



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
CIVIL CASE NO 36 OF 2014

1. ANNAH MBINYA MBUVI
2. ATANUS NTHENGE MUTISO.....PLAINTIFFS

VERSUS

ELIAS NYAGA (alias
ELIAS MUGENDI NYANGA).....RESPONDENT

J U D G M E N T

1. This case is a claim for damages under the **Law Reform Act, Cap 28** and the **Fatal Accidents Act, Cap. 32**. The Deceased **J W M** died in a road accident on 22/06/2014 along the Kenol-Sagana road when the motor vehicle he was driving collided with two other motor vehicles.
2. The Plaintiffs are the administrators of the Deceased's estate. The suit is brought for the benefit of the Deceased's widow (1st Plaintiff) and their three children (apparently all minors – O M W, E N W and S N W).
3. On 22/05/2017 a consent judgment on liability was entered. Liability was apportioned at 80% to 20% in favour of the Plaintiffs. This judgment therefore is only on quantum of damages.
4. Again by consent on 22/05/2017, the Plaintiff's list of documents dated 24/11/2014 and copies of documents listed therein (except documents 1 and 2) were admitted in evidence as Exhibit P1.
5. Only the 1st Plaintiff testified. The Defendant did not lead or call any evidence. I have considered all the evidence placed before the court. I have also considered the written submissions filed on behalf of the parties.
6. The Deceased was aged 43 years at the time of his death. He was a driver employed by **[Particulars withheld] Limited**. I have looked at his payslips for April, May and June 2014 exhibited in Exhibit P1. His only constant and regular income was his basic pay of **KShs 103,978/16** per month. It appears that he occasionally earned other incomes like overtime, bonus, etc., but these were not regular. I will therefore take his monthly basic pay as his only income.
7. From the basic pay must be removed the following statutory deductions –

NSSF Contribution - KShs. 1,080/00

NHIF	-	KShs. 320/00
PAYE	-	<u>KShs 48,056/30</u>
		KShs.49,456/30

His other deductions were pension contributions and loan repayments which were part of his income and will therefore not be removed from his monthly basic pay.

8. I therefore hold that the Deceased's monthly income was KShs 103,978/16 less KShs/ 49,456/30, which is **KShs 54,521/80**.

9. As for the dependency ratio of his monthly income for the Deceased's family, I will take the usual **two-thirds** of his monthly income. **10.** Let me now consider the multiplier. As already noted, the Deceased was aged 43 years at the time of his death. There is no evidence of the retirement age for drivers at his last place of work, but sixty (60) years is probably a good number to take. However, the vagaries, uncertainties and vicissitudes of life must be factored in. I will in the circumstances award a multiplier of **eleven (11) years**.

11. General damages under the Fatal Accidents Act therefore work out as follows – **KShs 54,521/80 X 12 11 X 2 ÷ 3 = KShs 4,797,918/40**

12. Under the Law Reform Act I will award KShs 100,000/00 for loss of expectation of life and KShs 25,000/00 for pain and suffering.

13. Special damages of KShs 48,800/00 were claimed and proved by way of receipts. I will award the same.

14. In summary therefore there will be judgment for the Plaintiff against the Defendant as follows –

Under the Law Reform Act

(a) Loss of expectation of life	-	KShs 100,000/00
(b) Pain and suffering	-	KShs 25,000/00
(c) Special damages	-	<u>KShs 48,800/00</u>
Total	-	KShs 173,800/00
Less 20% contributory negligence	-	<u>KShs. 34,760/00</u>
	-	<u>KShs 139,040/00</u>

Under the Fatal Accidents Act

General damages	-	KShs 4,797,918/40
Less 20% Contributory Negligence	-	<u>KShs 959,583/68</u>

KShs 3,838,334/70

13. There will be judgment accordingly for the Plaintiffs. The general damages will carry interest at court rates from the date of judgment, while the special damages will carry similar interest, but from the date of filing suit. The Plaintiffs shall have costs of the suit less 20% contributory negligence.

14. I must now apportion the general damages under the Fatal Accidents Act among the 1st Plaintiff and her three children as required by law. I have taken into account the fact that the children are minors and will be wholly dependent upon the 1st Plaintiff for some time. I will therefore apportion the sum of KShs 3,838,334.70 as follows –

1st Plaintiff (A M M) - KShs 2,938,334/70

O M W - KShs 300,000/00

C N W - KShs 300,000/00

S N W - KShs 300,000/00

KShs 3,838,334/70

15. The shares of the children shall be invested in separate accounts in the joint names of the 1st Plaintiff and the Deputy Registrar of the court during their respective minorities. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MURANG'A THIS 24TH DAY OF NOVEMBER 2017

H P G WAWERU

JUDGE