

REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

CIVIL APPEAL NO. 19 OF 2015

BETWEEN

SUKARI INDUSTRIES LIMITED APPELLANT

AND

DOROTHY AWINO suing as the administrators of the

estate of WYCLIFFE AGAWO AGIRO (Deceased)

RESPONDENT

AND

(Being an appeal from the Judgment and Decree of Hon. B.O. Omwansa, SRM in Senior Resident Magistrates Court at Ndhiwa in Civil Case No. 28 of 2013 dated 19th November 2014)

JUDGMENT

1. The deceased died while working for the appellant on 29th August 2013. He was collecting sugarcane when the bell loader reversed and knocked him down as a result of which he died. The respondent lodged a claim for damages under the ***Law Reform Act (Chapter 26 of the Laws of Kenya)*** and the ***Fatal Accidents Act (Chapter 32 of the Laws of Kenya)***. By a judgment dated 19th November 2014, the subordinate court apportioned liability at 80:20 against the appellant. The court award Kshs. 300,000/- for pain and suffering, Kshs. 150,000/- for loss of expectation of life and Kshs. 1,360,000/-.
2. The appellant has now lodged an appeal against liability and quantum. At the hearing, Mr Ondego, learned counsel for the appellant, submitted that the only issue in dispute regarding the entire award was the sum of Kshs. 150,000/- awarded for the loss of expectation of life under the ***Law Reform Act***. He argued that the award was a duplicate award and hence the same ought to have been deducted or taken into account when making the final award hence the learned magistrate fell into error in making the said award.
3. Ms Kuke, learned counsel for the respondent, submitted that the claim was under the ***Fatal Accidents Act*** and the award for loss of expectation of life being made under the ***Law Reform Act*** was not a duplicate award and as such there was no ground for this court to interfere with the judgment.
4. Under the ***Law Reform Act*** damages for lost years are recoverable for the estate of the deceased where the deceased died before he could institute an action. **Section 2(5)** of the ***Act*** provides that such damages are recoverable for the benefit of the estate and are in addition to any rights conferred on dependants of the deceased by the ***Fatal Accidents Act***. A claim under the ***Fatal Accidents Act*** is made by the dependants of the deceased who claim for loss of the support the deceased during his lifetime.
5. Although the principles of assessment are similar, the court cannot make an award for lost years and loss of dependency as the benefits would ultimately devolve to the same parties under both Acts and this would amount to double compensation (see ***Kemfro v A. M. Lubia & Another***

[1982-1988] KAR 727) The principal does not mean that a claimant under the *Fatal Accidents Act* should be denied damages for pain and suffering and loss of expectation of life as these are only awarded under the *Law Reform Act* hence the issue of duplication does not arise regarding that aspect of the award.

6. In the circumstances, the learned magistrate did not err by awarding the respondent the sum for loss of expectation of life. This appeal is therefore dismissed with costs to the respondent which I assess at Kshs. 25,000/- only.

DATED and DELIVERED at HOMA BAY this 31st July 2015.

D.S. MAJANJA

JUDGE

Mr Ondego instructed by L. G. Menezes and Company Advocates for the appellant.

Ms Kuke instructed by Kuke and Company Advocates for the respondent.