



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

Civil Case 16 of 2003

**SALICIO MITHIKA M'RUKUNGA (legal representative
of the estate of JOSEPH MWONGERA (deceased).....PLAINTIFF**

V E R S U S

MILLICENT WAIRIMU KIMANI.....1ST DEFENDANT

DAVID KIMANI NGANDU.....2ND DEFENDANT

J U D G M E N T

1. Joseph Mwangera died on 20.10.2002 in Karen Nairobi as a result of a road traffic accident along Dagoretti – Karen Road. He was actually knocked down by motor-vehicle registration number KAK 622 T Nissan, a Public Service Matatu Vehicle. The circumstances of the accident are not in dispute and parties agreed that the Defendant would shoulder 60% of the liability and what came for determination resulting from that agreement was the question of quantum.

2. Both Advocates appearing filed short, precise and clear submissions on quantum. Learned counsel for the Defendant had these proposals to make;

(i) Loss of expectation of life - Ksh.60,000/=

(ii) Loss of Dependency - Ksh.3,000/= as monthly earnings using a multiplier of 18 years, the (deceased having been 30 years old) and a dependency ratio of 1/3 (Ksh.3,000x18x1/3x12) = Ksh.216,000/=

iii) Pain and suffering -0/= since it is unknown how soon after the accident the deceased died.

iv) Special Damages Ksh. 19,750/- (not in dispute)

Ksh. 295,750/-

Less 40% Ksh. 118,300/-

TOTAL Ksh. 199,450/-

3. Counsel for the Plaintiff on the other hand proposed as follows:-

i) Loss of expectation of life - Ksh.100,000/=

ii) Loss of Dependency - Ksh. 3,500/= (as monthly earnings) using a multiplier of 20 years and a dependency ratio of 2/3.

(Ksh.3500x2/3x20x12) Ksh. 560,000/=

iii) Pain and suffering Ksh. 20,000/=

iv) Special Damages Ksh. 19,750/=

Ksh. 699,750/=

Less 40% Ksh. 279,900/=

Ksh. 419,850/=

4. I have seen the authorities relied on by both parties and have taken them into consideration.

5. For my part, there is no doubt in my mind that generally loss of expectation of life should be a conventional figure of Ksh.100,000/- which is fair and reasonable.

6. As for pain and suffering, I have seen the evidence of P.W.1, Salisio Mithika. No evidence was led to show how the deceased died and whether he died on impact or not. Counsel for the Defendant relied on a statement by Ang'awa J. in Reuben Musau Kithuka and another vs Rahab Muthoni and Another HCCC 55/99 (Nrb) where the learned Judge said;

“There was no evidence as to how soon the deceased died. I make no award as to pain and suffering.”

I was asked to be guided by that finding and make no award on the heading “Pain and suffering”.

7. Counsel for the plaintiff made no submissions on the subject but proposed a figure of Ksh.20,000/= under that heading. Lord Scarman in Lim Poh Choo vs Camden and Slington Area Health Authority [1980] AC 174 at 183 explained that the award for pain and suffering is payable but depends “upon the plaintiff’s personal awareness of pain [and] her capacity for suffering.” In Kemp and Kemp Quantum of Damages, Sweet and Maxwell, 1997 where the above passage was lifted from, it is added thus;

“If the plaintiff dies from his injuries shortly after the accident an award of damages in respect of pain and suffering may be appropriate if the evidence justifies it.”

8. In the instant case, no evidence was tendered to justify the award for pain and suffering but I prefer to go the way of the decision in the case of David Ngunje Mwangi vs Chairman, Board of Governors of Njiris High School HCCC 2409/1998 and award a nominal figure of Ksh.10,000/- under this heading.

9. The award for special damages is not contested and the same is awarded at Ksh.19,750/- as it is the amount that was pleaded and proved.

10. There is then lastly the contentious heading of damages for loss of dependency. I have considered oral submissions and the principles to be applied are not debatable. The point of departure is on the number of years, ratio and monthly income.

11. The evidence of P.W.1 was that the deceased was 30 years old and worked as a security guard with M/S Dagia Exports and Imports Agencies. His monthly salary was Ksh.4,000/- according to P.Exh.1. That figure was not contested whatsoever. I would agree with counsel for the plaintiff that for purposes

of this head of damages, the deceased would have worked upto the age of 50 years and therefore a multiplier of 20 would be reasonable and fair. I would however agree with counsel for the Defendant that the sum of Ksh.3,000/- would be reasonable per month because the deceased was said to have been sending Ksh.5,000/- every 3 months meaning that Ksh.1500/- per month plus his income from farming (which was not authenticated but it is reasonable to peg it to Ksh.1500/- per month) making a total of Ksh.3,000/= as the monthly loss to the plaintiff.

12. I do not agree that the plaintiff depended entirely on the deceased for all his upkeep. He was not himself an elderly withered man when he appeared in court and I am prepared to use a dependency ratio of 1/3.

13. There shall therefore be entered judgment in favour of the plaintiff on this heading in the sum of Ksh.240,000/- made up as follows:-

Ksh. 3,000 x 20 x 1/3 x 12 = Ksh.240,000

In the end the summary for all the headings is as follows:-

i) Loss of expectation of life Ksh.100,000/=

ii) Pain and suffering Ksh. 10,000/=

iii) Special Damages Ksh. 19,750/=

iv) Loss of dependency Ksh. 240,000

Ksh.330,250/=

Less 40% contribution Ksh.132,100/=

TOTAL Ksh.207,150/=

14. I shall consequently enter judgment for the plaintiff in the sum of Ksh.207,150/= plus costs and interest.

15. Orders accordingly.

DATED SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF JUNE 2006

ISAAC LENAOLA

J U D G E

In the Presence of

Mrs Gitonga Advocate for the Plaintiff

N/A -+Advocate for the Defendants

ISAAC LENAOLA

JUDGE.