



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
HIGH COURT CIVIL CASE NO. 258 OF 2015

SOPHIA WAIRIMU NJOROGE.....1ST
PLAINTIFF

JOSEPH KAHUGU NJOROGE2ND
PLAINTIFF

(SUING AS THE ADMINISTRATORS OF THE ESTATES OF **SAMUEL MUCHIRI KIGAMBA – DECEASED**)

VERSUS

GEORGE KARONGO.....1ST
DEFENDANT

WOODMAN AGENCIES LIMITED2ND
DEFENDANT

JUDGMENT

1. The Plaintiffs filed this suit as the administrators of the estate of the Late Samuel Muchiri Kigamba (hereinafter the deceased). The 1st Defendant is sued as the driver and/or beneficial owner of motor vehicle registration No. KBL 446A while the 2nd Defendant is sued as the registered owner thereof.
2. The deceased passed away on 14th February, 2015 when he was involved in a road traffic accident while travelling as a fare paying passenger in motor vehicle registration No KCB 235U make Nisan Vannet which collided with motor vehicle KBL 446A Isuzu Lorry (hereinafter Lorry). The deceased sustained fatal injuries in the accident. The Plaintiffs attributed the accident to the negligent manner in which they stated that the Lorry was being driven. The Plaintiffs prayed for general damages under the Fatal Accidents Act (Cap 32) and Law Reform Act (Cap 26) Laws of Kenya, special damages and costs.
3. The Defendants denied the claim as per the statement of defence dated 31st August, 2015. The Defendants in the alternative blamed the accident solely and/or substantially on the negligence of the deceased and the driver of motor vehicle registration No. KCB 235U.
4. The Plaintiffs filed a reply to the statement of defence and denied all the particulars of negligence set out in the defence.

5. The Plaintiff's side called three witnesses in support of the case. PW1 PC Eliud Katwa produced the police abstract as an exhibit. His evidence was that investigations were carried out and the lorry blamed for the accident. The police abstract reflects that the deceased sustained fatal injuries in the accident. PW1's further evidence was that the driver of the lorry was charged with the offence of causing death by dangerous driving in CMCR 2195/15 at Makadara Law Courts and the case is still pending.

6. PW2 Jackson Waweru Karema is an eye witness. PW2 blamed the accident on the lorry. It is the evidence of PW2 that the lorry was being driven on its right hand side lane and started overtaking two other motor vehicles at a high speed without regard to other road users and collided with the oncoming motor vehicle registration No. KCB 635A.

7. PW3 Sophia Wairimu Njoroge the widow of the deceased produced the grant of letters of administration. Her evidence was that the deceased was married with three children and they lost their family's sole bread winner as she is a housewife. She further testified that after the accident the deceased was taken to Kenyatta National Hospital where she found him in the Intensive Care Unit the day after the accident and that the deceased was pronounced dead after about one hour after her arrival at the Intensive Care Unit.

8. The Defendants closed their case without calling any witnesses. The parties thereafter opted to file written submissions which I have considered.

9. The evidence of the investigations carried out blamed the accident on the lorry driver who was charged with the offence of causing death by dangerous driving. PW2 who was at the scene at the material time gave evidence that shows that the lorry driver was driving the motor vehicle negligently at a high speed and overtaking when it was not safe to do so. Both PW1 and PW2 maintained their evidence and were not shaken during the cross-examination. On the other hand the defence did not call any witnesses in support of their allegations of negligence on the side of the deceased or the motor vehicle the deceased was travelling in. Consequently, I find the Defendants 100% liable for the accident. The police abstract reflects that the 1st Defendant, George Karogo was the Lorry driver while the 2nd Defendant Woodsman Agencies Ltd was the registered owner of the lorry as per the copy of records from Kenya Revenue Authority which was produced as an exhibit.

10. The evidence of PW1 established that the deceased died after one day following the accident. The death certificate reflects the date of death as 15th February, 2015. The accident occurred on 14th February, 2015. Thus the deceased did not die instantaneously. The deceased must have endured pain and suffering. I would award a conventional sum of Ksh.100,000/= for pain and suffering and a further Ksh.100,000/= for loss of life.

11. The uncontroverted evidence that the widow (PW1) of the deceased is that the deceased was her husband and they had three children. The marriage certificate and the birth certificates for the three minor children were produced as exhibits. I would adopt a dependency ratio of 2/3. Although the widow of the deceased testified that the deceased spent his entire salary on his family, the deceased must have spent some of the money on himself.

12. The deceased was working with Barclays Bank of Kenya Ltd as a Manger according to the evidence of the widow. The payslip produced as an exhibit confirms that the deceased was indeed employed as such. The payslip for the month of November 2014 reflects basic pay of Ksh.259,957/=. After statutory deductions and other deductions, the net pay was Ksh.172,920/=. At the age of 43, the deceased could have worked for many more years. However, the vicissitudes of life must be taken into account. The payment will also be made in a lump sum. A multiplier of 12 years is in my view reasonable. Loss of dependency therefore works out as follows:

$$\text{Ksh.172,920} \times 12 \times 2/3 = 16,600,320/=.$$

While computing the claim under the head of loss of dependency, I have taken into account the award made under the Law Reforms Act. The award need not be a mathematical calculation.

13. The Plaintiff's through the evidence of PW3 (widow) produced a receipt for Ksh.23,600/= for obtaining the grant of letters of administration ; Ksh.18,789/= for medical expenses; Ksh.500/= for obtaining the copy of records from Kenya Revenue Authority. These special damages were specifically claimed and have been proved. The same total Ksh.42,889/= and are awarded to the Plaintiffs.

14. The total award is as follows:

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|------------------------|----------------------|
| (a) Pain and suffering | Ksh.100,000/= |
| (b) Loss of life | Ksh.100,000/= |
| (c) Loss of dependency | Ksh.16,600,320/= |
| (d) Special damages | Ksh. <u>42,889/=</u> |

TotalKsh.16,843,209/=

15. I hereby enter judgment in favour of the Plaintiffs against the 1st and 2nd Defendants jointly and severally for the sum of Ksh.16,843,209/= plus costs and interest

Date, signed and delivered at Nairobi this 22nd day of June, 2017

B. THURANIRA JADEN

JUDGE