



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL SUIT NO. 246 OF 2005

1. DOREEN ATIENO ANYONA

**2. CHRISTABEL ORINDA ANYONA (as personal representatives of
Shem Migai Anyona, Deceased)PLAINTIFFS**

V E R S U S

DR ALDO MOSCHION KINCEID.....DEFENDANT

J U D G M E N T

The Plaintiffs are the widow and daughter respectively of **Shem Migai Anyona**, the Deceased in this case. They brought the suit on their own behalf as dependants of the Deceased and on behalf of some other two dependants, as well as for the benefit of the estate of the Deceased.

The Deceased died about three hours after suffering injuries in a road accident which took place on the 29th December 2002 along Lang'ata road, Nairobi. He died while undergoing treatment at hospital. The accident occurred when his motor vehicle registration No. K W Y 892, make Peugeot 505 saloon (which he was driving) collided with motor registration No. K A L 359B, make Range Rover owned and driven by the Defendant.

Damages are sought under the **Law Reform Act, Cap 26** and under the **Fatal Accidents Act, Cap 32**. The Plaintiffs have also claimed special damages in the total sum of KShs 404,200/00.

It is the Plaintiffs' case that the accident occurred due to the sole negligence of the Defendant who was not only driving at an excessive speed in the circumstances and without due care and attention, but was also under the influence of alcohol or some other substance. Particulars of negligence are pleaded in the amended plaint.

The Defendant was duly served with summons to enter appearance and copy of the plaint. He neither entered appearance nor filed defence.

Upon request by the Plaintiffs, interlocutory judgment was entered on 20th July 2007.

I commenced hearing the case for assessment of damages on 9th November 2011. The 1st Plaintiff was the only witness who testified. She could not complete her testimony as she did not have all necessary documents. Eventually hearing was completed. On 28th November 2011 the Plaintiffs' learned

counsel filed his written submissions.

I have considered those submissions, including the cases cited. I have also considered the testimony of the 1st Plaintiff, including the documents she produced in evidence.

Under the Law Reform Act:

The Deceased died some hours after the accident while undergoing treatment. There is no evidence that he was unconscious and he must therefore have suffered before he died. I will award KShs 15,000/00 for pain and suffering.

The Deceased died aged 55 years. Everything being equal, he had a considerable number of years of a full and useful life. I will therefore award KShs 100,000/00 for loss of expectation of life.

Under The Fatal Accidents Act:

The Deceased was at the time of his death an employee of **Nairobi Club**, a private members' club, earning KShs 100,000/00 plus an entertainment allowance of KShs 10,000/00 per month, making a total KShs 110,000/00. This appears to have been his gross monthly income. There must have been an element of taxation and other statutory deductions about which no evidence was led. I will assess the element of taxation and statutory deductions at one-quarter ($\frac{1}{4}$) which must be deducted from the monthly income. I will therefore award a **multiplicand** of KShs 82,500/00.

Regarding the **multiplier**, I will reiterate that the Deceased was aged 55 years at the time of his death. Being employed in a private members' club, his retirement would probably not have been based on age but on performance of his duties and satisfaction therewith of the members of the club that he served. I will therefore award a multiplier of 10 years.

As for the degree of **dependence**, the Deceased was maintaining a wife and three children. Though the children were already adults, it appears that they were still dependent on him. I will award dependence of one-third ($\frac{1}{3}$).

The arithmetic will thus work out as follows:-

$$\text{KShs } 82,500/00 \times 12 \times 10 \times \frac{1}{3} = \text{KShs } 3,300,000/00.$$

I will thus award damages under the Fatal Accidents Act in the sum of KShs 3,300,000/00.

Special Damages:

Special damages of KShs 404,200/00 were claimed in the amended plaint dated. Only KShs 112,100/00 was strictly proved. I will award that sum.

In summary I will enter judgment for the Plaintiff against the Defendant as follows: -

- (i) **General damages under the Law Reform Act - KShs 110,000/00.**
- (ii) **General damages under the Fatal Accidents Act - KShs 3,300,000/00.**
- (iii) **Special damages - KShs 112,100/00.**

There will be interest at court rates on the general damages from the date of judgment until payment in full. Similarly there will be interest at court rates on the special damages, but from the date of filing suit until payment in full.

The Plaintiffs shall have costs of the suit plus interest thereon at court rates from date of filing suit.

Judgment accordingly.

One thing remains to be done, and that is to apportion the award under the Fatal Accidents Act amongst the dependants as required by law. The dependants, as already seen, are the Deceased's widow (1st Plaintiff) and their three children. The children are all adults.

I will apportion the KShs 3,300,000/00 awarded under the Fatal Accidents Act as follows:

> **1st Plaintiff (widow)..... KShs 2,100,000/00**

> **Each of the three children..... KShs 400,000/00**

Any legal costs that may not be covered by the party and party costs awarded shall be paid from the 1st Plaintiff's share.

Those shall be the orders of the court.

DATED, SIGNED AND PRONOUNCED IN OPEN COURT THIS 27TH DAY OF JANUARY, 2012.

H.P.G. WAWERU
JUDGE