



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 27 OF 2009

EVA MAYAA MANASE (Administrator of the Estate of the
deceased)

FRANCIS MUTANDA OCHIENG.....PLAINTIFF

VERSUS

COAST BUS LIMITED.....DEFENDANT

AND

COMMERCIAL TRANSPORTERS LIMITED.....THIRD PARTY

JUDGMENT

The plaintiff has brought this action as the administrator of the estate of her deceased husband **Francis Mutanda Ochieng** (deceased). The deceased boarded the defendant's bus in Mombasa on 23rd December 2007 travelling to Kisumu. The bus was involved in an accident at Taita Village on Mombasa Road. The deceased was fatally injured. The plaintiff in evidence produced the death certificate and the grant. The plaintiff and the deceased had three children.

- ***Collins Manasse born 28th March 1994***
- ***Kevin Ochieng born 11th October 1990***
- ***Comfort Mutanda born on 23rd January, 2008.***

The plaintiff testified that when the deceased died she was pregnant and later gave birth to Comfort Mutanda. Parties in this action entered into a consent which was adopted by this court on 12th September, 2011. The consent was to the effect that the plaintiff would shoulder 15% liability, the defendant 70% liability and the third party 15% liability. The deceased before his death worked for Kenya Revenue Authority and his gross salary was Ksh. 100,025.20. He was 44 years old when he died. The defendant in its written submissions has sought that the court would consider the deceased's salary as Kshs. 39,287.20. That is the amount reflected in the deceased's payslip after deductions. That submission was supported by the third party. I have looked at the plaintiff's exhibit No. 4 that is the deceased's payslip for December, 2007. Having looked at it, I find that there are statutory deductions which clearly the court will consider in determining the deceased's salary. There are however, other deductions which will be added to the net salary in determining the deceased's salary. These are deductions relating to the deceased's membership to the Sacco. In my view, those deductions should be added to the net salary for the court to fully determine the deceased's salary. I therefore find that the deceased's salary was Ksh.

71,885.

The deceased was due to retire at the age of 60. At the date of his death he still had 16 more years to work. However considering the vicissitude of life and because the average life expectancy in Kenya has been lowered due to poverty, traffic accidents and H.I.V/Aids pandemic, I will apply a multiplier of 14 years.

The plaintiff stated that she is a teacher presently earning ksh 27,000 per month. It is clear that the deceased was earning a higher salary than the plaintiff. I therefore find that the family dependency was 2/3. I take caution of the case **KEMFRO AFRICA LTD VS A. M. LUBIA & ANOTHER (1982-88) 1KAR 727** this case laid down the principle that:

“the net benefit inherited by the dependants under the Law Reform Act must be taken into account for the damages awarded under the fatal accident act because the loss suffered under the act must be offset by the gain of the estate under the former act.”

I am grateful for that authority which was supplied by the 3rd party. The deceased died at the scene of the accident and I will therefore award Ksh 20,000 for pain and suffering. I do so being persuaded by the case **MUKITI MUSILI & ANOTHER VS L.T. COL LUCAS KAIRU MACHAKOS HCCC NO 112 OF 2002** where the court made similar award for pain and suffering. The plaintiff did not prove special damages and she therefore will not get judgment under that head. Bearing the above in mind, I enter judgment for the plaintiff as against the **defendant** as follows:

- ***General damages $71,885 \times 14 \times 12 \times 2/3 = 8,051,120$ less 15% = 6,843,452***
- ***Pain and suffering Ksh. 20,000 less 15% = Ksh. 17,000***
- ***Interest on general damages award and pain and suffering shall be at court rate from the date of this judgment until payment in full.***
- ***The defendant shall pay half of the plaintiff's costs of this suit and the 3rd party shall pay the other half of the plaintiff's costs of this suit.***

In accordance with Order 1 Rule 22 of the Civil Procedure Rules 2010, I hereby enter judgment for the defendant as against the 3rd party for:

1. ***15% of 8,051,120***
2. ***15% of 20,000***

DATED and DELIVERED at MOMBASA this 15th day of March, 2012.

MARY KASANGO

JUDGE