



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII**

Civil Suit 284 of 2002

GEORGE OGETO MENGE (suing as personal representative of the Estate of ZABLON MENGE OGETO – DECEASED)

..... **PLAINTIFF**

VERSUS

LINEAR COACH COMPANY LIMITED DEFENDANT

JUDGMENT

The plaintiff is the personal representative of the estate of Zablon Menge Ogeto, hereinafter referred to as “**the deceased.**” The defendant was the registered owner of a motor vehicle registration No. **KAL 561 B**. On 11th March 2000 the deceased was lawfully crossing the Kericho-Sotik road when the defendant’s driver controlled the defendant’s motor vehicle so negligently that it hit the deceased occasioning him fatal injuries. The plaintiff brought this action for the benefit of the dependants of the deceased under the **Fatal Accidents Act** and for the benefit of the deceased’s estate under the **Law Reform Act**. The deceased’s dependants were listed as:

- Peris Mogoi Ogeto (mother)
- Wilfred Ogeto (brother)
- Robert Makoro (brother)
- Florence Nyamisa (sister)

At the time of his death the deceased was aged 20 years and was a farmer. He enjoyed good health and lived a happy and vigorous life. The deceased was employed as a tea plucker at Changoi Estate earning Kshs. 6,000/= per month.

The plaintiff claimed general damages as well as special damages as hereunder:

- (a) Police Abstract Kshs. 100/=
- (b) Death certificate100/=
- (c) Cost of coffin Kshs. 5,000/=
- (d) Funeral expenses Kshs. 5,000/=.

The defendant did not file any defence and interlocutory

judgment in default of defence was entered on 25th April 2003. Formal proof was done on 10th May 2005. Only the plaintiff testified.

The plaintiff’s counsel was directed to file written submissions but the court file could not be traced for quite sometime. The submissions were eventually filed on 29th September 2009 and on 1st March 2010 this file was placed before me for preparation of the judgment though the matter was heard before Bauni, J.

As regards liability, the plaintiff’s evidence was unchallenged and I hold that the plaintiff proved, on a balance of probabilities, that the defendant’s driver was to blame for the occurrence of the said accident. I enter judgment on full liability for the plaintiff as against the defendant.

Regarding general damages under the **Fatal Accidents Act**, for pain and suffering, I award a sum of Kshs. 10,000/= since the deceased died almost immediately after the said accident. For loss of dependency, the plaintiff testified that the deceased's mother, his brother and sister were dependent on him. The plaintiff did not produce any documentary evidence to prove that the deceased was employed as a tea plucker and was earning a monthly salary of Kshs. 6,000/=. In the absence of such proof I will assume that the deceased was earning a sum of Kshs. 3,000/= per month and apply a multiplier of 30. Since he was a bachelor, I will adopt a dependency ratio of $\frac{1}{3}$ and tabulate the claim for loss of dependency as hereunder:

$$3,000 \times 12 \times 30 \times \frac{1}{3} = 360,000/=.$$

Special damages

No documentary evidence was produced in support of the claims for a police abstract, cost of coffin and funeral expenses. I will therefore award nothing for those claims. The Death certificate that was produced as **P. Exhibit 2** shows that the fees paid for the same was Kshs. 50/= which I hereby award.

I will not make any award for loss of expectation of life. In any event, even if I awarded the same I would still be obliged to discount it considering that the benefits payable under the **Fatal Accidents Act** and the **Law Reform Act** will be made to the same dependants and they should not benefit twice from the same cause of action. See **KEMFRO AFRICA LIMITED & ANOTHER –VS- LUBIA & ANOTHER (NO. 2)** [1987] KLR 30.

I now enter judgment for the plaintiff against the defendant as hereunder:

- (a) Pain and suffering Kshs. 10,000/=
- (b) Special damages Kshs. 50/=
- (c) Loss of dependency Kshs. 360,000/=

Total Kshs. 370,050/=

The plaintiff will also have costs of the suit plus interest at court rates.

DATED, SIGNED AND DELIVERED AT KISII THIS 20TH DAY OF APRIL, 2010.

**D. MUSINGA
JUDGE.**

20/4/2010

Before D. Musinga, J.

Mobisa – cc

Mr. Kaburi for Mr. Odongo the Plaintiff

N/A for the Defendant

Court: Judgment delivered in open court on 20th April, 2010.

**D. MUSINGA
JUDGE.**