



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL CASE NO. 92 OF 2005**

**JOHN BAILEY ANGUGO.....PLAINTIFF**

**VERSUS**

**K.K. HAULIERS.....DEFENDANT**

**J U D G M E N T**

- 1). The plaintiff filed suit against the defendant seeking damages both special and general pursuant to the road traffic accident that occurred on 8-4-2005 along Kisumu – Kakamega road near Kondele. According to the plaint the deceased was driving motor vehicle Reg. No. KAL 616 E a matatu and the other vehicle a lorry KAA 608 V driven by the defendants agent or driver. In between the two vehicles was a boda boda cyclist who also according to the defendant contributed in the accident.
- 2). The plaintiff called 3 witnesses. PW1 the father of the deceased arrived at the scene about one hour after the accident. He told the court that both vehicles had been taken off the road and he saw them at the police station. The deceased body had been taken to the mortuary. He further on quantum said that the deceased was aged 22 years and he was a matatu driver earning Kshs. 4000/= per month.
- 3). PW2 a pillion passenger told the court that he witnessed the accident. According to him the lorry driver hit them first before hitting the matatu. He was injured and lost consciousness. He further said that the lorry driver was speeding.
- 4). PW3 the police officer simply produced the police abstract but he did not go to the scene neither did he carry out any investigation.
- 5). The defence offered no evidence and closed its case. The fate of the 3rd party apparently was not mentioned although from the proceedings it appears the defendant was granted leave to enjoin the pedal cyclist.
- 6). This court shall analyse this suit in two forms namely on liability and quantum. On liability there is no dispute that an accident occurred on the material day involving the matatu and the lorry. There is no evidence however to suggest that there was a cyclist involved. The only eye witness availed by the plaintiff is PW2. Having carefully perused his evidence I am convince that the same was consistent. Although he lost consciousness I do not think that he was not in a position to see the lorry hitting the matatu. In any case he was a pillion passenger and therefore not in control of the bicycle.
- 7). The defence did not call any evidence to rebutt the evidence by the plaintiff. In his submission the defendant has prayed that liability ought to be apportioned between the plaintiff, defendant and a 3rd party. Respectfully, I do not see any persuasive evidence. There was no iota of evidence even from PW3, the police officer to suggest that there was any contribution by the deceased to the accident. In the

premises, I shall not hesitate to find that the defendant should shoulder 100% liability.

8). On quantum, although there was nothing to show that the deceased was aged 22 years, the same was not contested by the defence. However and as PW1 acknowledged in cross examination there was no proof that the deceased earned Kshs. 4000/= per month.

9). In light of the above observation I shall agree with the submission by the defence that he be treated as per the basic minimum wages gazetted by the government vide Legal Notice No. 197 of 20-7-2013 which sets the minimum wages at Kshs. 9,780.95/=.

10). The deceased was aged 22 years as stated earlier on. I have seen the authorities of **Alex Ooyi Omumbu -VS- Margaret Akoth Oraro, Court of Appeal Kisumu Civil Appeal No. 14 of 2014** cited by the defence which used a multiplier of 20 years for a teacher who was aged 27 years. The plaintiff have equally cited the authority of **Richard Osoro Jindege -VS- Alex Thange & Another .....HCC 42 of 2007** where the court used a multiplier of 25 years for deceased person aged 22 years.

11). In light of the above observations I think a multiplier of 25 years will be reasonable in the circumstances. The retirement age currently is 60 years and presumably the deceased would have had about 25 years of strong activity.

12). In terms of pain and suffering I do not think that the contention by the plaintiff's counsel in his submission that the deceased died while undergoing treatment is true. There was no evidence adduced on that line. The deceased must have died on the spot. I am therefore inclined to award him the general sum of Kshs. 20,000/= for pain and suffering.

The deceased was unmarried and had no dependant. Consequently, these are the orders of the court:

(a) **The defendant is hereby found 100% liable for the accident.**

(b) **On damages;**

i. **Loss of dependant Kshs.  $9,780 \times 12 \times 25 \times \frac{1}{3} = 970,000/=$ .**

ii. **Loss of expectation of life Kshs. 100,000/=.**

iii. **Pain and suffering Kshs. 20,000/=.**

**Total 1,090,000/=**

**There was no proof of special damages.**

c. **The plaintiff shall have costs of this suit and interest on the damages above.**

**Dated, signed and delivered at Kisumu this 18th day of February, 2015.**

**H.K.  
JUDGE**

**CHEMITEI**