

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 684 of 2004

**LEAH WANJIRU ASHIALI (As Administratrix of the Estate of NELSON ASHIALI
OMASHEBELA).....PLAINTIFF**

VERSUS

ROBERT NYAKAMBA ONDIEK.....DEFENDANT

JUDGMENT

This claim arises out of a traffic road accident which occurred on 2nd April 2003 along the Nairobi-Thika Road involving a motor vehicle registration Number KAG 959J in which the deceased NELSON ASHIALI OMASHEBELA was travelling lawfully as a fare paying passenger. As a result of the said accident the deceased sustained severe injuries and died on the spot. The Plaintiff brought this suit against the Defendant in her capacity as the Administrator of the Estate of the deceased. The Defendant was served but he did not enter appearance nor did he file a defence. The Plaintiff applied and obtained interlocutory judgment on 2nd June 2005 and the matter was set down for formal proof.

The Plaintiff in her evidence told the court that she was married to the deceased on 5th August 1995 and they were blessed with 2 issues of the marriage namely Exra Kumbeki Ashiali born on 8th October 1996 and Timothy Ambutsi Njoroge Ashiali born on 12th March 1999.

The deceased was traveling in the motor vehicle registration Number KAG 959J when it was involved in an accident as a result of which he died. She blamed the accident wholly on the Defendant who drove the said motor vehicle at an excessive speed and without due care and attention and as a result of which he lost control and the motor vehicle rolled several times. The deceased was aged 36 years when he died and was earning Shs.19,001.75 net pay per month.

From the evidence adduced I am satisfied that the Plaintiff has formerly proved her case on liability. The next issue is the assessment of damages. Special damages were proved at Shs.20,150/=.

The deceased's net income per month was Sh.19,001.75. this is the figure to be employed as a multiplicand and not Shs.26,000/= which was the gross salary as suggested by the Plaintiff's advocate. It is also not in dispute that the deceased was 36 years at the time he met his death. The Plaintiff's advocate suggested that a multiplier of 20 was reasonable and cited the case of **ELIJAH OLE KOOL VS. GEORGE IKONYA THUO – NAIROBI HCCC NO. 1299 OF 1998** where the Plaintiff was aged 36 years at the time of his death and a multiplier of 20 was adopted. I agree with the Plaintiff's advocate that a multiplier of 20 years is reasonable in the circumstances of this case. I will also adopt the usual dependency rate of ?. The sum to be awarded under the head loss of dependency will therefore work out as follows:- $Sh.19,001.75 \times 20 \times 12 \times ? = Shs.3,040,280/=$.

The Deceased died on the spot and therefore no damages awardable under the heading pain and suffering. Under the heading loss of expectation of life the advocate for the Plaintiff suggested a figure of Shs.120,000/=. But in my considered opinion an award of Shs.100,000/= would be reasonable for loss of expectation of life.

I therefore enter judgment for the Plaintiff as follows:-

(a) Loss of dependency - Sh.3,040,280/=

(b) Loss of expectation of life - Sh. 100,000/=

(c) Special damages - Sh. 20,150/=

Accordingly there shall be judgment for the Plaintiff and against the Defendant for Shs.3,160,430.00 with costs and interest.

Dated and delivered at Nairobi this 11th day of July, 2007.

J.L.A. OSIEMO

JUDGE