



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Civil Case 57 of 2010

JOHN GACHERU GICHURU.....PLAINTIFF

-versus-

STEPHEN GICHOHI GICHUHI.....1ST DEFENDANT

MAPENDO INTERNATIONAL LIMITED.....2ND DEFENDANT

J U D G M E N T

The issue which is the subject matter of this judgment is in respect of the claim on loss of dependency. The plaintiff herein sued the defendants claiming damages for the fatal injuries his wife, Anne Wairimu Gaceru, deceased suffered as a result of a Road Traffic Accident which occurred on 26th September 2009 along Kenol-Maragua Road, involving motor vehicle registration No.KAZ 948R (Matatu) and KAZ 998T Toyota Prado. The deceased was a fare paying passenger aboard motor vehicle registration number KAZ 948R which collided with KAZ 998T. On 7th July 2011, Learned Counsels appearing in this suit recorded a consent judgment on liability in which the defendant accepted liability at 80%. On 14th September 2011, both parties recorded a further consent in which loss of expectation of life was fixed at Ksh.70,000/= while pain and suffering was agreed at Ksh.10,000/=.

The issue which remained sticky was the claim on loss of dependency. Parties agreed to have the issue determined by written submissions and thus the subject matter of this judgment. It is the submission of the Plaintiff that the deceased was aged 68 and was earning Ksh.50,000/= per month. The plaintiff proposed that the deceased was expected to live for 10 years. He proposed the dependency ratio to be calculated as follows:

$$50,000 \times 10 \text{ (years)} \times 12 \text{ (months)} \times 2/3 = 4,000,000/=.$$

The defendants on their part agreed with the age assessment of the deceased to be 68 years. They urged this court to dismiss the claim on loss of dependency because the plaintiff did not plead for loss incurred due to the deceased's death. The defendants suggested that in case this court is in agreement that the Plaintiff suffered a loss of dependency, then the same should be calculated as follows:

$$5,000 \times 6 \text{ years} \times 1/3 \times 12 = \text{Ksh.120,000}/=.$$

The defendant was of the view that an income of Ksh.5,000/= was reasonable because the rental income remained constant i.e. 50,000/=.

I have considered the two rival submissions plus the authorities and documents relied upon. I think I will take a multiplier of 6 years considering the life expectancy is low. I am persuaded that the correct monthly income of the deceased was Ksh.50,000/=. The deceased was a teacher and was running a school

which the Plaintiff cannot do. I am convinced the following should be the most appropriate award on loss of dependancy:

50,000 x 1/3 x 12 x 6 = Ksh.1,200,000/=.

Consequently, I award the Plaintiff the aforesaid sum.

In the end, judgment is entered as follows:

(a) Loss of expectation of life - 70,000/=.

(b) Pain and Suffering - 10,000/=.

(c) Loss of dependancy - 1,200,000/=.
Ksh. 1,280,000/=.

Less 20% liability, meaning, the net sum due to the Plaintiff is Ksh.924,000/= plus cost and interest.

Dated and delivered this 17th day of August 2012.

J. K. SERGON
JUDGE