



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil 76 of 2005

EPHANTUS NJAGI P. KAMAITHA.....PLAINTIFF

VERSUS

KENBLEST LIMITED.....DEFENDANT

JUDGMENT

This is a plaint on claim of damages arising out of a traffic accident. It is pleaded that at all material time the Defendant Kenblest Limited was the owner of vehicle **KAJ 297** and on 30/6/2003 the deceased was lawfully driving motor vehicle number **KAQ 591 H** along Embu-Runyenjes road when the defendant's driver servant and or agent so negligently drove controlled and managed the Defendant's vehicle that it collided with the vehicle driven by deceased.

By consent Judgment on liability has herein entered. The plaintiff shall bear 15 % liability and the Defendant 85%.

The remaining issue is therefore for assessing quantum of damages. This suit is brought by the personal representative of the deceased Remson Gitonga Njagi under the Law Reform Act Cap 26 and Fatal Accidents Act.

The damages claimable are under the following headings:

1. Pain and suffering
2. Loss of expectation of life
3. Dependency/lost years and
4. Special damages.

On the item one above the death certificate shows that death occurred on 30/6/2003 the same date the accident occurred. There is no evidence from the scene to indicate if death was instant or occurred after some time. A nominal sum is therefore awarded here in the sum of Shs.10,000/= as awarded in the case of **David Njuge Mwangi vs The Chairman of Board of Government of Njiri High School (UR)** copy of Judgment supplied.

In the plaint the plaintiff pleads for loss of Dependency by the two dependants namely father and mother Ephantus Njagi Kamathai and Madris Muthoni Ephantus. The value of dependency is to be calculated upon taking several factors into account. The income of deceased was upon evidence daily sum of Shs.600/= he was a matatu driver making a total sum per month into 18,000/= there is no evidence that he worked everyday of the month. He had worked for the PW2 his immediate employer who gave evidence only for 3 days. He was son aged at 24 years. There is no reason to think he would not marry and establish a family sometime in his life and his financial needs would therefore increase so that he could not afford to hand over to his father 2/3 of his salary whatever his income could have been. Also it is to be considered that the parents had other children who were expected to share the responsibility for their parent's financial needs. At the trial one child had already become a teacher.

I am persuaded by the principles in the decision in the case of **Dolberly vs Goodwin [1955] 2 ALLER** cited by the defendant's counsel. The proposed dependency of Shs.12,000/- per month is unreasonably high in the circumstances of this case. The defendants are not disabled and are farmers living in the rural areas of Kenya

the majority of the population. The dependency is therefore reduced to 9000/= per month.

On the issue of multiplier the proposed 30 years is rather on the high side the defendants who were just over 50 years when the accident occurred can be expected to live another 20 years. However taking into consideration that the deceased carrier was in high risk bracket (matatu danger) considering the uncertainty of life a multiplier of 15 years is more appropriate.

I have considered all the authorities cited by both counsel **Nyeri HCC No. 67 of 1998 Susan Wambugu Mucheru vs James Kabathi** where multiplier of 29 was used for a matatu driver who died the age of 26 and defendants counsel authority. **Harvery McGregor on damages 17th Edition and Court of Appeal decision in Daunty vs Haji & another 2004 (2) KLR 125** where the multiplier of 10 was not disturbed on appeal.

I have also to state that each case has its own circumstances. In the case of **David Ngunje Mwangi vs Chairman of Board of Governors. Lady Justice Ang'awa** used a multiplier of 30. In the case of **Daunty vrs Harp & another** the court of appeal held that courts in this country have not established as a matter of practice the appropriate multiplier to be applied to different groups of victims of accidents. What is a reasonable multiplier in our jurisdiction is a question of fact to be determined from the peculiar circumstances of each case. The figure of 15 years is appropriate here and I find so.

I shall adopt the proposal by defence counsel to apply the multiplicand of 900/= so that the value of dependency is calculated thus:

9,000 X 12 X 15 yielding

On the issue of the Special Damages the plaintiff has pleaded:-

Funeral Expenses **Shs.- 20,000/=**

Expenses for Application for grant of representation - **Shs.21,025/=** and fees for obtaining copy of Registration of Certificate Motor Vehicles **Shs.500/=** supporting documents are exhibited. Supporting documents are exhibited. The claim is allowed.

Of the claim of funeral expenses, I hold the same view as **Hon. Osiemo J.** who said that once a person has died the body is to be transferred to burial site and the customs demand feeding the many people who attend the funeral.

In the circumstances receipts may not be issued for these expenditures. It is my finding that a sum of 20,000/= covering coffin and transport and feeding the mourners is not excessive and I allow it.

In the circumstances I allow special damages in the sum of Shs.41,025/=.

The total award is therefore:-

1. Loss of dependency - Shs.1,620,000/=
2. Loss of expectation of life - Shs.1,000,000/=
3. Pain and suffering - Shs. 10,000/=
4. Special damages - Shs. 41,025/=

Shs.1,761,000/=

Less 15% Shs.143,000/=

Shs.1,618,000/=

Judgment is entered in favour of the plaintiff in the sum of **Shs.1,628,025/=** Interest at court rates. The plaintiff also gets costs of the suit.

Dated this 31st May, 2007.

J. N. KHAMINWA

JUDGE

31/5/2007

Khaminwa – Judge

Njue – Clerk

Mr. Edie Njiru HB for Mwaniki.

Judgment read in open court.

J. N. KHAMINWA

JUDGE