



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

Civil Case 99 of 2004

**IBRAHIM ADAN MIRE (suing as personal representative of the estate of
FARAHM IBRAHIM ADDEN).....PLAINTIFF**

VERSUS

**PATEL SHAILESH
KESHAVLA.....DEFENDANT**

JUDGMENT

The plaintiff, Ibrahim Adan Mire has filed this suit as the administrator of the estate of Farah Ibrahim Adden - deceased (*hereinafter referred to as the deceased*) on behalf of the estate of the deceased seeking to be paid damages on account of the fatal injury that the deceased sustained when he was hit by a motor vehicle registration NO. KAP 992V (*hereinafter referred to as the said motor vehicle*) along Eldoret-Turbo road. The plaintiff averred that the said motor vehicle, was being driven by the defendant when it veered off the road and hit the deceased who was performing his duties by the road side as a traffic police officer. The plaintiff blamed the defendant for causing the said accident due to his negligence. The plaintiff particularized the particulars of negligence. He prayed this court to order the defendant to pay the estate of the deceased damages under the Law Reform Act and under the Fatal Accidents Act. He also prayed to be awarded costs of the suit.

The defendant filed a defence. He denied that the plaintiff had the requisite *locus standi* to file suit on behalf of the estate of the deceased. He further denied that he was the owner of the motor vehicle that was involved in the said accident. He denied that he had been negligent or had caused the said accident. He pleaded that the said accident was solely caused or substantially contributed by the negligence of the deceased who failed to have a proper lookout of the vehicular traffic on the said road before crossing the road. The defendant denied that the estate of the deceased was entitled to be paid any damages. The defendant urged this court to dismiss the plaintiff's suit with costs.

The hearing of this case commenced before M. Apondi - J who heard the plaintiff's witnesses. The plaintiff closed his case. M. Apondi - J was transferred to Nairobi before he could finalize the hearing of this case. The parties agreed by consent for this court to take over the proceedings in this case from where it had reached and thereafter deliver its judgment. The defendant was given several opportunities to avail his witnesses but failed to do so. On the 4th December, 2006 this court declined to grant a further application for adjournment made by the defendant. The defendant closed his case without calling any witnesses. The plaintiff called two witnesses, PW1 Ibrahim Adan Mire (*the plaintiff*) who was the father of the deceased and PW2 Dahaba Alio Somo, the widow of the deceased. They testified that the deceased

had been employed as a police constable and was killed on the 7th November, 2003 while he was on duty at Turbo. The plaintiff produced the deceased's death certificate as *plaintiff's exhibit No.1*. He testified that he had been issued with limited grant of letters of administration *ad litem* which gave him authority to file suit on behalf of the estate of the deceased. The limited grant was produced as *plaintiff's exhibit No.2*. It was the plaintiff's testimony that the deceased was married to PW2 and was blessed with four children. At the time of the trial, the children were aged 14 years (*Saddam Farah Ibrahim*), ten years (*Sahsan Farah Ibrahim*) 8 years (*Feisal Farah Ibrahim*) and two and a half years (*Mohammed Farah Ibrahim*).

The plaintiff conducted a search at the Registrar of Motor Vehicles which search confirmed that the motor vehicle was owned by the defendant. The search certificate was however not produced in evidence. He testified that after the accident, the defendant was charged with the traffic offence of causing death by dangerous driving. The defendant was convicted on his own plea of guilty and fined Kshs. 10,000/=. The proceedings were produced as *plaintiff's exhibit No.5*. The plaintiff testified that the deceased died while he was being taken to hospital. At the time of his death, the deceased was earning Kshs 7,000/= per month. He testified that at the time of his death, the government had increased the salary of police officers which back dated to July, 2003. The salary increment however was to take effect in December, 2003. The deceased did not therefore benefit from the said salary increment. He testified that the deceased was buried on 8th November, 2003.

PW2 produced the birth certificates of the children of the deceased as *plaintiff's exhibit No. 9 (a), (b), (c), & (d)*. She also produced the pay slips of the deceased as *plaintiff's exhibit No. 7 (a) & (b)*. She testified that all the children of the deceased, save for the last born were primary school pupils. She reiterated that the deceased earned a salary of Kshs 7,550/= as a police constable. She testified that the deceased did not benefit from the salary increment because he died before the salary increment was given effect to. She testified that she was married to the deceased under Islamic Law on the 1st December, 1988. She testified that the family of the deceased depended solely on the deceased. The parents of the deceased also depended on the deceased. The plaintiff testified that the deceased used to send them money every month for their upkeep. This is because the parents of the deceased and his family resided at Wajir. The plaintiff then closed his case.

As stated earlier at the beginning of this judgment, the defendant did not offer any evidence in his defence. After the close of the plaintiff's and the defendant's case, the parties to this suit agreed by consent to file written closing submissions. The plaintiff and the defendant filed their respective written closing submissions.

I have read the pleadings filed by the parties in this case. I have further considered the evidence that was adduced by the plaintiff. I have carefully considered the written submissions filed by the plaintiff and the defendant. The issue for determination by this court is whether the plaintiff has established that the defendant caused the accident and therefore is liable to pay damages to the estate of the deceased. If the above issue is determined in favour of the plaintiff, then the next issue for determination is what quantum of damages should be paid to the estate of the deceased.

On the first issue, the plaintiff testified that the deceased was killed on the 7th November, 2003 while he was on duty along the Eldoret- Turbo road. The plaintiff was killed by motor vehicle registration No. KAP 992V which was being driven by the defendant. The deceased sustained fatal injuries and died while he was being rushed to the hospital. After the accident, the defendant was charged with the offence of causing death by dangerous driving in Eldoret CMC Traffic Case No. 495 of 2004 Republic vs. Keshavlar Patel Sailesh. The defendant pleaded guilty to the charge and was fined Kshs 10,000/- or in default he was to serve 12 months imprisonment. The said proceedings were produced as *plaintiff's exhibit No. 5*. According to the said proceedings, the deceased was killed by the motor vehicle driven by the defendant as he was crossing the road. The evidence adduced by the plaintiff on the circumstances of the accident were not controverted by the defendant.

The defendant's admission of guilt in the traffic case constitutes admission of liability on negligence. The defendant admitted that he caused the death of the deceased by dangerous driving. Dangerous driving by

its very nature is negligent driving. Under Section 47A of the Evidence Act, a final judgment of a competent court in a criminal case is conclusive proof that a person was guilty of the offence which he was convicted. Taking into account all the circumstances of this case, I do hold that the plaintiff has established on a balance of probability that the defendant caused the death of the deceased by dangerous and negligent driving. The defendant is therefore liable in tort to the estate of the deceased. I therefore hold that the defendant shall bear 100% liability in damages.

On quantum, the plaintiff adduced uncontroverted evidence which established that the deceased was employed as a police constable. At the time of his death, the deceased was aged 41 years. According to the pay slip which was produced as *plaintiff's exhibit No. 7 (a) & (b)*, the deceased earned a net salary of Kshs 7,688/= at the time of his death. The plaintiff established that the that the deceased took care of his parents and his family at the time of his death. In their submissions before court, both the plaintiff and the defendant agreed that the multiplier to be applied in calculating damages under the Fatal Accidents Act should be 14 years. This is because the deceased would have worked for another 14 years before he retired. Whereas the plaintiff submitted that the salary of the deceased which ought to be considered is Kshs.8,982/=, the defendant submitted that the amount which should be considered is Kshs.7,195/=. As stated earlier, the pay slip of the deceased which was produced as *plaintiff exhibit No. 7 (a)* for the month of September, 2003 indicated that the deceased earned a net salary of Kshs.7,688/=. This is the sum that this court adopts as the monthly income of the deceased. Both the plaintiff and the defendant agreed that the dependency ratio to be applied should be $\frac{2}{3}$. I will adopt the said dependency ratio as agreed.

In the circumstances therefore, the damages to be paid to the estate of the deceased under the Fatal Accidents Act shall be:

$Kshs.7,688/= \times 12 \times 14 \times \frac{2}{3} = Kshs. 861,056/=$.

The plaintiff did not prove any special damages. I shall make no award under the Law Reform Act in view of the finding of the Court of Appeal in the case of Kemfro Africa Ltd t/a Meru Express Services, Gathogo Kanini –versus- A. M. Lubia & Oliver Lubia [1982 – 88] KAR 727.

In the premises therefore, judgment is entered for the plaintiff against the defendant as hereunder:

(i) On Liability,

The defendant shall bear 100% liability

(ii) On quantum,

Under the Fatal Accidents Act.....Ksh 861,056/-.

(iii) The plaintiff shall have the costs of the suit,

(iv) The interest shall be paid from the date of the the delivery of this judgment.

DATED at Kericho this 23rd day of March, 2007.

L. KIMARU

JUDGE