



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CIVIL CASE NO. 34 OF 2003

GLADYS KAVATA NAMASWA

[Suing as personal representative of **GEORGE DAVID NAMASWADECEASED**

VERSUS

KALENJIN AUTO HARDWARE DEFENDANT

JUDGMENT

1. The plaintiff **Gladys Kavata Namaswa** instituted this suit dated 9th May, 2003 as the personal and legal representative of the estate of George **David Namaswa**, who was involved in an accident on the 29th of June, 2001 whilst travelling as a fare paying passenger in motor vehicle registration NO. KAK 857 A along the Eldoret – Bungoma road and as a result of the accident the deceased is said to have sustained serious injuries that led to his death.

2. The defendant on the other hand was the registered owner of motor vehicle reg. No. KAL 257K a Mitubishi lorry which the plaintiff alleged to have been negligently driven, managed and or controlled, that the same came in the way of another motor vehicle reg. No. KAK 857 A thereby causing a serious accident.

3. It is the plaintiff's case that as a result of the accident the family that was wholly dependent on the deceased lost his material and financial support and the estate claims damages under both the Law Reform and Fatal Accidents Act.

4. In a defence dated 22nd of July, 2003 the defendant denied all the attributes of negligence pleaded in the plaint and in the alternative pleaded that the driver of the other vehicle KAK 857 A substantially contributed to the said accident.

5. Only the Plaintiff testified and thereafter by consent of the parties liability was agreed at 30 – 70% in favour of the plaintiff. Several documents were also put in by consent of parties namely

i. the chiefs letter detailing names of dependents

ii. Pay slip of the deceased dated June 2001

iii. Two receipts dated 5.7.2001 and 12.7.2001.

iv. Police abstract dated 27.7.2001.

6. Parties also agreed that they would file submissions on the issue of quantum. The plaintiff filed submission dated 27th November, 2015 seeking for an award of Kshs. 6,519,947 whereas the defendant filed submissions dated 4th December 2015 and proposed an award of kshs. 598, 779/=.

7. The issue for the courts determination is the quantum of damages payable to the estate of the deceased based on the ratio of liability consented to by the party.

8. The deceased was 48 years at the time of his death. He was a senior lecturer in the Bureau of Consultancy and Training at Kenyatta University where he earned a gross pay of kshs. 56,830. He had the following dependents.

i. Gladys K. Namaswa – Widow

ii. George M. Mugala -Son – 25 Years

iii. Hassan Namaswa – Son 23 Years

iv. Stephen Murefu - Son 22 Years

v. Carol Namaswa - Daughter 24 Years

vi. Fiona Namaswa – Daughter 22 Years

vii. M N – Daughter 17 Years

viii. D N – Daughter 15 Years

In submitting both parties considered the following,

Pain and suffering, loss of expectancy of live – under The Law Reform, Loss of Dependency under Fatal Accident Act and special damages. The court will consider the following heads in arriving at its decision.

i. Pain and suffering

Other than the information in the traffic case by the investigating officer that on arrival they found two dead bodies there is no evidence as to whether the deceased died instantly or not. The evidence on record is that he was found dead at the scene of the accident. In the circumstances I am of the view that under this head an award of Kshs. 50,000/= should be reasonable.

ii. Loss of expectation of life

The proposal of Kshs. 100,000/= is reasonable. In recent times courts have increasingly awarded such a figure. See HCCC NO.. 252/02 and HCCC NO.. 56 of 2012.

iii. Loss of dependency – Fatal Accident Act

The deceased worked for the University and may have retired at age 60. However taking into account exigencies of life and the fact that a lump sum is to be paid I would adopt a multiplier of 10. The deceased gross pay was kshs. 56,830/- less statutory deductions of P.A.Y.E of kshs. 10,110/= and N.H.I.F kshs. 320 the sum would be kshs. 46,400. Both parties agreed that a dependency ratio of 2/3 would be reasonable. I would therefore arrive at the awards as follows

46,400 X 10 X 12 X 2/3 = 3712,000.

iv. Special damages

The plaintiff indicated that the deceased employer met the funeral costs save for food and hire of generator for 10 days. She produced receipts for the same. I award

| | |
|-------------------|----------------------|
| Food | Kshs 38,910 |
| Hire of Generator | Kshs 12,500 |
| Police abstract | <u>Kshs 100</u> |
| Total | <u>Kshs. 51,410.</u> |

9. Based on the above I enter judgment in favour of the plaintiff as follows;

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| i. Pain and suffering | Kshs. 50,000 |
| ii. Loss of expectation of life | Kshs. 100,000 |
| iii. General damages for loss of dependency | Kshs. 3,712.00 |
| iv. Special damages | <u>Kshs. 51,400</u> |
| | <u>Kshs. 3,913,400</u> |

Less loss of expectancy of life Kshs. 100,000

Less 30% liability Kshs.1, 174,000

Total Kshs.2,639,380.

v. Costs of the suit

The above sums to be divided among the dependents of the deceased upon consultation bearing in mind the need of the widow and the younger children.

Dated at Bungoma this 19th day of May 2016.

ALI-ARONI

JUDGE.