



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL SUIT NO. 484 OF 2005

STANLEY GATITHI NGWERIINI

(Suing as legal rep of the estate of Paul Kinyua Gatithi (deceased)).....PLAINTIFF

-VERSUS-

PAUL KARANJA

GITAU.....DEFENDANT

JUDGMENT

The deceased, at the time of his death as a result of a motor vehicle accident, was working as an Assistant Manager, Barclays Bank, Nairobi.

The following facts emerged from the pleadings and evidence.

On the fatal night, i.e. 14th November, 2004, Plaintiff and other persons were assisting an overturned motor vehicle off Jogoo Road at Makadara near Duty Pharm. The motor vehicle was overturned on island between two lanes of the road. The group assisting were along two sides of lanes. As per the testimony of PW2, Patrick Githaiga Mwanii, a motor vehicle was coming from the side of town, lost control, veered and rammed into the overturned motor vehicle and the persons assisting. This motor vehicle was identified having registration no. KAH 594A. The certificate of ownership produced showed that it was owned by the defendant who was also its driver on that night. The deceased along with others died instantly. PW2 also was injured and taken to the hospital. Thereafter, gave statement at Buru Buru Police Station.

PW1 is father of the deceased and after obtaining the limited grant *ad litem* filed the Plaintiff. The Plaintiff avers that the accident and consequent death of the deceased was as a result of negligence of the defendant. Particulars of defendant's negligence are specified in paragraph 5 of the Plaintiff. The list of dependants under the Fatal Accidents Act are also specified in the Plaintiff.

The deceased was 26 years of age and was not married. He was assisting the family. As of this date, all

the siblings of the deceased have reached age of majority.

The plaintiff testified and produced all relevant documents namely, grant *ad litem* of letters of Administration, police abstract of the accident, death certificate of the deceased, copy of records of the motor vehicle in question, receipts of payments totaling Kshs.23,800/=.

The defendant has filed his Memorandum of Appearance and Defence but did not appear before the Court on the date of hearing. After satisfying that, the notice was duly served, I proceeded to hear the matter *ex-parte*.

I have considered the uncontroverted evidence led by the Plaintiff and am satisfied that the plaintiff has proved this case on the balance of probability as required under the law. The evidence has satisfied me to find that the accident occurred due to sole negligence of the defendant and considering that no evidence is led to prove otherwise, I enter the Judgment for the plaintiff on 100% liability of the defendant.

I shall now consider the issue of assessment of damages.

(A) Under the Law Reform Act

(i) Pain and suffering

The evidence before the court makes it unlikely that the death was instant. The deceased must have seen the death coming with pain. I shall award shs.30,000/= under this heading

(ii) Loss of expectations of life.

The deceased was 26 years of age and working as an Assistant Manager in a reputable Bank. His work did not pose any hazards or life threatening risks. He also owned two matatus and had people working for him. The deceased was expected to have a successful life ahead of him.

I shall award Kshs.150,000/- under this head.

(B) Under the Fatal Accidents Act

(i) Loss of Dependency

The deceased was unmarried but he was maintaining his parents and siblings which are mentioned as his dependants. At the time of this Judgment all the siblings have attained age of majority.

As per the document produced before me, it is shown that the deceased took home Kshs.35,365/= as his net monthly income. That sum shall then obviously will be considered as multiplicand in absence of any proof shown for the income from matatu business.

In absence of any evidence as to the contractual term of retirement of the deceased, I would take the usual accepted age of retirement of 55 years. However, it is submitted that multiplier of 20 years would be reasonable. I thus shall take that figure as the multiplier and usual ? contribution would be taken.

In the premises, I shall compute the loss of dependency as $35,365 \times 20 \times 12 \times ? = \text{Kshs.}5,658,400/=$.

(ii) Special damages:

The special damage to the tune of Kshs.23,800/= has been proved. Unfortunately the plaintiff has failed to prove the other claimed heads of the special damages. I shall thus allow the special damages in the sum of Ksh.23,800/=.

The upshot of the above is that I enter the judgment for the plaintiff against the defendant in the sum of Kshs.5,862,200.00 as under:-

1) Pain and suffering	Kshs. 30,000.00
2) Loss of expectation of life	Kshs. 150,000.00
3) Loss of dependency	Kshs.5,658,400.00
4) Special damages	<u>Kshs. 23,800.00</u>

TOTAL **Kshs.5,862,200.00**

The defendant shall pay costs of the suit and interest as per law.

Orders accordingly.

Dated, signed and delivered at Nairobi this 20th day of **September, 2011**

K. H. RAWAL

JUDGE

20.09.2011