



REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CIVIL CASE NO. 53 OF 2014

HYDER NTHENYA MUSILI

PATRICIA MUTILE MBINDYO

(Suing as The Legal Representatives of the

Estate of COLLINS MUMO MBUNDYO).....PLAINTIFFS

VERSUS

CHINA WU YI LIMITED 1ST DEFENDANT

WILSON GITHU.....2ND DEFENDANT

JUDGMENT

The Pleadings

On 3rd January 2013, Collins Mumo Mbindyo since deceased (hereinafter referred to as “the Deceased”), was the driver of motor vehicle registration number KBC 176F, when the said motor vehicle collided with motor vehicle registration number KBB 892G. The Deceased suffered fatal injuries in the accident and died on the same day. The 1st Defendant was the registered owner of Motor Vehicle and trailer registration Number KBB 892G and ZD4070, while the 2nd Defendant was the driver of the said motor vehicle.

On 2nd December 2014, the Plaintiffs, who are the brother and wife of the Deceased as well as his dependants and legal representatives, filed this suit by way of a Complaint dated 20th June 2014. They allege that motor vehicle registration number KBB 892G was carelessly, negligently and recklessly driven, managed and/or controlled; and the said motor vehicle abruptly entered the road and in the path of the motor vehicle registration number KBC 176F without any warning signs or giving way, and as a result motor vehicle registration number KBC 176F violently rammed into the said motor Registration No.KBB 892G occasioning an accident.

Further, that the said accident was caused by the sole negligence of the 2nd Defendant the driver, agent, servant and/or employee of the 1st Defendant, and gave the particulars of the Defendants’ negligence as follows:

a) Driving at an excessive speed in the circumstances.

b) Driving dangerously and recklessly without due regard to other road users, particularly the

plaintiff.

- c) Failing to keep any or any proper lookout to the safety of other road users.
- d) Failing to give way or warning signals as to avert the accident.
- e) Permitting motor vehicle to join a road when it was not clear to so do.
- f) Failing to brake, swerve, slow down and/or failure to maneuver the motor vehicle registration number KBB 892 G so as to avert the accident.
- g) Causing and/or permitting the accident to occur.
- h) Driving the motor vehicle in a careless and un-attentive manner on a public road.
- i) Failing to adhere to the Highway Code and traffic rules and regulations

The Plaintiffs also relied on the doctrine of *res ipsa loquitor*.

The claim by the Plaintiffs is that the Deceased's dependants and estate have suffered loss and damage, and they claimed damages under the Law Reform Act and the Fatal Accidents Act. The Deceased's dependants who were averred to wholly depend on him were specified as his wife, his mother and his two minor daughters. It is stated that at the time of his death the deceased was aged 32 years and in good health, and he worked as a sale and marketing executive and also run a business for the sale of tyres and earned a net income of Kshs 85,340/= per month.

The Plaintiff therefore sought special damages of Kshs 96,445/=-, general damages under the Law Reform Act and the Fatal Accidents Act, interest on the damages, and costs of the suit.

The 1st and 2nd Defendants on their part denied that the 1st Defendant was the registered owner of the said motor vehicle registration number KBB 892G, pursuant to a defence filed in Court dated 12th January 2015. They further denied that the accident was caused by the alleged negligence on the part of the Defendants, and contended that the said accident was caused by or substantially contributed to by negligence on the part of the deceased. The particulars of the negligence on the part of the deceased were itemized in the said Defence as follows:

- a) Obstructing the lawful path of motor vehicle registration number KBB 892T.
- b) Over loading motor vehicle registration number KBC 176F.
- c) Ignoring and/or neglecting all the warning signs by the driver of motor vehicle registration number KBB 892T.
- d) Failing to keep any or proper look out for oncoming motor vehicles particularly motor vehicle registration number KBB 892T.
- e) Ramming onto motor vehicle registration number KBB 892T.
- f) Over speeding in the circumstances.
- g) Failure to muster and stop motor Vehicle registration number KBC 176F appropriately.
- h) Causing the accident.

This suit was filed alongside two other matters being **HCCC No. 51 of 2014- Wilson Nyamai Ndeto & Another vs China Wu Yi Ltd** and **HCCC No. 52 of 2014 -Jastine Nzula Musyoka & Another vs**

China Wu Yi Ltd & Another which arose from the same accident, and directions were issued on 30th November 2015 that the present suit (HCCC No. 53 of 2014) will be the test suit for the purposes of determination on the issue of liability, and that the judgment and/or determination on liability do apply to the other two suits with calling evidence to that effect.

The Evidence

During trial, the Plaintiffs testified and called two (2) additional witnesses to testify. The first witness (PW1) was PC Raider Kemboy Ibrahim, who testified that he was a traffic police officer attached to Athi River Police Station and was charged with performance of traffic duties. The witness stated that on 3rd January 2013 around 9.30 pm an accident was reported at the station as having occurred around Steel Plant along Mombasa Road. Further, that one Wilson Githu (the 2nd Defendant) was the driver of motor vehicle registration number KBB 892G lorry and trailer registration number ZD 4070 make of Hino truck involved in the accident. Further, that the accident also involved motor vehicle registration number KBC 176F, a station wagon that was driven by one Mumo Mbindyo (deceased) which was travelling from Mombasa direction towards Nairobi. The witness averred that the station wagon hit the trailer that was turning into Mombasa Road, and due to the impact the driver and two passengers died on the spot and five (5) other passengers were seriously injured.

The witness produced a police abstract that was marked as Exhibit 1, and further averred that Wilson Githu (the 2nd Defendant) was charged as a result of the accident at Mavoko Law Court in PM Traffic Case number 3161 of 2014 with the offence of causing death by dangerous driving. The witness averred that the 2nd defendant was to blame for the accident.

In cross-examination the witness averred that he was not the investigating officer in this case, that the capacity of the motor vehicle was five (5) although there were eight passengers aboard. That the damage to the station wagon was extensive to the front and that the lorry was partially on the road, and could have given way to the station wagon. The witness confirmed that the lorry/trailer abruptly emerged from the feeder road and into the highway and therefore solely occasioning the accident.

The witness in re-examination confirmed that the speed of the station had not been determined. That from the sketch maps the station wagon partly off the road to signify that there was an effort by the deceased to avert the accident.

The second Plaintiffs' witness (PW2) was Irene Leah Musau, who adopted her witness statement dated the 20th June 2014, and averred that she is a civil servant and lives in Nairobi. Further, that on the 3rd January 2013 around 9.30 pm, she was travelling in motor vehicle registration number KBC 176F along Mombasa Road headed to Nairobi, when abruptly motor vehicle registration number KBB 892G without any signal entered the road, and the vehicle she was travelling in rammed into the lorry. That she witnessed the accident and blamed the driver of the lorry for failure to indicate the signal that he was joining the road. and for failure to give way to an oncoming motor vehicle. In addition, that the motor vehicle she was travelling in was at a moderate speed and their driver applied brakes and also flicked the lights to send a signal to the driver of the lorry, however the same were ignored. The witness sustained serious injuries as a result of the accident, while three (3) passengers sustained fatal injuries, including the driver of the motor vehicle registration number KBC 176F.

In cross-examination, the witness confirmed that the driver of the station wagon was the deceased one Collins Mumo and that Peter Maithya was seated at the back right side. She stated that the capacity of the motor vehicle was five (5) passengers, and that the accident occurred at about 9.30 pm. Further that she could see ahead while still at the back seat, and that the truck abruptly joined the road when it was not clear to so do and as a result the accident occurred. The witness testified that their motor vehicle was travelling at a moderate speed and that the witness had worn a safety belt.

Hyder Nthenya Musili, the 1st Plaintiff was PW3, and she adopted her witness statement dated 20th June 2014 as her evidence, and proceeded to further aver that she was married to the Deceased under the Kamba Customary law. PW3 produced the death certificate that was marked as exhibit 2 as evidence

that her husband died in a road traffic accident that occurred on the 3rd January 2013, when he was the driver of motor vehicle registration number KBC 176F. The 1st Plaintiff averred that the motor vehicle driven by her husband collided with motor vehicle registration number KBB 892G, and produced a search of motor vehicle in respect of the lorry (KBB 892G) as exhibit 3. Further, that prior to institution of this suit the Plaintiffs had applied for letters of administration *ad litem* in respect of the deceased's estate limited to bringing this action, and produced the limited grant as exhibit number 4.

The 1st Plaintiff averred that her union with the deceased was blessed with two children Yvonne Muthoki Mumo and Mercy Mwongeli Mumo also known as Gift Mumo, and produced their birth certificates as exhibits 5(a) and (b) respectively and further a letter from the chief dated 14th March 2013 as exhibit 6. The 1st Plaintiff also produced a bundle of receipts for special damages as exhibit 7. She further testified that her deceased husband worked as a sales and marketing executive at Inland Hauliers and produced three (3) pay slips as exhibits 8(a), (b) and (c), and a letter from the employer dated 21st January 2013 as exhibit 9. Lastly, the 1st Plaintiff produced a demand notice dated 24th April 2014 as exhibit 10.

The 1st Plaintiff in cross-examination confirmed that she is a business lady who sells tyres and that she was at her rural home when the accident occurred. Further, that the motor vehicle registration number KBC 176F belonged to her husband, and that the insurance compensated her for the motor vehicle after it was written off. In addition, that whereas the pay slips may have differed from month to month on how much he received, the figure indicated in the pay slip is what her husband earned.

The last witness who testified on behalf of the Plaintiffs was Patricia Mutile Mbindyo, the 2nd Plaintiff, who adopted her witness statement dated 20th June 2014. She averred that she is a farmer and hails from Kisumu within Makueni County and is the mother of the Deceased. She reiterated that the deceased died in a road traffic accident along Mombasa Road on 3rd January 2013, and that the Deceased was married to one Hyder Nthenya Musili (the 1st Plaintiff) and their union was blessed with two children. The 2nd Plaintiff averred that she would on a monthly basis receive money from the Deceased of between Kshs. 5,000/- and Kshs. 10,000/-, which she would use to buy clothes and meet other needs. That when she fell sick the Deceased would take her to hospital and pay all the bills, and following his demise she has immensely lost support that she used to receive from him.

In cross-examination the witness confirmed that in total she has six (6) children and that her daughters are married, while the other sons have moved to other areas and she relied on the deceased who did not move.

The Plaintiffs closed their case at this point, and the defence thereupon closed its case without calling any witnesses.

The Issues and Determination

The substantive issues in this suit are only two. Firstly, who as between the deceased, the driver of motor registration KBC 176F and the Defendants 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, J.A Makau & Co Advocates addressed these two issues in submissions filed in Court dated 10th January 2017, while the Defendant's learned counsel, Muriithi & Ndonge Advocates, filed submissions dated 28th November 2016.

On the issue as to liability, the Plaintiffs submitted that their witnesses advanced oral evidence and produced documentary evidence, which remained unchallenged by the defence, and which demonstrated that neither the driver of motor vehicle KBC 176F nor either of its occupants were responsible for the accident or made any contributions to the occurrence of the accident. Furthermore, the investigations carried out by the traffic police officers did not in any manner whatsoever impute any blame on the driver of motor vehicle registration number KBC 176F in respect to the accident, but found that the driver of the motor vehicle registration number KBB 892G was to blame for the accident.

Reliance was placed on the authority of Court of Appeal in the case of Nyeri **Board of Governors of Kangubiri Girls High School & Another vs Jane Wanjiku Muriithi & Another**, [2014] e KLR where it was held that when a car is proved to have caused damage by negligence, a presumption arises that the owner is responsible for the driver's liability. The Plaintiffs urged this Court to find and hold the Defendants liable for the accident at 100%.

The Defendants submitted that the evidence before the court is that motor vehicle KBB 892G had already joined the road prior to the occurrence of the accident, and further that motor vehicle KBC 176F was being driven at excessive speed prior to the accident. According to the evidence of the sketch plan, the position of the vehicles after the accident was that the trailer head of the lorry was facing Mombasa road while the saloon car was partly facing Nairobi direction, and there was extensive damage to the bonnet of motor vehicle registration number KBC 176F due to excessive speed.

In addition, that the conclusion that motor vehicle KBC 176F was being driven at excessive speed was collaborated by the evidence of PW2 who testified that before the accident the deceased tried to flash lights and hoot but was not able to stop, and rammed into motor vehicle KBB 892G. The Defendants also submit that the deceased put the 7 passengers in his vehicle and himself in danger, as overloading the said vehicle beyond the required capacity of 5 passengers did affect the effective performance of his vehicle

I have considered the evidence and submission by the Plaintiffs and Defendants on liability. I note that the Defendants did not contest the police abstract produced by PW1 as exhibit 1, that clearly demonstrated that occurrence of the accident and that the motor vehicle registration number KBB 892G was driven by one Wilson Githu (the 2nd Defendant). Likewise, the copy of a search of motor vehicle records produced as exhibit 3, which demonstrated the 1st Defendant as the registered owner of motor vehicle registration number KBB 892G, was also not disputed.

Lastly, the Plaintiffs also needed to establish that the driver of motor vehicle registration number KBB 892G, was the agent and/or servant of the 1st Defendant or acting on behalf of the 1st Defendant when the accident occurred. In **Tabitha Nduhi Kinyua V Francis Mutua Mbuvi & Another**, [2014] e KLR it was held as follows :

“ In order to fix liability on the owner of a car for negligence of the driver, it was necessary to show either that the driver was the owner's servant or that at the material time the driver was acting on the owner's behalf as his agent . To establish the existence of the agency relationship, it was necessary to show that the driver was using the car at the owner's request, express or implied or on his. Instructions and was doing so in performance of the task or duty thereby delegated to him by the owner.”

As there is evidence that motor vehicle registration number KBB 892G was owned by the 1st Defendant, and at the time of the accident it was being driven by the 2nd Defendant, and given that the Defence did not bring any evidence to show otherwise, the only inference that can be drawn from these set of circumstances is that the 2nd Defendant could only have been driving the said motor vehicle with the implied authority of the 1st Defendant, who can therefore be held vicariously liable.

As regards the proof of negligence on the part of the parties, I find that the evidence adduced by PW1 was that the accident occurred when motor vehicle registration number KBB 892G joined the highway from a feeder road, and that the point of impact of the accident showed that the said motor vehicle was partially on the road. This evidence demonstrated to the court that the 2nd Defendant was to substantially blame for the accident, as he joined the highway when it was not clear and safe to do so as there was an oncoming motor vehicle being motor vehicle registration number KBC 176F.

This evidence was collaborated by the evidence of PW2 who was a passenger in motor vehicle registration number KBC 176F, and also by the evidence that the 2nd Defendant was consequently charged with the offence causing death by dangerous driving in Mavoko Traffic Case no. 3161 of 2014 - Republic -vs- Wilson Githu.

However, the failure of the driver of the motor vehicle registration number KBC 176F to either slow down or stop his vehicle is also indicative that he was either driving in excessive speed or was not able for other reasons able to control his motor vehicle. In this regard PW1 testified that the driver was carrying 3 excess passengers, and he must therefore also bear some liability. I accordingly apportion liability as between the Defendants and the driver of motor vehicle registration number KBC 176F at the ratio of 70: 30.

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 married and had children, and had dependants within the meaning of the Fatal Accidents Act. Therefore the dependency ratio to be applied in this case should be two thirds (2/3).

Further, that the evidence before the Court was that the deceased was prior to his death in gainful employment and his net income was Kshs. 85,340/- In addition, that it is not in dispute that the deceased was thirty two (32) years of age at the time of death, and he would have worked till retirement age being sixty (60) years and therefore would have been in employment for a period of twenty eight (28) years, which was proposed as the multiplier for this case.

The Plaintiffs therefore submitted that under the Fatal Accidents Act the compensation for loss of dependence should be calculated as follows;

$$85,340 \times \frac{2}{3} \times 12 \times 28 = 19,116,160/-$$

For the compensation awarded under the Law Reform Act, the Plaintiffs proposed the sum of Kshs. 50,000/- for pain and suffering and Kshs 100,000/= for the loss of expectation of life. Lastly on special damages, they submitted that the 1st Plaintiff produced receipts in proof thereof for the total sum of Kshs. 23,950/-.

The Defendant on the other hand submitted that the letter from the Deceased employer produced in Court by the 1st Plaintiff as exhibit 9 did not bear an official stamp from the employer, and further did not indicate where the said company is located, and thus the authenticity of the said letter is put in question. Further, that PW3 could not state where the said Inland Hauliers Ltd is located or what kind of business her husband was engaged in as sales executive, and that upon the registration of his death, they registered the deceased as a businessman by occupation.

In addition that the pay slips produced by PW3 as Exhibits 8(a), (b) and(c) did not bear the name of the company they originate from, and further did indicate the statutory deduction of pay as you earn. The Defendants submitted that both the letter from Inland Hauliers Ltd and the pay slips produced are not authentic and the same should not be used to calculate the multiplicand of the deceased.

The Defendants thus proposed that the court uses the minimum wage of the deceased at the time of his death (January 2013) as the multiplicand, which would be Kshs. 8,579.80/= per month with Nairobi area as per Legal Notice No. 71, The Regulation of Wages (General) (Amendment) Order, 2012). However, that should the court find that the said pay slips are admissible as evidence of how much the deceased earned, since the said pay slips do not bear the income tax paid as statutory deductions and the basic salary of the deceased therein was Kshs. 48,000/=, this figure that should be subjected to statutory deductions (pay as you earn).

Further, that the statutory deduction would be 1/3 of Kshs. 48,000/= which would be Kshs, 14,440/=-, and the amount the deceased would have taken home would therefore be Kshs. 33,560/=-. Reliance was placed on the decision in **Simeon Kiplimo Murey & 3 others v Kenya Bus Management Services Limited & 4 others [2014] eKLR** in this regard.

The Defendants in addition submitted that a multiplier of 20 years will be reasonable in this case taking into account the vicissitudes of life and cited various judicial authorities for this proposition, including the case of 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. Lastly, on the dependency ratio the Defendants proposed the ratio of two-third (2/3), as the deceased was survived by his wife and two children.

On the damages to be awarded under the Law Reform Act, the Defendants submitted that the deceased died at the scene of the accident, 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.

Lastly, on special damages to be awarded, it was the Defendant's contention that the Plaintiffs pleaded for special damages amounting to Kshs. 97,445/= in their Plaint. However that during the hearing the PW3 produced the following receipts: Grant ad litem charges of Kshs. 12,000/=, Funeral home expenses of Kshs. 8,450/=, car search receipt of Kshs. 500/=, and Shalom Hospital receipt of Kshs. 3,000/= amounting to Kshs. 23,950/=.The defendants submitted that Kshs. 23,950/= be awarded as the special damages that were pleaded and proved.

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."

In addition, only the deceased's wife, children and parents are entitled under upon proof of dependency under section 4(1) of the Fatal Accidents Act, and the 1st Plaintiff who was the Deceased's wife produced the birth certificates of the Deceased's two minor children aged 4 and 6 years at the time of the his death as exhibits 5(a) and (b), and the 2nd Plaintiff testified as to her dependency and on the deceased for her subsistence and medical expenses.

The 1st Plaintiff gave evidence that has been disputed that the deceased was employed as a sales executive by Inland Hauliers Ltd, and pay slips showing that his net pay that ranged from Kshs 70,000/= to 85,000/= depending on commission he earned. The Defendants however did not object to the production of these documents during the hearing, and cannot raise the issue in submissions when the Plaintiffs no longer have the opportunity to call the maker of the documents. In addition the Defendants did not call any evidence to disprove the contents of the said document.

I have however noted the submissions by the Defendants that the pay slips produced as exhibits do not have any statutory tax deductions. In this regard, the average monthly net income of the Deceased from the 3 pay slips produced as exhibits 8(a), (b) and (c) was Kshs 78,000/= per month, and after deduction of income tax at 30%, I find that a monthly net income of 54,600/= per month would be reasonable. The parties were agreed on a dependency ratio of two-thirds (2/3) which is reasonable in light of the evidence adduced on dependency.

Lastly, on the multiplier, the deceased was aged 32 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 28 years while the Defendant's advocates propose 20 years. I find that a multiplier of 25 years would be reasonable. Damages under the Fatal Accidents Act will thus work out at KShs 54,600 X 12 X 25 X 2/3 = KShs 10,920,000/=.

This sum will be reduced by 30% 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 PW1 and PW2 testified that the deceased died at the scene of the accident and I find that an award of Kshs 10,000/= for pain and suffering and Kshs 100,000/= for loss of expectation of life is reasonable.

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."

The Plaintiffs pleaded special damages of Kshs 96,445/= . The special damages proved by production of receipts was however Kshs 23,950/=.

I accordingly enter judgment for the Plaintiffs against the Defendants as follows –

1. The Defendants are found 70% liable for the accident with contributory negligence by the driver of motor vehicle registration number KBC 176F of 30%.
2. The damages awarded in favour of the Plaintiffs as against the Defendants are as follows:

Damages awarded under the Law Reform Act.....KShs 110,000/=

Damages awarded under Fatal Accidents Act.....KShs 10,920,000/=

Special damages.....Kshs 23,950/=

Sub total.....Kshs 11,053,950/=

Less 30% contributory negligence.....Kshs 3,316,185/=

Total Award.....Kshs7, 737,765/=

3. I apportion the damages under the Fatal Accidents Act (Kshs 10,920,000/= less 30% = Kshs 7,644,000/-) as follows: –

(i) Hyder Nthenya MusiliKshs 3,000,000/=

(ii) Yvone Muthoki Mumo.....Kshs 2,000,000/=

(iii) Mercy Mwongeli Mumo.....Kshs 2,000,000/=

(iv) Patricia Mutile Mbindyo.....Kshs 644,000/=

4. The general damages will carry interest at court rates from the date of judgment, while the special damages will attract similar interest from the date of filing suit.

5. The Plaintiffs shall have costs of the suit.

Orders accordingly.

Dated, signed and delivered in open court at Machakos this 21st day of September 2017.

P. NYAMWEYA

JUDGE