



CIVIL

· In a fatal accident claim a party needs to adduce evidence to prove loss of expectation of life and lost years.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HIGH COURT CIVIL CASE NO. 10 OF 2008

PETER MEEME KITHURE (*Suing as a legal representative of the*

estate of Elijah Ntonja Kirimania)

(DECEASED) PLAINTIFF

VERSUS

SOLOMON KIRAGU MANYEKI

1ST DEFENDANT

ANTHONY NJOROGE WAINAINA

2ND DEFENDANT

JUDGMENT

The plaintiff by this claim seeks on behalf of the estate of Elijah Ntonja Kirimania, deceased, an award of special and general damages. He seeks that award in respect of the accident caused by the 2nd defendant whilst driving a motor vehicle owned and registered in the name of the 1st defendant. The 1st defendant did not file a defence as required and an interlocutory judgment was entered against him by the deputy registrar on 29th May 2008. The 2nd defendant filed a defence denying the plaintiff's claim. On 9th June 2009, the plaintiff and the 2nd defendant entered into a consent on liability. That consent was to the effect that judgment be entered on liability wholly for the plaintiff against the defendant at 70%. Although that consent indicated that it was a consent between the plaintiff and the defendant, the consent was only signed on behalf of the 2nd defendant by his counsel. So it is clear that that judgment by consent only relates to the plaintiff and the 2nd defendant. By a subsequent consent dated 6th November 2010, the plaintiff and the 2nd defendant agreed to submit the plaintiff's exhibit in this case without calling evidence amongst which were death certificate, grant of letters of administration of the deceased estate, copy of the record of the registrar of motor vehicles and receipt of the special damages claim totaling Kshs.

10,500/=. The parties by that consent agreed to submit before court in writing in respect of the quantum of damages. The plaintiff's claim was both under Fatal Accident Act and the Law Reform Act. The parties in my view erred to have consented to submit on quantum of damages in writing without the plaintiff having first adduced evidence to prove various heads under the Law Reform Act and the Fatal Accident Act. The plaintiff's failure to adduce evidence means that the court cannot satisfactorily award damages in respect of claims such as loss of expectation of life and lost years. The only information the court has from the pleadings is that the defendant was a matatu conductor. There is no evidence before court of the amount of salary he was receiving and whether or not he was employed on a salary or on commission. It should be recalled that the 2nd defendant did file a defence to the plaintiff's claim and in that defence denied all the allegations the plaintiff made. It therefore means that the plaintiff needed to prove the statements made in the plaint. The 2nd defendant's counsel submitted that the court should not make an award under the heads of lost years until the plaintiff adduced evidence. These submissions were made late in the day because the parties had already consented that the hearing should proceed by way of written submissions. The 2nd defendant's counsel after making that submissions conceded that the plaintiff should only be awarded the following:-

1. *Pain and suffering Kshs. 10,000/=*
2. *Loss of expectation of life Kshs. 70,000/=*
3. *Lost years (Kshs. 5,000 x 12 x 20 x 1/3) = Kshs. 400,000/=.*

It is because of that concession by the 2nd defendant that the plaintiff's claim which should have dismissed will now not be dismissed. I therefore enter judgment for the plaintiff as against the 2nd defendant as follows:-

1. *Pain and suffering Kshs. 10,000/=.*
2. *Loss of expectation of life Kshs. 70,000/=.*
3. *Lost years (Kshs. 5,000 x 12 x 20 x 1/3) = Kshs. 400,000/= - Total = Kshs. 480,000/=*
Less 30% Kshs. 144,000/=
Kshs. 336,000/=
4. *Special damages Kshs. 10,500/=*
5. *The plaintiff shall have costs of the suit and interest on Kshs. 10,500 from the date of filing suit and interests on Kshs. 336,000 from the date of this judgment.*

Dated, signed and delivered at Meru this 17th day of March 2011.

MARY KASANGO
JUDGE