



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CIVIL CASE 15 OF 2005

NANCY RUGURU TRUPHASPLAINTIFF

VERSUS

JAMES MBURU KARANJA.....DEFENDANT

JUDGMENT

In this case Judgment as to liability is already agreed upon. The remaining part is to assess quantum of damages. The plaintiff pleaded special damage being:-

Police Abstract	- 100/=
Funeral expenses	- 20,000/=
Costs of obtaining a grant	- 10,000/=
Total	<u>30,100/=</u>

This was the amount pleaded and proved. The amount is allowed. As to general damages, the deceased was survived by 3 daughters listed in the plaint. She testified that her husband had his own business t/a STARLIGHT ELECTRONIC and he supported the family fully. But he died on 30/6/2003 in an accident which occurred between KAJ 279 F. The deceased was a fare paying passenger in vehicle KAJ 279 F. He sustained fatal injuries. Damages awardable are for pain and suffering. Death occurred on the same day and therefore only nominal amount can be awarded. On considering the submissions of both parties I am convinced that a fair award should be Shs.10,000/= which I hereby award.

On the issue of loss of Expectation of life an award of Shs.100,000/= is awarded considering the authorities cited by both parties.

The main issue is the assessment of loss of dependency under the fatal accident Act. The survivors are the widow and her 3 children. Evidence is that the wife was not working and the children were of school going age. The deceased was aged 43 years and was carrying on his own business. His profit in 2002 was 277669/= making an average income of Shs.23,139/= per month out of which sum he would pay school fees and give the wife about 5000/- 10,000/= per month for family upkeep as funds were available. The defendant contends that the evidence of income by way of audited account of deceased

business was not proved. However apart from making that statement no evidence is produced to controvert the evidence of plaintiff. The document gives the business address both postal and physical plot number. It should have been easy to counter check. The document is made by a disclosed firm of Certified Public Accountant. Nevertheless it cannot be said that a man who had wife and children had no income and the sum of Shs.10,000/= per month on average to his family cannot be said to be excessive. Relying on the truthfulness of the widow (Plaintiff) which is not shaken, I believe that the deceased making available Sh. 10,000/= to is family.

On issue of multiplier at 43 years everything being equal and as he was in private sector he could have worked to the age say 60 years. However the court has to consider the eventualities of life. The life cannot be said to last for any period of time, sickness and other problems might arise so that working life is terminated easily. In the circumstances I find a suitable multiplier would be 12 years. The dependence therefore should be 12 years X 12 months X 10,000/- yielding **Shs.1,440,000/=** damages awarded.

Shs. 1,440,000/= - loss of dependency

Shs. 100,000/= - loss of expectation of life

Shs.10,000/= - pain and suffering

Shs.30,100/= - special damages

Total Shs. 1,580,100/=

Judgment is entered against the Defendant in the said sum. The plaintiff shall have interest on the said sum plus costs. The said sum shall be apportioned as agreed by parties.

Dated this 9th November, 2007.

J. N. KHAMINWA

JUDGE

9/11/2007

Khaminwa – Judge

Njue – Clerk

Mr. Munene HB for Ms Mwangi

Ruling read in his presence.

J .N. KHAMINWA

JUDGE

Mr. Munene HB for Defendant; I am instructed to apply for stay for a period of 30 days.

No opposition.

Order: Stay is granted for a period of 30 days from today.

J. N. KHAMINWA

JUDGE