



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 831 OF 2007

LUCY KANINI IRUNGU.....PLAINTIFF

VERSUS

CHEGE WAHOME.....1ST DEFENDANT

EDWARD KARIUKI NJANI2ND DEFENDANT

HACO INDUSTRIES LTD.....3RD DEFENDANT

JUDGMENT

The Plaintiff herein filed this suit as the mother and one of the joint personal representatives to the Estate of Bernard Gitonga Irungu (deceased), against the defendants claiming general and special damages arising out of an accident that occurred on the 7th day of October, 2006.

The Plaintiff averred that at the material time, the deceased was travelling as a fare-paying passenger in motor vehicle KAN 167G along Thika road near Utalii drift when the first defendant while acting as the 2nd and 3rd defendant's agent so carelessly drove and/or controlled the aforesaid motor vehicle that the same lost control, veered off the road and overturned thereby occasioning fatal injuries to the deceased. The particulars of negligence are set out in paragraph 5 of the plaint.

It was further pleaded that by reasons of the aforesaid, the Plaintiff and the estate of the deceased suffered damage and loss due to the death of the deceased who was aged 23 years at the time of his death. That at the time, the deceased was a 4th year university student with a great potential of being a prominent personality in future likely to earn huge income and was also working part time in a bank and the deceased's Estate had therefore suffered great loss and damage which the Plaintiff claims from the defendants

The particulars of negligence and those of special damages are set out in paragraph 7 of the Plaint. On the 27th day of March, 2013 a consent judgment on liability was entered in favour of the plaintiff against the defendants in the ratio of 30:70 and on 21/4/2017, parties agreed on the special damages at Kshs.135,200 subject to contribution.

The matter thereafter proceeded for formal proof during which the Plaintiff called one witness namely Peter Irungu Gachau who is the father to the deceased and the husband to the Plaintiff. He adopted his witness statement filed in court on the 29th November, 2012.

It was his evidence that when the deceased died he was aged 23 years and he was a 4th year student at

Catholic University doing a degree in Bachelor of Commerce. That in addition, he was an intern in one of the banks in Nairobi City earning a sum of Kshs.25, 000/- per month during the holidays. He stated that the deceased was his only bright child and he was looking forward to him for support during his old age.

On cross examination, it was his evidence that the internship was only during the holidays and it was not employment. He stated that he did not have transcripts for the 3rd and 4th years and without them, he could not tell whether or not the deceased could have graduated immediately upon completion.

On whether his late son would have secured a job, he stated that there was a probability he could have but he could not know the income the deceased would have earned upon completion of the study.

The parties having recorded a consent on liability, this judgment relates to the quantum of damages only.

Parties filed written submissions in support of their respective positions in that regard. I propose to consider the same under three heads:-

(a) Pain and suffering

Under this head the Plaintiff has proposed a sum of Kshs.20,000/-. On their part, the defendants concurs that the award as proposed by the Plaintiff is fair.

(b) Loss of expectation of life

Under this, both parties concur that a sum of Kshs.90,000/- is reasonable.

(c) Loss of dependency

The plaintiff has urged the court to award a total sum of Kshs.8, 960, 000/- on the basis of multiplicand at Kshs.70, 000 multiplier of 32 and a ratio of 1/3. It was submitted that the deceased, after finishing his course, could have been employed and could have earned not less than Kshs.70,000 per month.

He relied on the case of **Satwinder Singh Bhogal vs Satwinder Kaur Benavura & others HCCC No. 1615 of 2001** where the deceased who was a student in Britain pursuing a degree in business information systems was awarded a multiplicand of Kshs.40,000/-, multiplier of 20 years and dependency ratio of ¼.

He also relied on the case of **Betty Ngatia Vs Samuel Kinuthia Thuita HCCC No. 339 of 1998 (Nakuru)** where an award of Kshs.10,000 was made for pain and suffering, Kshs.100,000 for loss of expectation of life, multiplier of 25 years and 1/3 ratio was adopted and a multiplicand of Kshs.4,000/-

The cases of **Haniel Mugo Muriuki Vs Morris Maina Njaramba (2009) eKLR** wherein the deceased was a 5th year medical student aged 24 years and a multiplicand of 27,000/- was used, 1/3 ratio and a multiplier of 24 years was also cited.

And the case of **Samuel Kimutai Korir** (suing as personal and legal representative of the **Estate of Chelangat Sileria Vs Nyanchwa Adventist Secondary School and Ano (2016) eKLR** wherein the deceased was aged 21 years undertaking a Teachers Training Course. The court used a multiplicand of Kshs.18, 000/- a multiplier of 25 years and 1/3 ratio.

On the part of the defendants, the following submissions were made on quantum;

The court was told to consider that the deceased was said to have been working on part-time basis and even then, no evidence was adduced to prove the said employment.

It was contended that the Plaintiff did not offer any evidence to enable the court to assess damages for lost years using the multiplier approach. In this regard the case of **Sheikh Mushtag Hassan Vs Nathan Mwangi Kamau Transporters & 5 others (1985) eKLR** was relied on in which a passage in the case of

Gammel Vs Wilson (1981) 1 Aller was quoted. The defendants urged the court to abandon the multiplier approach and adopt a global award which was suggested at Kshs.1,800,000/- relying on the case of **Peter Kibogoro Wanjohi Vs Christine Wakuthi Muriuki & Anor (2009) eKLR** where a global sum of Kshs.1,750,000 was awarded.

On a without prejudice, the defendants submitted that if the court is inclined to use the multiplier method a sum of Kshs.15,000 was suggested as a fair assessment of the deceased's income. The court was told that the suggested sum of Kshs.70,000 proposed by the Plaintiff has no factual and/or evidential basis.

On the multiplier, the defendants proposed 27 years which in their view is realistic. Their argument being that the deceased would have entered the job market at the age of 28 years considering that his transcripts indicated that he had incomplete courses and as such, he would have spent longer in college sitting for the incomplete courses..... A ratio of 1/3 was suggested because the deceased was not married. Going by this method a total sum of Kshs.1,620,000 was suggested.

The court has considered the arguments by both parties. The plaintiff has entirely submitted on the basis of the multiplier approach and has asked the court to adopt a multiplicand of Kshs.70,000/- as the expected salary that the deceased would have earned after completing his degree in Bachelor of Commerce.

The defendants contend that no evidence was led to support that salary. I fully concur with the defendants in that regard. In the case of **Satwinder Kaur Benavora & 2 others** and that of **Betty Ngatia Vs Samuel Kinuthia Thuita** (both relied on by the Plaintiff) the court notes that evidence was adduced to support what the deceased would have earned in their respective careers. Witnesses were called to give evidence on expected salaries in similar careers.

In the case at hand, no such evidence was adduced and the figure of Kshs.70,000 was merely speculative and has no legal or factual basis.

In the case of **Gammel vs Wilson (1981) 1ALLER** which was quoted in our Kenyan case of **Sheikh Mushtag Hassan Vs Nathan Mwangi Kamau Transporters & 5 others (1985) eKLR**, the court held:-

“..... if sufficient facts are established to enable the court to avoid the fancies of speculation, even though not enabling it to reach mathematical certainty, the court must make the best estimate it can. In civil litigation, it is the balance of probability which matters.....”

In the absence of such evidence, I am of the view that a sum of Kshs.20,000 represent a fair assessment of the deceased income.

On the global approach, my considered view is that it is equally speculative and in the circumstances of this case, the multiplier approach is more justifiable. With regard to the ratio, I note that the deceased was not married and therefore a 1/3 ratio, is applicable in this case.

On the multiplier, assuming that the deceased would have started working at the age of 25 years, he would have worked until the age of 60 years in the public service. Due to vagaries of life I would consider a multiplier of 32 years as reasonable.

In the premises, I enter judgment for the plaintiff against the defendants jointly and severally as follows:-

- (1) Liability at 70:30 in favour of the plaintiff (by consent)
- (2) Pain and suffering – Kshs. 20,000/-
- (3) Loss of expectation of life – Kshs. 90,000/-
- (4) Loss of dependency $20,000 \times \frac{1}{3} \times 32 \times 12 =$ Kshs.2,560,000/-

(5) Special damages –	Kshs. 135,200/-
Subtotal -	Kshs.2,805,200/-
Less 30% -	<u>Kshs. 841,560/-</u>
Grand total -	<u>Kshs.1,963,640</u>

The plaintiff is awarded the costs of the suit.

Dated, Signed and Delivered at Nairobi this 22nd Day of September, 2017.

.....

L. NJUGUNA

JUDGE

In the presence of

.....*for the Plaintiff*

.....*for the defendants*