



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

Civil Case 140 of 2008

R.C.R (*suing as administrator*)

***to the estate of J. K. R)*.....PLAINTIFF**

VERSUS

UNILEVER KENYA LIMITED.....DEFENDANT

JUDGMENT

The plaintiff, Recho Chepkorir Rono, has sued the defendant claiming damages under both the **Law Reform Act (Cap 26 of the Laws of Kenya)** and the **Fatal Accident Act (Cap 32 of the Laws of Kenya)**. The claim arises out of the death of her husband, John Kipsiele Rono, on or about 17th September 2001 in a fatal accident, in respect of which she holds the defendant liable. She has brought the suit as the widow and administratrix (*ad litem*) of the estate of her late husband on her own behalf and that of the deceased's eight children:

	NAME OF CHILD		Age at the time of the accident (years)
1.	C.C.R	Daughter	24
2.	K.K	Son	21
3.	G.K.S	Son	19
4.	W.K.S	Son	16
5.	H.K.S	Son	13
6.	J.C	Daughter	11
7.	B.K	Son	8
8.	A.K	Son	6

According to the plaint, the deceased was 47 years old at the time of his demise. The age of the plaintiff, having been stated to have been 48 years at the time of filing suit, it would follow that the plaintiff was widowed at 44 years. A written consent judgment on liability was filed on 29th October 2008 and adopted by the court on 18th November 2008. Parties applied to file written submissions on quantum, subsequent upon which this judgment is now delivered. Documentary evidence in support of the plaintiff's case was tendered by way of a consent letter dated 7th November 2008 and filed on 18th November 2008. The documents thus admitted by consent are:

- (a) *Limited Grant Ad Litem issued on 14th September 2004*
- (b) *Police Abstract Report dated 18th October 2001*
- (c) *Death certificate dated 5th November 2001*
- (d) *The deceased's pay-slips for July, August and September 2001*
- (e) *Order granting leave to file suit out of time*
- (f) *Birth certificates for the deceased's eight children*

The defendant's written submissions were filed on 12th March 2009 while the plaintiff's were filed on 20th April 2009. The same have been carefully considered, alongside the various authorities cited to support each party's position. The age of the deceased at the time of death is not in dispute nor is the fact that he was an employee of the Kenya Pipeline Company Limited, earning a reasonably good salary. Parties have agreed that the conventional sum of Kshs 100,000/= be awarded in respect of loss of expectation of life and Kshs 20,000/= for pain and suffering. Dependency of $\frac{2}{3}$ has also been agreed upon leaving this court to decide on the issue of the multiplier applicable and the quantum payable under the Fatal Accidents Act.

There is a clear dispute as to the amount to be used as a yard stick (*the multiplicand*) in assessing the general damages, due to the fact that the consent letter of 7th November 2008, by virtue of which the plaintiff's documents were admitted, indicates that the salary of the deceased for the months of July, August and September 2001 amounts to Kshs 56,968.50cts, 46,811.25cts, 38,517.70cts respectively. The defendant proposes that the said figures be adopted in calculating the general damages while the plaintiff's advocate, in his submissions, proposes a figure of Kshs 186,175/= which, I note, represents the gross salary of the deceased as stated in the July and August, 2001 payslips. The defendant proposes a multiplier of 5 years while the plaintiff suggests 8 years on the basis that the defendant, had he not died in the accident, would have continued to work with Kenya Pipeline Company Ltd up to the age of 60 years said to be the retirement age within parastatals. It is in order for the defendant wish to rely on the figures tendered before court by the plaintiff. However this court is of the view that to do so would lead to the deceased's estate being disentitled to recoverable benefits since those figures represented the net earnings of the deceased after tax and other deductions, including voluntary deductions. This court is of the view that the correct yard stick in the circumstances would be an average figure calculated on the basis of the after tax earnings of the plaintiff as represented in the three payslips admitted herein. The after tax earnings for July 2001 amount to Kshs 120,679/=, August Kshs 121,310/= and for September Kshs 123,888/= which gives an average monthly salary of Kshs 121,959/=. I accept the defendant's submission that given the uncertainties and imponderables of life it cannot be said with certainty that the deceased would have continued in employment up to retirement age of 60 years as suggested in the plaintiff's submissions. However considering his position or status in life I am of the view that a multiplier of seven years would be appropriate. Accordingly loss of dependency under the **Fatal Accidents Act** is hereby calculated as follows:

$$\text{Kshs } 121,959 \times 12 \times 7 \times \frac{2}{3} = 6,829,704/=$$

As regards special damages none were pleaded nor proved as submitted by the plaintiff. However a police abstract report, having been tendered, an assumption can safely be made that the sum of Kshs 100/= paid in respect thereof is awardable as the same must have been paid.

In their submission the defendant's propose that the award payable herein be discounted by a sum of Kshs 220,00/= on the basis that the award represents an accelerated early lump sum income payable to the estate. However the award being made 8 years from the date of the accident a discount may not be justified.

Taking all the above into consideration I enter judgment for the plaintiff and award damages as follows:

- (i) Damages for Loss of Dependency Kshs 6,829,704.00
- (ii) Loss of expectation of life Kshs 100,000.00
- (iii) Pain and suffering Kshs 20,000.00

6,949,704.00

Less 20% contribution (**1,389,940.80**) **5,559,763.20**

I have taken into account the fact that the beneficiaries' to the award both under the Fatal Accidents Act and the Law Reform Act are the same. However I see no possibility of double compensation to warrant a reduction of the damages herein. To the sum of 5,559,763.20 the special damages of Kshs 100/= is added giving a final award of Kshs 5,559,863.20/=. It being clear that three of the beneficiaries were adults at the time of the accident herein I direct that the plaintiff do file an application to prove dependency ratio. Appropriate proposals for apportionment should be made in each case for the court's approval once the sum awarded herein is paid.

Orders accordingly.

Dated signed and delivered at Nakuru this 6th day of November 2009

M. G. MUGO

JUDGE