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**Civil Case 130 of 2009**

**WINFRED MUTHEU KIAMUKO** 1.  
**MAUNDU NZAU** 2. **TITUS**  
.....  
**PLAINTIFFS**

**VERSUS**

**BREKI ISLAM** 1. **SWALEH**  
**BUS SERVICES LIMITED** ..... 2. **MASH**  
..... **DEFENDANTS**

In this matter judgment was entered for the plaintiff against the defendant by consent. Liability was also recorded by consent as 80% against the defendants and 20% against the plaintiffs.

The matter came before me for hearing for assessment of quantum of damages. Only one witness testified. It was the 1<sup>st</sup> plaintiff, Winfred Mutheu Kiamuko, the wife of the deceased. The defendant tendered no evidence. After the close of the evidence, both parties filed written submissions through their counsel, J.A. Makau & Company for the plaintiffs and Wangai Nyuthe & Company for the defendants. Counsel for the plaintiff asked for damages of Kshs.17,655,896/=. On the other hand, counsel for the defendant thought that figure was on the higher side. Both sides relied on decided court cases.

The uncontroverted evidence given by the 1<sup>st</sup> plaintiff was that the deceased died almost instantly following a road traffic accident. He was a passenger in the bus belonging to the 2<sup>nd</sup> defendant and driven by the 1<sup>st</sup> defendant. His monthly gross salary with Co-operative Bank Ltd, when he died in 2008, was Kshs.72,599/=. He was in permanent employment. Expenses were incurred consequent to the death, for example, funeral expenses.

Since liability has been admitted, the court’s duty is to assess damages under the Law Reform Act (Cap 26) and the Fatal Accidents Act (Cap 32).

From the facts of the case, under the Law Reform Act, I take into account that the deceased died instantly following the accident. He was about 30 years old. I make awards as follows:-

- **Pain and Suffering – Kshs. 20,000/=**
- **Loss of Expectation of Life – Kshs. 80,000/=**
- Total Kshs.100,000/=**

Under the Fatal Accidents Act, the cases of **Zeaverino Mworio Mbosoki –vs- Stanley Maore Mugwika – Machakos HCCC 422 of 1999**, and the case of **James Okoth Nyarero –vs- Mohammed Sheikh Omar & Another - Machakos HCCC No. 76 of 2000** were relied upon. The plaintiffs' advocate has asked for an award for loss of dependency of Kshs.17,375,760/=. He used a multiplier of 30 years and a multiplicand of 72,399/=. and a dependency ratio of 2/3.

Indeed, the deceased was 30 years old at the time of death. However, there was no scientific guarantee that he would have worked up to 60 years of age. In addition, from the evidence and documents tendered, only about half of his gross salary was available for his own use and that of the family. The rest was tied up in commitments. I will take a multiplier of 25 years and dependency ratio of 1/3.

As for the specials, it is apparent that part of the funeral expenses were paid by the employer Co-operative Bank Ltd through a Mr Paul Ngila. These are 650/=. 34,000/=. Kshs.2,100/=. These have to be discounted from the special damages claim of Kshs.160,136/=.

The court's award therefore under the Fatal Accidents Act is:-

Loss of Dependency –

$$72,399 \times \frac{1}{3} \times 12 \times 25 = 7,239,900/=$$

Special Damages = Kshs. 123,386/=.

The award is therefore as follows:-

**Law Reform Act:-**

- Pain and Suffering Kshs. 20,000
- Loss of Expectation of life Kshs. 80,000

**Total Kshs. 100,000/=**

**Fatal Accidents Act:**

- Loss of Dependency-

$$72,399 \times \frac{1}{3} \times 12 \times 25 \quad \text{Kshs.7,239,900/=}$$

- Special Damages Kshs. 123,386/=

**Total Kshs.7,363,286/=**

The plaintiff will also get costs and interest. It is so ordered.

Dated and delivered this 7<sup>th</sup> day of **June** 2012.

.....

**George Dulu**  
**Judge**

**In the presence of:**  
Mr Makau for Plaintiff

Ms. Ngatia for holding brief for Mr Musundi for Defendant

Nyalo – Court clerk.