



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

Civil Case 65 of 1998

MARY WANJIKU MBURU

LUCY NJERI MBURU (Suing as the Administratrix of the estate of

FREDRICK MBURU – DECEASED)

.....**PLAINTIFFS**

VERSUS

DAVID KARANGARA.....

.....**DEFENDANT**

J U D G M E N T

Mary Wanjiku and Lucy Njeri Mburu (*hereinafter referred to as the Plaintiffs*) have brought this suit against David Karangara (*hereinafter referred to as the Defendant*) seeking general and special damages under the Law Reform Act and the Fatal Accidents Act. The suit is brought for and on behalf of the estate of Fredrick Mburu Gitau (*hereinafter referred to as the deceased*) whose death the Plaintiffs contend was caused by the negligence of the Defendant and or his agent in the management and control of motor-vehicle registration number KVV 392 causing it to collide with the deceased who was lawfully riding his motor-cycle registration number KRX 625. The Defendant filed a defence denying the Plaintiff's claim and maintained that the accident was caused by the negligence of the deceased.

At the hearing of the suit, Mary Wanjiu Mburu one of the administratrix of the deceased's estate testified together with one Njoroge Mungai Njenga (P.W.2). The Plaintiff's evidence was that on the material day the deceased was riding his motor-cycle. He was just approaching the gate to his home and therefore signaled using his hand to show that He was turning right.

The Defendant's motor-vehicle which was behind the deceased however did not stop but collided onto the deceased just as the deceased was beginning to turn right. The deceased fell and rolled. P.W.2 whose shamba is just next to the road witnessed the accident. He saw the Driver of the motor-vehicle and two others put the deceased into their vehicle. P.W.2 alerted P.W.1 who is the deceased's wife who immediately rushed to Githunguri Police Station where she found the deceased. The deceased was then rushed to Kenyatta National Hospital where he was admitted. The deceased remained at the Hospital's Intensive Care Unit for 3 weeks after which he died.

P.W.1 testified that the deceased husband was a primary school headmaster. She produced copies of the deceased's payslips. She also produced the police abstract report of the accident, death certificate, a letter from the Chief and the grant appointing her and Lucy Njeri Mburu as administrators of the deceased's estate.

Counsel for the Plaintiffs filed written submissions urging the court to find the Defendant 100% liable. He also urged the court to adopt a multiplier of 6 years and a dependency ratio of 2/3 based, on the deceased's income of Kshs.10,000/= . In respect of loss of life expectancy, He urged the court to award the sum of Kshs.80,000/=. He also prayed for an award of Kshs.15,000/= as damages for pain and suffering and a further sum of Kshs.15,000/= in respect of burial expenses.

The defence did not call any witnesses nor did the defence counsel file any written submissions. The Plaintiffs were the administratrix of the estate of the deceased and therefore had the mandate to bring this suit. The Plaintiffs have adduced evidence showing that the deceased indicated his intention to turn right. Although the defendant averred in his defence that the deceased turned without any warning and without ensuring that it was safe, no evidence was adduced in support of this allegation nor was any evidence adduced to contradict the Plaintiffs' evidence by the Plaintiff's eye-witness that the deceased signaled that He was turning right and that it was the Defendant's driver who did not stop but rammed onto the deceased. I am satisfied on the evidence adduced before me that the Defendant or his driver or agent who was driving the motor-vehicle was solely to blame for this accident. I therefore find the Defendant fully liable.

Given the age of the deceased which was 55 years and the fact that his youngest child at time of death was 7 years, I find that a multiplicand of 5 years would be reasonable as the deceased could still have reasonably provided for his large family even after retirement. I would assess the deceased's income using his payslip at an average of Kshs.10,000/=. Using a dependency ratio of 2/3 I would assess general damages for loss of dependancy under the Law Reform Act as follows: -

$$10,000 \times 2/3 \times 12 \times 5 = 400,000/=$$

I would award general damages for life expectancy at Kshs.80,000/=. The deceased was in Intensive Care Unit for 3 weeks. The amount of Kshs.15,000/= proposed for pain and suffering is fair and I would award the same. With regard to special damages, the amount of Kshs.4,000/= was pleaded however no receipts were issued in support of the same, nor were any receipts issued in support of the amount of Kshs.15,000/= which counsel for the Plaintiff urges this court to award. I would therefore award none. The upshot of the above is that I give judgment in favour of the Plaintiffs as against the Defendant as follows: -

General damages

Loss of dependency Kshs.400,000/=

Loss of life expectancy Kshs. 80,000/=

Pain & suffering Kshs. 15,000/=

475,000/=

The Plaintiff shall further have costs of the suit and interest from the date of this judgment.

Dated, signed and delivered this 7th day of June of 2006.

H. M. OKWENGU

JUDGE