

deceased which were lying on the ground outside the Jeep. Her testimony was fortified by the sketch plan which depicted both vehicles on the left side of the road as one faces Malindi from Mombasa direction.

Counsel for the respondent submitted that the accident was either solely or substantially caused by the negligence of the driver of the Jeep. He attributed this to the fact that the said driver had drunk alcohol. With respect, no such evidence was produced. Anne was categorical that before they embarked on the journey, they had lunch and soft drinks.

From the un rebutted evidence that the lorry was being driven on the wrong side of the road, I find that that was an act of negligence which was the direct cause of the collision resulting in the death of the deceased. Having so found, I turn to consider the quantum of damages, the plaintiffs and the other dependants are entitled to.

I have noted earlier that the deceased was survived by ten dependants. The word dependants is a term used in the **Law of Succession section 29**, to me the wife, wives or former wives and children of the deceased whether or not maintained by the deceased immediately, prior to his death. It was submitted for the defendant that three married daughters of the deceased do not qualify to be dependants. Again that position is not correct in view of the above definition of the term dependant.

At the time of his death, the deceased was:

- i) 47 years of age
- ii) employed at Oasis Polcino Limited as a Manager
- iii) earning a monthly salary of Kshs.45,000/=

Based on these factors, counsel for the plaintiffs has submitted for a multiplier of 14 years and a $\frac{2}{3}$ dependency ratio. Counsel cited **Joyce Mumbi Mugi Vs. The Co-operative Bank of Kenya & 2 others** – Civil Appeal No.214 of 2004, **Alice Mboga Vs. Samuel Njoroge**, HCCC No.357/1999 and **Susan Mwangi Vs. Kinyanjui Ngethe & 2 others**, Nkr. HCCC No.175 of 1997. It was submitted, on the other hand, for the defendant that the plaintiffs would be entitled to the following award:

i)	under the Law Reform Act	- Kshs. 60,000.00
ii)	under the Fatal Accident Act	-Kshs. 480,000.00
iii)	Special damages	- Kshs. <u>60,000.00</u>
	Total	- Kshs. 600,000.00
	Less 60% contribution	- Kshs. <u>360,000.00</u>

Kshs.240,000.00

Counsel relied on the case of **Reuben Musau Kithuka & Another Vs. Rahab Muthoni & Another**, HCCC No.NAI. 55 of 1999.

On pain and suffering, the evidence presented suggest that the deceased died instantaneously. In situations like that, courts have traditionally awarded Kshs.10,000/= explaining that where death occurs on the spot, the deceased suffers some form of pain albeit briefly. I will award Kshs.10,000/= for pain and suffering. For loss of expectation of life, the authorities relied on awards vary between Kshs.70,000/= and Kshs.150,000/=. Again courts have made in such cases a nominal award of Kshs.100,000/= which I hereby adopt. On loss of dependency, it was submitted without being rebutted that the deceased was 47 years old and earned Kshs.45,000/=. What was not stated, however, was what portion out of this he paid as tax. I will take away Kshs.5, 000/= as tax.

Taking that into consideration, I will settle for a monthly salary of Kshs.40,000/=. Given the large number of dependants, I will adopt dependency ratio of $\frac{2}{3}$ and a multiplier of 10 years translating to: $40,000.00 \times 12 \times 10 \times \frac{2}{3} =$ Kshs.3,200,000/=. The total award would be as follows

i)	Pain suffering	- Kshs.	10,000.00
ii)	Special damages	- Kshs.	57,150.00
iii)	Loss of expectation of life	- Kshs.	100,000.00
iv)	Loss of dependency	- Kshs.	<u>3,200,000.00</u>
		- Kshs.	3,367,150.00
	Less award under the		
	Law Reform Act	- Kshs.	<u>110,00.00</u>
	Total	- Kshs.	<u>3,257,150.00</u>

(See **Maina Kaniaru & Another** Vs. **Josephat Mwaniki Wangondu** C.A.No.14 of 1989).

Judgment is entered against the defendant in the sum of Kshs.3,257,050/= with costs and interest.

Dated, Delivered and Signed at Nakuru this 25th day of February, 2011.

W. OUKO
JUDGE