



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

-
Civil Case 76 of 1999

JULIUS MOKUA ONGERA.....PLAINTIFF

(Suing as the administrator of the estate of Joyce Bitutu Mokuu – deceased)

VERSUS

ESTHER NJOKI GICHARU.....DEFENDANT

JUDGMENT

The plaintiff, Julius Mokuu Ongera filed suit as the legal representative of the estate of Joyce Bitutu Mokuu – deceased (*hereinafter referred to as the deceased*) claiming damages under the **Law Reform Act and the Fatal Accidents Act** from the defendant, Esther Njoki Gicharu, the owner of motor vehicle registration number KZM 220, which he claimed knocked down the deceased and fatally injured her as she was crossing the Eldoret-Nakuru road near Union Carbide bus stop. The plaintiff averred that the said accident that resulted in the death of the deceased was solely caused by the negligence of the defendant and therefore asked this court to order the defendant to pay to him damages on behalf of the deceased's estate. When the defendant was served, she admitted that the accident indeed took place but blamed the deceased for solely causing the said accident or substantially contributing to it by her negligence in attempting to cross the road when it was not safe to do so. The plaintiff and the defendant compromised the issue of liability by consent. It was agreed that the plaintiff was to bear 30% liability whereas the defendant was to bear 70% liability. The parties also agreed that special damages be assessed at Kshs 150/=. They further agreed that the quantum as to damages was to be assessed by this court.

The plaintiff called only one witness, himself. He testified that the deceased was his wife. He married her when she was thirteen years old and they were blessed with three children, namely Linet Mokuu, a standard seven pupil at Bonyengwa Primary School, Enock Mokuu, a standard five pupil at the same school and Alex Mokuu, a standard two pupil at the same school. The three children are aged between sixteen years and ten years. The plaintiff testified that after the accident he reported the incident to the police and was issued with a police abstract report (*produced as plaintiff's exhibit No. 1*). He obtained letters of administration *ad colligenda bona* to administer the estate of the deceased (*produced as plaintiff's exhibit No. 2*). He produced the death certificate of the deceased as plaintiff's exhibit No. 3. He testified that at the time of her death, the deceased was a business lady who used to sell vegetables, maize and charcoal at a kiosk at Nakuru West. He testified that the deceased earned a monthly income of Kshs 5,000/=. He however did not produce any documents to support his contention that the deceased earned such sum of money. He did not produce a licence to prove that the deceased indeed operated a kiosk. He testified that since the death of his wife, his said children were under the custody and care of

his parents. He urged this court to grant him damages as prayed in his plaint and the costs of the suit. The plaintiff then closed his case.

The counsel for the plaintiff and the counsel for the defendant agreed to present to this court written submissions on the quantum of damages to be paid to the plaintiff. I have considered the evidence that has been adduced by the plaintiff and also considered the written submissions which were presented to me by the parties to this suit. The plaintiff testified that the deceased was aged 22 years at the time of her death. He further testified that the deceased used to earn a sum of Kshs 5,000/= per month from her small scale business. The plaintiff did not however produce any documents to prove that indeed the deceased earned such sum of money. No statements of accounts were produced in evidence. This court is therefore unable to be certain that indeed the deceased earned such sum of money. The defendant in her submission has suggested that in view of the evidence that was adduced by the plaintiff, this court should assess the monthly sum earned by the deceased to be Kshs 1,500/=.

I have considered this submission and in light of the evidence adduced by the plaintiff, I will assess the amount earned by the deceased to be Kshs 2,000/= for the purposes of the assessment of damages to be paid to the deceased's estate. The plaintiff testified that the deceased left behind four dependants: himself and their three children who are minors. The deceased died when she was 22 years. The defendant has suggested that a multiplier of 20 years should be applied in calculating the amount to be paid to the deceased's estate under the **Fatal Accidents Act**. On his part, the plaintiff suggests a multiplier of 23 years. The plaintiff has submitted that the dependency ratio to be applied should be $\frac{2}{3}$ of the income earned by the deceased. The defendant on his part has submitted that the dependency ratio to be applied should be $\frac{1}{3}$. The unfortunate thing about this case is that the plaintiff did not adduce any evidence to support his contention that the deceased either supported him or their children. As it were, both the plaintiff and the defendant plucked the figure on the dependency ratio from the thin air. In my case, in the absence any evidence, I hold that the dependency ratio to be applied is $\frac{1}{2}$.

I further hold that the multiplier that will be applied with be 20 years. This is in view of the fact that there is no guarantee that the deceased could have lived to the ripe age of fifty five years especially putting into consideration the increased incidences of poverty, the AIDS pandemic and other diseases that has resulted in the reduction of the average life expectancy of a Kenyan. I therefore assess the damages to be paid to the deceased's estate under the **Fatal Accidents Act** to be as hereunder:

$$\text{Kshs } 2,000/= \times 20 \times 12 \times \frac{1}{2} = 240,000/=$$

This court will make no award under the **Law Reform Act** in view of the award made under the **Fatal Accidents Act**, because to do so would amount to the plaintiff getting double compensation (See **Kemfro Africa Limited t/a Meru Express Services (1976) & Anor –vs- Lubia & Anor (No. 2) [1987] KLR 30.**)

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

(i) General damages

(Under the **Fatal Accidents Act**) Kshs 240,000/=

(ii) Special damages Kshs 150/=

Subtotal Kshs 240,150/=

Less 30% contribution **TOTAL** Kshs 168,105/=

(iii) The plaintiff shall have the costs of this suit.

(iv) Interest on the general damages shall be payable from the date of filing the suit.

The plaintiff, before he is paid any damages and costs awarded by this court, must first file an application to be granted full grant of letters of administration intestate to enable him administer the estate of the deceased and distribute the assets that are comprised of the deceased's estate. It is after the plaintiff has obtained a full grant that he can make an appropriate application to this court to enable him apportion the damages awarded to the deceased's beneficiaries.

DATED at NAKURU this 19th day of May 2006.

L. KIMARU

JUDGE