



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO. 308 OF 2010

- 1. **ELIZABETH CHELAGAT TANUI**
- 2. **ELIZAR KIPLAGAT SONGOK**

(Suing as administrators of the

estate of JONAH KIPRONO SONGOK).....PLAINTIFFS

VERSUS

ARTHUR MWANGI KANYUA.....DEFENDANT

J U D G E M E N T

1. The 1st Plaintiff is the widow of **Jonah Kiprono Songok** (hereinafter called the Deceased). The suit is a claim for damages in negligence on account of the death of the Deceased. General damages are sought under the **Law Reform Act, Cap 26** for the benefit of the estate of the Deceased and also under the **Fatal Accidents Act, Cap. 32** for the benefit of the Deceased’s dependants named at paragraph 5 of the **plaint dated 7th June 2010**. Special damages are also sought.

2. The Deceased died in a road accident on 16th May 2009 when he was run over by motor vehicle Registration No. KBC 297 Z as he walked along Thika Highway in Nairobi. It is the Plaintiffs’ case that the vehicle was owned by the Defendant and driven by him or his agent, and further, that the accident occurred due to the sole negligence of the Defendant or his agent. Particulars of negligence have been pleaded.

3. On 6th June 2013 judgment on liability was entered and damages under the Law Reform Act and special damages recorded in terms of an undated consent filed in court on 19th December 2012 as follows –

- (i) Liability at 80% to 20% in favour of the Plaintiff.**
- (ii) Pain and Suffering.....KShs 10,000/00**
- (iii) Loss of Expectation of life.....80,000/00**
- (iv) Special damages.....10,500/00**

All the awards would be reduced by 20% contributory negligence.

4. On 20th June 2013 the documents in the Plaintiff's **list and bundle of documents dated 16th November 2012** were admitted in evidence as Exhibit P1 without the necessity of calling makers thereof. Those documents would constitute the evidence upon which the court would assess damages under the Fatal Accidents Act.

5. The parties also filed written submissions. The Plaintiff's submissions were filed on 9th June 2013 while those of the Defendant were filed on 9th July 2013. I have considered those submissions, including the cases cited.

6. To properly assess damages under the Fatal Accidents Act it is necessary to determine the Deceased's **income**, the **dependency ratio** of his dependants and the **multiplier** to be used. Only his wife, children and parents are entitled under the statute upon proof of dependency. See **section 4(1)** of the Act.

Deceased's Income

7. The Deceased's pay-slip for the month of April 2009 is one of the documents admitted in evidence. It discloses net earnings of KShs 23,885/00 per month after statutory deductions. The amounts deducted from his pay that went towards repayment of loans or towards his savings were in reality all part of his net income and cannot be excluded. I will therefore award an **income of KShs 23,885/20 per month**.

Dependency Ratio

8. I am satisfied from the evidence before the court that the Deceased's wife (1st Plaintiff) and their three children (all minors) were fully dependent upon him. The Deceased was also assisting his mother and father, aged 60 years and 68 years respectively. In these circumstances the Deceased could not have used less than two-thirds of his net income on his dependants. I will award a **dependency ratio of two-thirds ($\frac{2}{3}$)**.

Multiplier

9. The Deceased was aged 36 years when he died. Everything being equal he would have worked to the official retirement age of 60 years. But due allowance must be given for the vagaries, vicissitudes and uncertainties of life. I have looked at the comparable authorities from each side. The Plaintiffs' advocates propose a multiplier of 24 years while the Defendant's advocates propose 10 years. I will award a **multiplier of 18 years**.

10. Damages under the Fatal Accidents Act will thus work out at

KShs 23,885/20 X 12 X 18 X $\frac{2}{3}$ – KShs 3,439,468/80.

This sum will be reduced by 20%.

11. In summary I will enter judgment for the Plaintiffs against the Defendant as follows –

- (i) **Liability 80%**
- (ii) **Law Reform ActKShs 90,000/00**
- (iii) **Fatal Accidents Act.....3,439,468/80**
- (iv) **Special damages.....10,500/00**

All the awards will be reduced by 20% contributory negligence.

12. The general damages will carry interest at court rates from the date of judgment while the specials will attract similar interest from the date of filing suit. The Plaintiffs will also have costs of the suit reduced by 20%.

13. Finally, I will apportion the damages under the Fatal Accidents Act (KShs 3,439,468/80 less 20% = **KShs 2,751,575/00**) as follows –

- (i) **Elizabeth Chelagat TanuiKshs 1,151,575/00**
- (ii) **Jotham Kipkoech400,000/00**
- (iii) **Joan Jeruto400,000/00**
- (iv) **Janet Chepkirui.....400,000/00**
- (v) **Silas Kipsongok Keino.....200,000/00**
- (vi) **Miriam Chepkemoi Keino.....200,000/00**

The minor children's shares shall be invested as the court may approve upon application.

14. For the avoidance of doubt, the Plaintiffs shall pay any outstanding advocate's costs and any other outgoings. The other dependants shall not be responsible for the same.

15. There shall be judgment accordingly.

DATED, SIGNED AND PRONOUNCED IN OPEN COURT THIS

25TH DAY OF OCTOBER 2013

H. P. G. WAWERU

JUDGE