



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO. 595 OF 2008

FELISTAS AWINO LIJERAPLAINTIFF

VERSUS

NICHOLAS MURIITHI KIGERA.....DEFENDANT

J U D G E M E N T

1. This suit is for damages in negligence under the **Law Reform Act, Cap 26** and the **Fatal Accidents Act, Cap 32**. It is brought by the legal representative of **PAUL LIJERA** (the **Deceased**) for the benefit of his estate and on behalf of herself as the Deceased's dependant.
2. The Deceased died from injuries sustained in a road accident on 9th April 2006 when he was run over by motor vehicle registration number KAN 286 H as he walked along Mombasa Road in Nairobi. It is the Plaintiff's case that the said motor vehicle was driven by the Defendant, and that the accident occurred due to his sole negligence.
3. The Defendant was duly served with summons to enter appearance and copy of the plaint. He neither entered appearance nor filed defence. Interlocutory judgment was entered against him on 19th June 2009.
4. I heard the case for purposes of assessment and quantum of damages. The Plaintiff testified as PW1 and called one other witness (PW2). PW1 produced in evidence the Plaintiff's list and bundle of documents. The documents included –
 - (i) Grant of letters of administration.
 - (ii) Police abstract on the accident.
 - (iii) Deceased's death certificate.
 - (iv) Receipts for funeral expenses, etc.
5. I have considered the evidence placed before the court. I have also considered the submissions filed for the Plaintiff. I will now consider the damages to award and the quantum thereof.
6. Under the Law Reform Act I will award damages for pain and suffering and loss of expectation of life.

7. Pain and suffering

It is pleaded in the plaint that the Deceased died on the same day of the accident. There is no evidence that he died in hospital while undergoing treatment. It is likely that he died at the scene soon after the accident. I will award KShs 15,000/00 for pain and suffering.

8. Loss of expectation of life

The Deceased was aged 27 years at the time of his death. The conventional award now for this head for a young life or one in its prime is KShs 150,000/00. I will award that sum.

9. As for damages under the Fatal Accidents Act, the only dependent of the Deceased was his mother, the Plaintiff. A dependency ratio of two-thirds (2/3) was suggested in the Plaintiff's submissions. I will not accept that. A young man who had just started work would hardly spend more on his mother than on himself. He probably spent just as much on his mother (who lived with him in Nairobi) as he did on himself. I will award a dependency ratio of one-half (1/2).

10. As for the multiplicand, I note that there is no documentary proof of the Deceased's employment. But I accept the oral testimony of the Plaintiff and PW2 that indeed the Deceased was working at a job that PW2 had secured for him with a company called **Panafrican Equipment Limited** (which was said to be "part of the **Doshi Group of Companies**") located near City Stadium in Nairobi.

11. PW2's further testimony was that the Deceased was earning KShs 10,000/- per month. But without documentary proof of this, I will award the statutory minimum wage in the sum of KShs 6,000/00 per month. I believe the minimum wage is not taxed.

12. What about the multiplier? As already stated, the Deceased was aged 27 years at the time of death. He was working in the private sector which has no general mandatory retirement age. His specific job is not apparent from the evidence. The kind of job one is engaged in can often determine how long one would work at it ordinarily. Apart from that, the uncertainties and vicissitudes of life have to be taken into account.

13. I have looked at the cases cited. The Plaintiff's learned counsel has suggested a multiplier of 33 years. Doing the best I can I will award a multiplier of 26 years.

14. I will thus award damages for KShs 936,000/00 under the Fatal Accident Act worked out as follows
-

KShs 6,000/00 X 12 X 26 X 1/2 - KShs 936,000/00

15. Special damages must be particularly pleaded and strictly proved. That is generally the law. But I hold that a Judge has the discretion to depart from this strict requirement should the circumstances warrant it. Such circumstances would, I believe, be for instance where the claimed expenses are commonly known, for instance fees incurred in public offices for certain services. In the present case a total of KShs 73,289/00 was claimed – KShs 72,364/00 for funeral expenses and KShs 925/00 for obtaining letters of administration. The latter was probably court fees paid, and I will readily award that KShs 925/00. But I decline to award the funeral expenses of KShs 72,364/00 without strict proof thereof.

16. In summary, there will be judgment on liability for the Plaintiff against the Defendant at 100%.

17. I will award damages as follows

(a) **Under the Law Reform Act**

(i) For pain & Suffering.....KShs 15,000/00

- (ii) For loss of Expectation of life.....150,000/00**
- (b) Under the Fatal Accidents Act.....936,000/00**
- (c) Special damages925/00**

18. The general damages will carry interest at court rates from the date of judgment until payment in full. Similarly, the special damages will carry interest, but from the date of suit. The Plaintiff will have costs of this suit. It is so ordered.

DATED, SIGNED AND PRONOUNCED IN OPEN COURT THIS 7TH DAY OF JUNE 2013

H. P. G. WAWERU

JUDGE