



REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL SUIT NO. 2 OF 2016

1. HASSAN OSMAN ALI

2. ALIMA HASSAN IBRAHIM (SUIING AS ADMINISTRATORS

OF THE ESTATE OF THE LATE HUSSEIN ASMAN ALI)...PLAINTIFFS

VERSUS

MULTIPLE HAULIERS (E.A.) LIMITED.....DEFENDANT

Judgment

The Claim

The Plaintiffs have sued the Defendant in their capacity as co-administrators of the estate of Hussein Asman Ali (hereinafter referred to as “the Deceased”). They seek recovery of damages arising from an accident alleged to have occurred on 15th October, 2012 along Mombasa – Nairobi road. In their Amended Plaint amended on 22nd October, 2014, the Plaintiffs claimed that the Defendant’s driver recklessly drove the Defendant’s motor vehicle registration number KAW 731K Mercedes Benz Lorry, that it caused an accident and that as a consequence thereof, the Deceased who was a lawful driver of motor vehicle registration number KAJ 504M suffered fatal injuries.

It was averred in the Plaintiff’s Amended Plaint dated 22nd October 2014 and filed in Court on 24th October 2014 that the accident occurred solely or substantially due to the Defendant’s negligence. It was alleged that by reason of the said death, the deceased who was aged 29 years at the material time lost normal expectation of life and that his estate suffered loss and damage. It was alleged that prior to his death, the Deceased apart from being a driver used to hire out his pick up to undertake business from which he gained income. It was stated that his estimated income per day was KShs. 6,000/= per day.

The Plaintiffs’ further claim was for special damages made up of loss of motor vehicle registration number KAJ 504M, funeral expenses, and the advocate’s and legal costs in the petition for letters of administration in Nairobi High Court Succession Cause No. 1103 of 2013. They claimed in this regard that the said motor vehicle was extensively damaged in the accident and subsequently written off. The Plaintiffs claimed for its pre accident value since the vehicle was not comprehensively insured.

The 1st Plaintiff (PW1) was the Plaintiffs’ only witness. He testified that the deceased was his brother and the 2nd Plaintiff is their mother. He adopted his witness statement dated 24th October 2016, together with documents he filed herein and produced the said documents as exhibits 1 to 17.

PW1 testified that the accident occurred on 15th October 2012, and following the accident the deceased

passed away after a period of hospitalisation. He further testified that the deceased was self-employed and owned a motor vehicle KAJ 504M which he used to carry out hire business, and which earned him an average of Kshs. 6,000/= per day. Further, that the Deceased in some cases earned more when he went longer distances. PW1 testified that the Deceased was aged 29 years at the time of his death and was survived by the Plaintiffs. PW1 also stated that the deceased also had a girlfriend and a child.

On cross-examination PW1 confirmed that the Deceased was overtaking at the time of the accident, and that the point of impact was on the lane heading to Mombasa which was the Defendant's driver's lane. Further, that he did not witness the occurrence of the said accident, but that the Deceased narrated to him how the accident occurred. He confirmed that the deceased was not alone in his motor vehicle, and was with Wilberforce Wanjala who was a loader. He also stated that he was not going to be calling the said Wilberforce Wanjala as a witness.

PW1 in addition confirmed that according to the Deceased's financial statement from National Bank that he filed in court as an exhibit, there were no accounts for the year 2011, and that the deceased did not desposit Kshs. 6,000/- per day as per the financial records of the year 2012. He further confirmed that there was no proof in court to show that the car was written off, and further there was no documentation he produced to prove the funeral expenses and legal costs pleaded as special damages.

The Defence

The Defendant denied the Plaintiffs' claim in its statement of defence dated 10th October, 2014, and particularly that it was vicariously liable for the accident. Two witnesses testified on behalf of the Defendant. Thomas Koikai Lempesa (DW1) who was the driver of motor vehicle registration number KAW 731K testified that he is a driver and lives in Loitoktok. He adopted his statement dated 19th September 2016. It was his testimony that on 15th October 2012 when the accident occurred, he saw motor vehicle registration number KAJ 504M abruptly cut into his lane and in an attempt to avoid a head on collision he swerved to the left.

He further testified as he swerved to the left he collided with motor vehicle registration number KAJ 504M, with the impact was on his lane of the road, and that his vehicle was damaged on the driver's side and the front bumper broke. Further, that after the impact, motor vehicle registration number KAJ 504M overturned and was damaged on the left side. It was his testimony that immediately after the accident the police came to the scene of the accident, and the Deceased and his passenger were rushed to hospital. He then drove motor vehicle registration number KAW 731K to Machakos Police Station for inspection.

On cross-examination, DW1 testified that the accident occurred at around 6:45 am, and further that the accident occurred on the left lane which was his lawful lane. It was his testimony that he was driving at a speed of 50 kilometers per hour, and that immediately he saw motor vehicle KAJ 504M cut into his lane, he swerved to the left to avoid an accident. He further testified that the point of impact of the accident was not as shown in a sketch map drawn by Fact Finders Investigators and Assessors, and it was his testimony that the point of impact was on the white line and was not off the road. He testified that the scene of the accident is slightly a hilly area and not flat. He denied he was freewheeling at the time of the accident.

The second Defendant's witness was PC Robert Tomo (DW2), and he stated that he was stationed at Machakos Police Station. He confirmed that he had received witness summons to come to court with the Occurrence Book and the Police File No. 173 of 2012. He confirmed that the said police file could not be located at the station and he thus only came with the Occurrence Book to court.

He read out to court Occurrence Book entry No. 07/15/10/2012 in which a serious injury traffic accident was reported. He testified that the said accident occurred at 6:30am along Mombasa road near the Machakos Junction. It was his testimony that motor vehicle registration number KAJ 504M was overtaking when it collided with an oncoming motor vehicle registration number KAW 731K ZD 6006. He further testified that Hussein Osman Ali who was driving the motor vehicle registration number KAJ 504M was seriously injured, while the passenger who was with him in the motor vehicle, Raphael Musyoka Kioko, was slightly injured and they were both taken to Machakos Hospital for treatment.

DW2 further testified that as per the Occurrence Book entry, the scene was visited, and the vehicles towed to Machakos Police Station for inspection. It was his testimony that the driver of Motor vehicle KAJ 504M was to blame for the accident as he overtook when it not safe to do so.

He further testified that there was a further Occurrence Book entry on the same day with regard to the same accident by PC Kinyamal and PC Obonyo who had visited the Machakos Hospital. He testified that according to the further Occurrence Book entry, Hussein Osman Ali had passed away while undergoing treatment, and the person reported as Raphael Musyoka Kioko was actually Wilberforce Wanjala.

On cross-examination, he confirmed that according to the Occurrence Book the accident occurred at around 6:30am. It was his testimony that when the accident was first reported it was reported that the passenger who was in the vehicle was Raphael Kioko, but the same was corrected when the police visited the hospital and found that the said person was Wilberforce Wanjala. He testified he was not aware if the police officers took any statements from Wilberforce Wanjala.

When shown a copy of death certificate DW2 stated that the date of death as shown was 28th November 2012, but that he could not comment on the same as it was not issued by the police. It was his further testimony that it is not wrong to overtake, but drivers should only overtake when it is safe to do so.

The Issues and Determination

The Defendant does not dispute that it is the owner of motor vehicle registration number KAW 731K, and the Plaintiffs also produced as an exhibit search results from the Registrar of motor vehicles showing that the Defendant was the registered owner of the said motor vehicle. In addition, both the Plaintiffs and Defendant's witnesses testified as to the occurrence of an accident involving the said motor vehicle and motor vehicle registration number KAJ 504M on 15th October 2012, which is also not disputed. The disputed issues are firstly, who as between the deceased and the Defendant was to blame for the accident that occurred on 3rd January 2013 and to what extent; and secondly, what is the quantum of damages if any, are payable to the Plaintiffs.

The Plaintiffs' learned counsel, Nelson Harun & Company Advocates, filed written submissions on these issues dated 20th February 2017, while the Defendant's learned counsel, Muriithi & Ndonge Advocates, filed written submissions dated 3rd March 2017.

On the issue as to liability, the Plaintiffs submitted that their testimony laid out the Plaintiffs' case on causation of the accident. Further, that section 33 of the Evidence Act relates to statements by a deceased person, and the allegations of the deceased as narrated by PW1 are admissible in evidence pursuant to the said section. In addition, that the said statements were corroborated by an investigation report issued to the Defendant's Claim Manager, which was produced in evidence and marked as Plaintiffs' exhibit 4, and which had sketches of the scene of the accident. It was thus submitted that the Plaintiffs account as narrated to PW1 by the Deceased is a believable narrative, consistent and accurately describes the circumstances, the locality and the event.

The Plaintiffs further submitted that the Defence testimony is inconsistent, contradictory, unbelievable and a cover up, as there was inconsistency in the Police Abstract, P3 Form, witness accounts and the police occurrence book on the time of the accident. In addition that there was a deliberate failure by the police to take a statement from Wilberforce Wanjala Simiyu who was a victim and an eye witness, and there was a mix-up in the names of the victims Wilberforce Wanjala Simiyu and one other Raphael Musyoka Kioko by the police. Lastly, that there was generally a failure on the part of the police to thoroughly investigate the whole truth on the circumstances that led to the fatal accident.

The Plaintiffs urged this Court to find and hold the Defendants 100% liable for the accident.

The Defendant on its part submitted that the Deceased brought upon himself misfortune as he was overtaking when it was unsafe to do so, as it is clear from the evidence adduced in court that the accident

occurred when the deceased was overtaking, and further that the collision occurred on DW1's lawful lane. That it was further evident that DW1 in trying to avoid the said accident from occurring swerved to the left, but unfortunately collided with the motor vehicle which was being driven the Deceased.

In addition, that according to the police investigations carried by the police as per the Occurrence Book entry that was read in court, it was DW2 evidence that the Deceased was to blame for causing the accident as he was overtaking when it was unsafe to overtake. The Defendant submitted that the Plaintiffs have failed to prove their case on a balance of probability, and that the case against the Defendant should be dismissed with costs. However, that should the court find that the Defendant is liable, the Deceased bear the largest percentage on liability.

I have considered the evidence and submission by the Plaintiffs and Defendants on liability. As regards the proof of negligence on the part of the parties, I find that the evidence adduced by both PW1, DW1 and DW2 was that the accident occurred when the deceased was overtaking, and collided with the Defendant's motor vehicle at the edge of the Defendant's motor vehicle's lane.

The sketch of the accident scene in the Investigation Report by Fact Finders Investigators and Assessors dated 16th January 2013 which relied on by the Plaintiffs, and which was corroborated by the evidence of DW1, showed that the impact of the accident was at the edge of the road on the Defendant's motor vehicle's lane. The only inference that can be drawn from this evidence is that both motor vehicles moved to the edge of the road, presumably in a bid to avoid the accident.

This Court finds that as the Deceased was overtaking at the time of the accident and the accident took place at the Defendant's motor vehicle's lane, he was negligent to the extent that he did not ensure that the road was clear as there was an oncoming motor vehicle. The Defendant's driver was also negligent to the extent that he was not able to slow down or stop his vehicle in good time which is indicative that he was either driving at excessive speed or was not able for other reasons able to control his motor vehicle. I accordingly apportion liability as between the Deceased and the driver of the Defendant's motor vehicle registration number KAW 731K at the ratio of 60:40.

On the issue of quantum of damages, the Plaintiffs submitted that for damages under the Fatal Accidents Act, they had demonstrated that the deceased was aged 29 years as shown by the certificate of death, and submitted that he would have led a successful life as a businessman well beyond the age of 70 years. The Plaintiffs proposed a multiplier of 36 years taking into account the vicissitudes of life, and a monthly income of Kshs. 90,000/=.

Reliance was placed on the decision in **Kimatu Mbuvi vs Augustine Munyao Kioko, Nairobi Civil Appeal No. 203 of 2001** where the Court of Appeal upheld an award of Kshs. 80,000/= as monthly income for a person who was running a butchery business but could not provide conclusive evidence on the earnings. The Plaintiffs proposed that the damages be discounted by one third on account of dependency.

For the compensation awarded under the Law Reform Act, the Plaintiffs submitted that the deceased was in hospital from 15th October 2012 to 28th November 2012 when he succumbed to the injuries suffered, which was a period of forty five (45) days of pain, suffering and anxiety. The Plaintiffs proposed the sum of Kshs. 500,000/- for pain and suffering. Further, that the deceased was a young man who had established himself and had laid a firm foundation for his business and purchased his own vehicle for his trade, and the Plaintiffs also proposed an award of Kshs. 500,000 for loss of expectation of life.

Lastly on special damages, the Plaintiffs submitted that the deceased 's motor vehicle became a total wreckage after the accident. However, that it was not possible to obtain a pre accident valuation report, and they relied on a sale agreement showing that the deceased had purchased the vehicle for Kshs. 310,000 on 24th September 2010, and argued that it was unlikely that the vehicle's value would have substantially gone down by 15th October 2012. They urged the Court to assess this special loss based on the sale value of Kshs. 310,000/=.

The Defendant on the other hand submitted that under the Fatal Accidents Act, PW1 testified that the Deceased made Kshs. 6,000/= per day, however that the same was not collaborated by the financial records adduced in court. That according to the financial statements produced in court, the Deceased never made any deposits in his Postbank account in 2011 and 2012 making it difficult use the said statement to calculate how much the deceased made per month.

Further, that PW1 produced in court financial records from National Bank from 12th March 2012 to 16th August 2013, and that from the said account the deceased made only five deposits as follows: on 22/04/2012 he deposited Kshs. 32,000/=; on 12/06/2012 he deposited Kshs. 73,000/=; on 03/08/2012 he deposited Kshs. 60,000/=; on 12/09/2012 he deposited Kshs. 46,000/=; and on 12/10/2012 he deposited 37,000/=. Therefore that on average as per the financial records, the deceased earned Kshs. 666.00/= per day and taking that he worked for 20 working days in a month, the deceased earned Kshs. 13,200/= per month.

On the issue of the multiplier, the Defendant submits that a multiplier of 18 years will be reasonable in this case taking into accounts the vicissitudes of life, and relied on the decisions in **J W K & Another vs George Omondi & 2 Others, (2016) eKLR** and **Martha Ndiro Odera (suing as the administrator and Personal representative of the estate of Willy Patrick Ochieng Ndiro (Deceased) vs Come Cons Africa Limited, (2015) eKLR**. On the dependency ratio, the Defendant proposed a ratio a third (1/3), as the Deceased was only survived by his mother and brother as per the evidence adduced in court. The Defendant submitted that under the Fatal Accidents Act the compensation of loss of dependency should be Kshs. $13,200 \times 18 \times 12 \times \frac{1}{3} =$ Kshs. 950,400/=

On the damages to be awarded under the Law Reform Act, the Defendants submitted that the deceased herein died while undergoing treatment at the Machakos Hospital on the same day the accident occurred as per the evidence of DWI, and that an award of Kshs. 10,000/= will be adequate compensation for pain and suffering. Further, that an award of Kshs. 100,000/= will be adequate for loss of expectation of life.

The Defendants further submitted that that the Plaintiffs herein are the Deceased's beneficiaries under the Law Reform Act, and dependants under the Fatal Accidents Act and thus awarding the Plaintiffs under both Acts would amount to double compensation. The defence thus submits that the award under Law Reform Act be subtracted from the award made under Fatal Accidents Act. Reliance was placed on the decisions in **Aphia Plus Western Kenya & another v Mary Anyango Kadenge & Another [2015] eKLR** and the Court of Appeal decision in **Hellen Waruguru Waweru (suing as the legal representative of Peter Waweru Mwenja (Deceased) v Kiarie Shoe Stores Limited, [2015] eKLR**.

Lastly, on special damages to be awarded, it was the Defendant's contention that the Plaintiffs herein pleaded for the pre-accident value of the deceased motor vehicle, funeral expenses and legal costs for obtaining letters of Administration ad litem. However, that during the hearing, PW1 did not produce any evidence before this court in support of the above claims. Further, that PW1 produced a receipt of Kshs. 1,000/= being the costs of for doing a search at the Kenya Revenue Authority, which amount was not pleaded by the Plaintiffs in their Amended Plaint, and thus the claim fails. The Defendant submitted that the Plaintiffs should not be awarded any sum under this head as they have failed to prove the special damages they claimed in their Amended Plaint.

What are the applicable principles of law as regards the award of the damages urged by the parties? 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.”

It is only the deceased's mother who is entitled under upon proof of dependency under section 4(1) of the Fatal Accidents Act, as the 1st Plaintiff did not produce any evidence that the deceased had a wife or children. The 1st Plaintiff gave evidence in this regard that has been disputed by the Defendant, that the deceased was self employed and earning a daily income of Kshs 6,000/=.

I have noted that of the financial statements produced by the 1st Plaintiff in evidence, it is only the one from National Bank of Kenya that was current, spanning 7 months from March 2012 and October 2012. Over this period, the Deceased is shown to have made deposits totaling Kshs 248,000/= which translates to an average income of Kshs 35, 400/- per month. I therefore find that a monthly net income of 30,000/= per month would be reasonable. The parties were agreed on a dependency ratio of one-thirds (1/3) which is reasonable in light of the evidence adduced on dependency.

Lastly, on the multiplier, the deceased was aged 29 years when he died as shown in the death certificate produced by the Plaintiff as exhibit 2. 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 36 years while the Defendant's advocates propose 18 years. I find that a multiplier of 25 years would be reasonable. Damages under the Fatal Accidents Act will thus work out at KShs 30,000 X 12 X 25 X 1/3 = KShs 6,000,000/=.

This sum will be reduced by 60% to take into account the contributory negligence of the deceased.

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 case there was contradictory evidence brought by the Plaintiff as to the date the deceased died. The death certificate produced in evidence showed that the date of death was 28th November 2012. However, the police abstract the Plaintiffs dated 13th November 2012 showed that the accident was fatal

in relation to the deceased, the implication being that by that date the deceased was dead. However, despite this inconsistency, there is concurrence as shown in the evidence by DW1 that the deceased was taken to hospital after the accident, and passed away while in hospital. I find that an award of Kshs 100,000/= for pain and suffering and Kshs 100,000/= for loss of expectation of life is reasonable in the circumstances.

On the submissions by the Defendants 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 PW1 was that the Deceased used to support his mother who was the 2nd Plaintiff, and in addition the 1st Plaintiff who was the deceased’s brother. 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, and there is no double compensation.

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.”

Also see the decision of the Court of Appeal in the case of Hann vs Singh, (1985) KLR 716 where the court specifically stated that:-

“Special damages must not only be specifically claimed but also strictly proved, the degree of certainty and the particularity of proof required deponed on the circumstances and the nature of the acts themselves”

The Plaintiffs in their evidence and submissions claimed special damages of Kshs 310,000/= being the sale price of the motor vehicle registration number KAJ 504M, and relied on a sale agreement entered between the deceased and the seller of the said motor vehicle dated 24th September 2010. It is notable that no specific amount of special damages were pleaded in the Amended Plaint dated 23rd October 2014 filed in Court by the Plaintiffs on 24th October 2014. The special damages of Kshs 310,000/= not having been specifically pleaded, they cannot be awarded by this Court. In addition, no evidence of the other special damages pleaded was produced.

I accordingly enter judgment for the Plaintiffs against the Defendant only to the extent of the following orders: –

1. The Deceased is found 60% liable for the accident with contributory negligence by the driver of the Defendant’s motor vehicle registration number KBC 176F of 40%.

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

Damages awarded under the Law Reform Act.....KShs 200,000/=

Damages awarded under Fatal Accidents Act.....Kshs 6,000,000/=

Sub total..... Kshs 6,200,000/=

Less 60% contributory negligence..... Kshs 3,720,000/=

Total Award.....Kshs2, 480,000/=

3. The Plaintiffs shall be paid 40% of the costs of the suit by the Defendant.

Orders accordingly.

Dated, signed and delivered in open court at Machakos this 3rd day of August 2017.

P. NYAMWEYA

JUDGE