence given by the Respondent. In this case no evidence was led despite several adjournment afforded to them and therefore the decision on ***Shah vs Mbogo [1967] EA 116*** does not come to the aid of the Appellant. For that reason the limb of the appeal on liability must fail and it is hereby dismissed.

4. On quantum of damages, I find no fault or error at all on the award of damages under the headings pains & suffering as well as loss of expectation's of life. Those awards were made on sound principles of law and solid evaluation of the evidence and being an appellate court no justification has been put forth to merit interference.

5. However there is to me an error on the assessment of damages for lost dependency in so far as the trial court adopted a multiplier of 18 years.

6. The evidence led was that the deceased was single and was supporting the parents, father and mother aged 66 and 49 years respectively. In assessing loss of dependency it was incumbent upon the trial court not to put all the premium on the age of the deceased only in isolation from the ages of the dependants and the fact that the deceased had the prospects of marrying and reducing his support to the parents. The trial court was equally bound to take into account the fact that under the fatal accidents Act siblings are not recognized as dependants.

7. Taking into account the ages of the parent, and regard being had to the vicissitudes of life, and the average life expectancy of Kenyans, I hold the view that the multiplier of 18 years is manifestly high and had the inescapable effect of exaggerating the award under the heading loss of dependency. That was occasioned by failure to take into account the ages of the parents, the unmarried status of the deceased and the fact that dependency depended on those two factors. That was an important and relevant factor to be taken into account and in failing to take some with account the trial court erred. That error must be corrected by an order setting aside the choice of multiplier.

8. On my part as a first appellate court and having taken into account the relevant facts aforesaid and without substituting my discretion for that of the trial court, I hold and find that a multiplier of upto 10 years would be reasonable. This is coupled with the fact that the sum awarded comes in lump sum and can be invested to yield on regular basis.

9. Accordingly, the award under the heading loss of dependency is tinkered with by substituting the multiplier of 18 with that of 10 years. The sum for loss dependency now works out as follows:-

$$30,000 \times 12 \times 10 \times 2/3 = 2,400,000.00$$

10. In summary, the aggregate sum due to the Respondent work out as follows:-

Pains & suffering	150,000.00
Loss of expectation of life	100,000.00
Loss of dependency	2,400,000.00
Special damages	<u>1,270,707.00</u>
TOTAL	<u>3,920,707.00</u>

11. The general damages shall attract interest at court rate from the date of the delivery of judgment by the lower court while special damage will attract interest from date of the suit.

12. As the Appellant has succeeded only partly award to him ½ costs of this appeal.

13. It is so ordered.

Dated and delivered at Mombasa this 24th day of April 2017.

HON. P. J. O. OTIENO

JUDGE