



REPUBLIC OF KENYA
IN
THE HIGH COURT OF KENYA AT NAKURU
CIVIL SUIT 226 OF 2005

TOM KIPNGETICH CHERUIYOT.....1ST PLAINTIFF

JANE ABE KOGEI2ND PLAINTIFF

*(Suing as administrators of the estate of the late
RAEL JEPCHUMBA CHERUIYOT – deceased)*

VERSUS

THE HONOURABLE ATTORNEY GENERAL.....1ST DEFENDANT

ELDORET EXPRESS LIMITED.....2ND DEFENDANT

JUDGMENT

Both plaintiffs are the legal representatives of the estate of the late Rael Jepchumba Cheruiyot (*deceased*). The deceased died on 3rd December 2003 as a result of a road traffic accident involving motor vehicle registration number KAN 486R Mercedes Benz Government registration no. GK 526Y belonging to the Office of the President (*hereinafter referred to as the 'Mercedes Benz'*). The deceased was travelling in the Mercedes Benz. It is alleged that the vehicle belonging to the 2nd defendant registration number KAQ 695B (*hereinafter referred to as the 'bus'*) collided with the Mercedes Benz as a result the deceased was fatally injured.

The plaintiffs blamed the accident on the 1st and 2nd defendants and sought for compensation by way of special damages of Kshs 270,150/=. They also sought for general damages under **the Fatal Accidents Act** and **the Law Reform Act**. The 1st plaintiff testified that the deceased was his wife, before this accident, she was working in the civil service. She was earning a salary of Kshs 5,418/= as per the last payslip of February 1999. According to the plaintiff, the deceased retired and was engaged in the business of selling clothes. She used to contribute to the well-being of the family. The deceased had three children aged between 20 years and 16 years. She used to contribute to the family budget a sum of Kshs 15,000/= per month. She was aged 35 years as at the time of the accident.

When the accident occurred, the 1st plaintiff who was a commissioned army officer was on duty out of the country. The deceased was travelling with the official car belonging to the 1st plaintiff's offices at the

time of the accident. The plaintiff received the news of the death of the deceased while in London. He travelled to the country and arranged the burial of the deceased. He incurred funeral expenses of Kshs 270,000/=. He produced the receipts for catering for the mourners, funeral announcements and other expenses.

After the burial, the plaintiff obtained the death certificate for the deceased which shows that the deceased died on 3rd December 2002 at Naivasha and the cause of death was chest injuries due to a road traffic accident. The plaintiff obtained limited grant of letters of administration ad litem on 16th May 2006 together with Rael Chepchumba Cheruiyot to enable them file this suit. The plaintiff also reported the matter to Naivasha Police Station and was issued with a police abstract form.

PC Lucy Simiyu based at the Naivasha Traffic Base testified in this matter. According to the records held at the Naivasha police station, the Mercedes Benz was trying to overtake the Eldoret Express Bus. While on the opposite side, there was an on-coming vehicle. The driver of the Mercedes Benz tried to return to his left side of the road and in the process he was hit by the bus and pushed to the right-hand side where the Mercedes Benz was rammed into by an on-coming bus. According to the Police, the driver of the Mercedes Benz was to blame for the accident. He was charged with the offence of dangerous driving but the case is still pending before the Principal Magistrate's court in Naivasha.

The plaintiff initially filed this suit in High Court Nairobi being HCCC No. 1195 of 2003. The suit was struck out on the grounds that the accident occurred in Naivasha within Rift Valley Province, thus the suit ought to have been filed in Nakuru and not Nairobi. By a ruling dated 26th July 2005 the court was of the opinion that since the limitation of actions was not over, the plaintiff was at liberty to file a fresh suit, on 14th September 2005, the present suit was filed. The 2nd defendant defended this suit although at the hearing they did not adduce any evidence.

Based on the evidence on record the plaintiff was not present when the accident occurred. According to the evidence by the Police who carried out the investigations the driver of the Mercedes Benz was to blame. He tried to swerve on his side of the road after unsuccessful attempt to overtake, and was hit by the bus and also an oncoming vehicle. According to counsel for the plaintiff, the driver of the bus which was being overtaken ought to have slowed down to give way to the vehicle which was overtaking, thus counsel submitted that the driver of the bus should share liability with the driver of the Mercedes Benz.

I find the driver of the Mercedes Benz should bear a greater responsibility for this accident. He tried to overtake without ensuring that it was safe to do so. On the other hand the Bus driver should have slowed or swerved to give way to the Mercedes Benz. In this regard liability is apportioned 70% for the 1st defendant and 30% for the 2nd defendant. The deceased was aged 35 years as at the time of her death. She was a civil servant earning a salary of Kshs 5,655/= per month. She however took an early retirement and engaged in business. However no documents were produced to show the business that she is engaged in or the income that she was earning. I will therefore base the assessment on the last salary that the deceased was earning but considering that she had retired in 1999 and this accident occurred in 2002. If she had remained in the same employment her salary would have risen. Taking all the circumstances and the vicissitudes of life I will take a sum of Kshs 6,000/= as the deceased monthly pay.

The deceased was aged 35 years, even if she had not taken an early retirement, and remained in the public service she would have retired at the age of 55 years; I will therefore use a multiplier of 20 years. For loss of dependency I will award the plaintiffs Kshs $6,000 \times 12 \times 20 \times \frac{2}{3} =$ Kshs 960,000/=

The plaintiff was able to prove that he incurred funeral expenses of Kshs 141,500/= as follows:

- (i) Letters of administration
- (ii) Funeral announcements
- (iii) Funeral expenses

Judgment is entered for the plaintiff as follows:

(a) General damages for loss of dependency Ksh 960,000

(b) Special damages Ksh 141,500

TOTAL Ksh **1,101,500**

(c) The plaintiffs will also have the costs of this case.

This award shall be apportioned 30% to be paid by the 2nd defendant while 70% to be paid by the 1st defendant.

Judgment read and signed on 1st day of April 2009

M. KOOME

JUDGE