



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CIVIL SUIT NO.77 OF 2005

JOHN KOLA AJODE

**suing as the personal representative and legal administrator of the estate of
TABITHA ACHIENG KOLA (deceased).....PLAINTIFF**

VERSUS

PETER MWANGI.....1ST DEFENDANT

CICILIA MUTHONI NJENGA2ND DEFENDANT

J U D G E M E N T

Interlocutory judgment was entered for failure to enter appearance and to file a defence. Before court is formal proof for assessment of general damages.

John Kola Ajode the plaintiff filed suit on his behalf for injuries he sustained and as personal representative and legal representative of estate of **Tabitha Achieng Kola** deceased. The plaintiff seeks for damages for the injuries he sustained under the Fatal Accident Act and the Law Reform Act on behalf of the estate of the deceased for loss of dependency and loss of expectation of life.

In support of injuries sustained the plaintiff produced a medical card and a P3 form indicating the following injuries:

- 1. Blunt injury to chest;**
- 2. Bruised head;**
- 3. Bruised shoulder;**
- 4. Bruised knee;**

PW3 Dr. Oruro Sam Ben a medical doctor who examined the plaintiff found that the plaintiff had sustained the following injuries:

- 1. Blunt injury chest with pains;**
- 2. Blunt head injury with swellings;**
- 3. Bruises on the left palm, left shoulder and knee;**

On examination he concluded on the 24th of February, 2005 the doctor found the plaintiff to have mild tenderness on the chest and healed bruises on the palm and knee. He formed an opinion that the plaintiff had suffered multiple soft tissue injuries and the aches would mostly improve. Counsel for the plaintiff relying on the case of **David Muneria & others versus Ronald Barasa HCCC Appeal No.103 of 2003 (Eldoret)**, sought for Kshs.120,000/=. The injuries sustained by the plaintiff in the said case were slightly more serious than in the present case and claim under the Fatal Accident Act and Law Reform Act for and on behalf of the Estate of Tabitha Achieng Kola. The court will award Kshs.100,000/= as general damages. Judgment on specials at Kshs.4,100/= was entered at the interlocutory stage.

As a result of the accident the deceased sustained fatal injuries. It is not clear whether she died immediately after the accident. It was the evidence of the plaintiff and his witnesses that the deceased and the plaintiff were man and wife. The 2nd plaintiff also testified that the deceased was a business woman who engaged in the business for selling tomatoes where she made Kshs.1500/= a day and with the income from the business she assisted in buying food, paying school fees and buying clothes for the children. The plaintiff's counsel sought for compensation under 3 heads.

- 1. Loss of expectation of life where he proposed an award of for Kshs.150,000/=;**

2. Pain and suffering where he proposed Kshs.20,000/=;

3. Loss of dependency where he used the minimum wage of Kshs.8,500/= and a multiplier of 41 and arrived at Kshs.4,182,000/= as the proposed award under this heading.

The death certificate gave age of the deceased as 27 years.

The deceased left 3 survivors the husband, the plaintiff who was 34 years at the date of filing suit, two daughters **Rael Akinyi Kola** aged 10 and **Grace Atieno Kola** aged 3 years at the time of filing suit. The court takes cognisance that the Government retirement age is 60. However due to exigencies of life there is a possibility that the deceased would not have worked to that age. The multiplier of 41 is extremely high. A multiplier of 20 would therefore be reasonable. Although no proof of earnings was adduced the court assumes that in this day and age the deceased must have been involved in some gainful engagement and she assisted the husband in meeting some of the family expenses. The proposal of using the minimum wage is reasonable. Current minimum wage in Kenya is Kshs.6,130/=. A multiplier of 2/3rd towards the family as proposed is reasonable. The amount by court as award for damage is as follows: $6,130 \times 12 \times 20 \times 2/3 = 980,800/=$.

Loss of Expectation of Life:

The sum of Kshs.100,000/= reasonable and the same is awarded as proposed.

Pain and suffering:

It is not clear whether deceased died on the spot the proposed amount of Kshs.20,000/= is reasonable and also awarded.

Specials:

Judgment was entered at the interlocutory stage at Kshs.46,370/=.

All in all Judgment is entered as follows:

plaintiff: - General damages	Kshs.100,000/=
Special damages	<u>Kshs. 4,100/=</u>
	<u>Kshs.104,100/=</u>

Estate of the deceased:

1. Loss of expectation of life -	Kshs.100,000/=
2. Pain Suffering	Kshs. 20,000/=
3. Loss of dependency	Kshs.980,800/=
4. Specials	<u>Kshs. 46,370/=</u>
Total	<u>Kshs.1,147,110/=</u>

Cost of the suit is awarded to the plaintiff.

The deceased had 2 minor children the award to the estate is to be shared among the survivors with the minors getting a bigger portion of the same. Counsel for the plaintiff is directed to make submissions on apportionment of the sum of Kshs.1,147,110 less specials among the survivors and where the minors share will be deposited in an income generating account until they attain the age of majority.

Dated and Delivered at Kisumu this 26th day of November, 2010

ALI-ARONI

J U D G E

In presence of:

.....Counsel for plaintiffs

.....Counsel for defendants

