



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAKURU**

**Civil Suit 44 of 2007**

**REGINA WANGECI .....PLAINTIFF**

**VERSUS**

**ELDORET EXPRESS CO. LIMITED.....DEFENDANT**

**JUDGMENT**

On 14<sup>th</sup> January 2005 the late Geoffrey Mwangi (*hereinafter called the deceased*) was cycling along Nairobi-Nakuru road. He was hit by vehicle registration number KAP 763N which was traveling along the same direction. As a result, the deceased sustained fatal injuries and died immediately thereafter. **Regina Wangeci** suing as the legal representative of the estate instituted this case against the defendant who are the registered owners of the motor vehicle.

The plaintiff has alleged that the defendant's motor vehicle was negligently and recklessly driven. The plaintiff being the widow of the deceased obtained the letters of administration of the deceased's estate. She also obtained the death certificate which shows that the deceased died on 14<sup>th</sup> January 2005 and the cause of death was cardiac arrest due to severe head injury due to a road traffic accident. The deceased was at the time of his death aged 34 years. He was a graduate teacher. At the time, he was teaching at Mugwati Secondary School. He was earning a salary of Kshs 32,267 gross. The deceased was survived by the plaintiff and two children aged 8 years and 5 years respectively. The plaintiff produced their birth certificates.

The plaintiff further testified that they depended entirely on the deceased who used to pay for all the expenses for the family. When the plaintiff received the news about the accident she visited the Naivasha police station where the accident was reported. She was issued with the police abstract form which shows that the accident occurred and that the deceased was fatally injured. She was also able to take a photograph of the bicycle which she produced as an exhibit. The plaintiff blamed the defendant for the accident and sought for compensation for the death of her late husband.

The plaintiff's case was supported by the evidence of Thomas Nyakundi who testified that on the material day, at about 1.00 p.m. he was selling sausages along the junction of Kinangop and Naivasha when he saw the bus registration number KAP 763M approaching. In front of the bus, there was a salon car and the deceased was cycling on a bicycle. He averred that the bus accelerated and knocked the cyclist (*deceased*) who fell on the tarmac. The bus stopped after hitting the cyclist. He helped to take the deceased to the hospital but unfortunately he passed away. This witness testified that he took the registration number of the bus. According to this witness it is the driver of the bus who was on the wrong.

The defendant did not adduce any evidence. Learned counsel for the defendant filed written

submissions and urged the court to apportion liability on 50:50 basis since the accident was a collision between the deceased and the motor vehicle KAP 763N. On quantum the court was urged to use a multiplier of ten (10) years and award the plaintiff a sum of Kshs 1.3. counsel cited decided cases which I have taken into consideration.

The plaintiff also filed submissions and urged the court to rely on the decision in the case of **Elijah Ole ku vs. John Ikunya Thuo Nairobi HCCC No. 1299 of 1998** where Visram J. used the multiplier of 20 years to assess general damages and applied the dependency ratio of  $\frac{2}{3}$ . The deceased therein was also awarded Kshs 100,000/= for pain and suffering and Kshs 80,000/= for the loss of expectation of life. The plaintiff similarly relied on the case of **Alice Mboga vs. Samuel Kibuge Njoroge Nakuru HCCC No. 357 of 1999.**

The first issue to determine in this suit is whether the defendants were negligent and whether the plaintiff proved her case to the required standard. As stated above, the defendants did not offer any evidence. The plaintiff's evidence and that of her witness is not controverted. The accident occurred and the deceased who was cycling was fatally injured. He was hit by the defendant's vehicle from behind. Counsel for the defendant invited the court to apportion liability between the plaintiff and the defendant. However as it was held in the case of **Nandwa Vs Kenya Kazi Ltd [1988] KLR 488;**

***“In an action for negligence, the burden is always on the plaintiff to prove that the accident was caused by the negligence of the defendant. However, if in the course of trial there is proved a set of facts which raises a prima facie inference that the accident was caused by negligence on the part of the defendant, the issue will be decided in the plaintiff's favour unless the defendant provides some answer adequate to displace that inference.”***

On this issue of liability I am satisfied by the evidence of PW2. his evidence was not controverted that this accident was caused through the negligence of the driver of motor vehicle KAP 763N whose vehicle knocked the deceased from behind. It was also held in the case **Embu Public Road Services Ltd –Vs- Riimi [1968] EALR 22,** as follows;

***“Where circumstances of the accident give rise to the inference of negligence, then the defendant in order to escape liability has to show that there was a probable cause of the accident which does not connote negligence.”***

On page 24 of the same decision, Sir Charles Newbold stated that:-

***“The doctrine of res ipsa loquitor is one which a plaintiff, by proving that an accident occurred, in the circumstances in which an accident should not have occurred thereby discharges in the absence of any explanation by the defendant, the original burden by showing negligence on the part of the person who caused the accident. The plaintiff, in those circumstances, does not have to show any specific negligence, he merely shows that an accident of that nature should not have occurred in those circumstances, which leads to the inference, the only inference, that the only reason for the accident must therefore be negligence of the defendant.”***

Taking the circumstances of this case into consideration I find that the defendant was 100% liable for the accident. On the issue of loss of dependency the deceased was working as a Deputy Head Teacher at Mugwathi Secondary School. He was a graduate from the Egerton University. He was earning a gross salary of Kshs 32,267/- per month. He left behind a widow and two minor children. He was 34 years old at the time of his untimely death. Counsel for the plaintiff suggested a multiplier of 28 years while the defence suggested 10 years. Assuming that the deceased would have worked as a teacher upto the mandatory retirement age of 55 years I will adopt a multiplier of 21 years.

The plaintiff and her children depended on the deceased entirely. It is reasonable therefore to find that  $\frac{1}{2}$  of his salary would go towards the upkeep of his family. The plaintiff also obtained the letters of administration in respect of the deceased's estate and under the Law Reform Act I would award the plaintiff Kshs 80,000/= which is a conventional sum. The plaintiff died immediately after the accident

and I would award Kshs 20,000/= for the pain and suffering. No evidence was adduced in regard to special damages. There will be no award for special damages.

Judgment is hereby entered for the plaintiff as follows:

(i) ***Loss of dependency;***

Kshs  $32,267 \times 21 \times 12 \times \frac{1}{2}$  = Kshs 4,065,642/=

(ii) ***Loss of expectation of life*** = Kshs 80,000/=

(iii) ***Pain and Suffering*** = Kshs 20,000/=

**Total Kshs 4,165,642=**

The plaintiff shall also have the costs of this suit.

It is so ordered.

**Judgment read and signed on 25<sup>th</sup> day of January 2008**

**M. KOOME**

**JUDGE**

**25/1/2008**

Before Koome J.

Mwiti court clerk

Habari for the plaintiff

Wamasa for the defendant

**Judgment read and signed on 25<sup>th</sup> day of January 2008**

**M. KOOME**

**JUDGE**