



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 23 of 2002

TERESIA WANGUI NDERITU

(Suing as the Legal Representative of the estate of the Late

FREDRICK MACHARIA (DECEASED).....

....PLAINTIFF

VERSUS

HESSEIN DALACHA.....1ST DEFENDANT

ATTORNEY GENERAL.....2ND DEFENDANT

JUDGMENT

This is a claim for damages for the injuries the plaintiff suffered in a road accident on 18th November 2000 at Ngata area in Nakuru District along Nakuru/Eldoret Road. Liability was by consent apportioned at 60/40% with the defendant shouldering 60%.

Liability having been apportioned as stated above the contention by Mr. Bitta, counsel for the defendants, that this suit is bad in law for being statute barred under the **Public Authorities Limitation of Actions Act** and for failure by the plaintiff to serve the defendant with the requisite notice under **Section 13A** of the **Government Proceedings Act** is, with respect, totally misplaced. Mr. Bitta was in court and consented to the apportionment of liability and his argument is therefore self defeating.

Mr. Bitta submitted that is I rule against him on the issue of liability then I should adopt the computations made by Koome J in HCCC No. 382 of 2001 which suit also arose from the accident giving rise to this one. I have perused the judgment in that case and I have no problem with that suggestion.

The deceased in this case appears to have died instantly. I therefore award the plaintiff a sum of Kshs.20,000/- for pain and suffering. The deceased was 44 years old. I find the sum of Kshs.80,000/- suggested by both counsel for loss of expectation of life to be reasonable and I accordingly award it.

On loss of dependency, the deceased's widow testified that he was involved in the business of selling spare parts from which he used to earn a sum of Kshs.20,000/- per month. She produced some receipt books which show that the deceased was indeed involved in that business. I find that sum a reasonable basis for determining the multiplicand. The deceased as I have said was 44 years old. Being a businessman I find that he could have continued in that business upto the age of about 60 years. However, due to the expedited payment I consider a multiplier of 10 reasonable in this case. I

accordingly award the plaintiff Kshs.1,600,000/- for loss of dependency. The deceased's widow also produced receipts for the special damages of Kshs.10,800/- claimed in the plaint which I find proved.

In the upshot I award the plaintiff a sum of Kshs.1,026,480/- made out as follows:-

1. Pain and suffering - Kshs. 20,000.00
 2. Loss of expectation of life - Kshs. 80,000.00
 3. Loss of dependency $(20,000 \times 12 \times 10 \times \frac{2}{3})$ -Kshs.1,600,000.00
 4. Special damages - Kshs. 10,800.00
- TOTAL - Kshs.1,710,800.00
- Loess 40% contribution - Kshs. 684,320.00
- Balance payable to plaintiff - Kshs.1,026,480.00

DATED and delivered at Nakuru this 3rd day of November, 2008.

D. K. MARAGA

JUDGE.