

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 984 of 2005

TABITHA NGITHI NYAGA.....1ST PLAINTIFF

PAUL MWANGI NDOGO.....2ND PLAINTIFF

**(Suing as Legal Representatives of the Estate of
STANLEY NDOGO MWANGI – deceased)**

VERSUS

TOM VAN VEEN.....DEFENDANT

JUDGMENT

The plaintiff is suing in her capacity as a legal representative of the estate of Stanley Mwangi (deceased)

This claim arises out of a road accident which occurred on or about 20th March 29004 at about 4 a.m along Thika-Garissa Road in which the deceased Stanley Ndogo Mwangi was hit by motor vehicle registration No. KAQ 443W a Honda Station Wagon and sustained serious injuries from which he later died. The defendant did not stop after the accident. The body of the deceased was removed from the scene to Thika District Hospital mortuary. The matter was reported to Thika Police Station who issued a police abstract. The defendant was later traced and when the advocate for the plaintiff wrote him a letter dated 22nd June 2005 to admit liability he instructed a lawyer who replied in a letter dated 28th June 2005 in which the defendant admitted to have driven along Garissa -Thika Road on the alleged date and that he was involved in an accident. He also admitted that he did not stop after the accident because his visa had expired hence was afraid that he would land in more troubles with the police. The plaintiff blames the defendant for the accident in her evidence. At the end of the plaintiff's case the defendant did not call any evidence to contradict the plaintiff's evidence. After having considered the plaintiff's evidence and the documentary evidence adduced herein I am satisfied that the plaintiff was to blame for the accident and I so hold. The plaintiff has proved liability against the defendant.

I now move to assess damages. The plaintiff in her evidence told the court that her deceased husband was aged 40 years at the time he met his death. He was employed by SADOLIN PAINTS EA and was earning Sh. 21,000/= per month. From the letter of appointment it is indicated that his retirement age was 55 years old. Therefore he had 15 years to retire. The plaintiff further told the court that when the body of the deceased was released from Thika Hospital Mortuary she transported it to Nakuru for burial. She incurred Sh. 40,000/= funeral expenses. She stated that she is a housewife and she depended wholly on the deceased for her maintenance as well as her two children Wangui who was born on 3rd February 2003 and Jemiah born on 17th November 2000. Funeral expenses was admitted at shs. 40,000/=

On the issues of pain and suffering Counsel for the plaintiff suggested a figure of Sh. 20,000/= while Counsel for the defendant suggested a figure of Sh. 10,000/= It is not clear from the evidence how long it

took before the deceased died after the accident. On loss of expectation of life Counsel for the plaintiff suggested a figure of Sh. 100,000/= while Counsel for the defendant suggested a figure of Sh. 60,000/=. On loss of dependency Counsel for the plaintiff suggested a multiplier of 23 years at a salary of Shs. 21,000/= per month while Counsel for the defendant suggested a multiplier of 12 years at a salary of Shs. 15,000/= per month.

After considering the evidence adduced in court, the submissions as well as the authorities quoted and comparing what was awarded in those authorities and the instant case it is my considered opinion that the following figures would be adequate compensation for the plaintiff.

- (a) Under the heading - special damages I award Sh. 40,000/=
- (b) Under the heading – pain and suffering I award Shs. 15,000/=.
- (c) Under the heading – loss of expectation of Sh. 80,000/=.
- (d) Under the heading – loss of dependency I adopt a multiplier of 13 years at a salary of Sh. 18,000/= per month which will work out as follows $18000 \times 13 \times 2/3 = 1872000$

Accordingly there shall be judgment for the plaintiff and against the defendant for Sh. 2,052,000/= with costs and interest.

Dated and delivered at Nairobi this 15th day of February 2008.

J. L. A. OSIEMO

JUDGE