



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

Civil Suit 264 of 2002

GRACE KATHINI KALOLA
PLAINTIFF

VERSUS

JOSHUA M ARON

IDD S KINUNGU

KENYA CALCIUM PRODUCTS DEFENDANTS

J U D G E M E N T

This suit is brought by the widow who is also the personal representative of the deceased DAVID MBUVI who died in a road accident. The plaint shows that first and second defendants were owners in possession of motor vehicle KAL 410T and KAA 116H respectively. The case against the third defendant has been withdrawn by the plaintiff.

The hearing of this case commenced de novo on 5.5.05 before this court.

The first witness to testify for plaintiff was No. 61758 Francis from Diani Police Station. He brought to court police traffic file regarding an accident which occurred on 5.9.00 along Lunga Lunga – Mombasa Road. The vehicle involved was KAA 116H Mini Bus Isuzu driven by Iddi Kinungu, a matatu vehicle and KAL 410T driven by Michael Ouma Akuma which was overtaking another vehicle KAA 116H without due care and attention. The impact pushed the vehicle to the other side where it hit another vehicle causing 4 deaths. The deceased died on the spot. This witness produced police abstract form as exhibit 1. He also produced police traffic file 1AR(F) 34/00. This officer was not the investigating officer.

The driver of KAL 410T ran away. The KAA 116H was not found guilty and no prosecution was undertaken. Aron was owner of vehicle 410T, IDD KANUNGU was owner of KAA 116H. The offences committed were causing death by dangerous driving and failing to report accident.

Plaintiff herself gave evidence. Deceased was her husband. She took a grant at the cost of Sh. 6500/= She was not present at the scene. When her husband left in the morning, he did not return after work. She received information and traveled to the mortuary to see. Afterwards she made arrangements for the burial of the deceased in Kitui. She hired vehicle for transport sh. 60,000/= receipt is exhibited. She obtained death certificate and police abstract.

Her husband was aged 37 years. He was a businessman selling in a curio shop on Diani Beach. He

used to earn on average Sh. 8000/=. They had three children aged 16,13 and 5years. The first two children attended school and third nursery. The family used to depend on his income. The defence did not call witness but made submissions.

The deceased was lawfully a passenger in KAL 410T. The driver was overspeeding and driving without care and attention. He was overtaking when it was not safe to do so. He ran away after the accident definitely for fear of consequences. He tried to overtake another vehicle traveling on same direction. It was driven at high speed. There were other vehicles coming from opposite direction.

The driver of KAL 410T was following the vehicle in front they both started to overtake another vehicle KAA 116H. There was an oncoming vehicle, a lorry. KAL 410T did not have a way of escape.

He was overtaking KAA 116H. He moved out of the road but his vehicle was hit by KAA 116H at the rear right side.

There was a collision of KAL 410T and KZT 711 Isuzu lorry which was coming from the opposite side. Four passengers from KAL 410T lost their lives including that of Mr Mbuvi who died instantly.

There is no evidence to controvert this evidence contained in police file and which was admitted by consent of parties.

I hold the driver of KAL 410T guilty of gross negligence and in that the particulars of negligence are proved against the owner of the vehicle is vicariously liable on 100% basis.

On quantum, the deceased was aged 37 years with wife and three young children. It is pleaded that he was earning Sh. 8000/= per month. He was actually residing with his family in Mombasa and I take it that he spends 2/3 of his income on his family for rent, food clothing and other expenses. His wife was not working.

The counsel for plaintiff suggests a multiplier of 20 years. It would have brought him to the age of 57 years. It does not appear unreasonable.

The dependency amounts to:

$8,000 \times 12 \times 20 \times \frac{2}{3}$ yielding Sh. 1,280,000/=

The total award is therefore:

Dependency	Sh. 1,280,000
Loss of Expectation of life	sh. 100,000
Special damages pleaded	sh. 6,600
Total	sh. 1,386,600

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Judgment is entered against the defendant in that sum.

The plaintiff shall have interest at court rates and costs of this suit.

Dated 14th February 2006

J KHAMINWA

JUDGE