



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII**

Civil Case 122 of 2002

DAVID OMUNDI RASUGU

Suing as a personal Rep. of the Estate of George Rasugu

Omundi (Deceased) PLAINTIFF

VERSUS

MOTREX LIMITED DEFENDANT

JUDGMENT

One GEORGE RASUGU OMUNDI (hereinafter referred to as the ‘deceased’) was on 15th September 2000 walking along Keroka Sotik road when he was hit by motor vehicle Reg. No.KAJ 331 pulling a trailer Reg.No.ZB6670. This was after the said vehicle collided with m/v Reg. No.KAG 445 P. The deceased died on the scene.

His father DAVID OMUNDI RASUGU brought this suit on his own behalf and that of the Estate of the deceased against the defendant MOTREX LTD who owned the vehicle in question. Liability was agreed by court in the ratio of 80%-20% in favour of the plaintiff and what remains in the quantum of damages.

Counsel for defendant in his submissions raised the issue of Letters of Administration produced as Exh.PI.

He said the grant is shown to have been issued to DAVID OMUNDI NYANGENA while the plaintiffs names are shown in the plaint as

DAVID OMUNDI RASUGU. True there is a discrepancy in the last name but there are no doubts that they were issued to the plaintiff. He told the court so and produced the grant. The defendant did not raise any issue with that even in cross-examination. In any case the defendant admitted liability. The argument holds no water.

The plaintiff told court that the deceased died on the scene.

It was not very clear how long after the accident. No doubts he suffered pain before he died. The defendant submitted for an amount of shs.5000/= while the plaintiff submitted one of shs.20,000/=. Indeed in the case of VINCENT K. MWANGI VS PAUL MUNGAI NB HCCC.NO.143 OF 1989 SHS.5000/= was awarded. That was over 15 years ago and our money has gone through devaluation. I will award a sum of shs.10,000/= for pain and suffering.

As for loss of expectation of life the deceased was a young man in good health at the time of his death. A sum of shs.100,000/= would be just and I ward the same under that heading.

The deceased died while he was 32 years. The plaintiff who is his father told court he used to support him and his young siblings.

He helped in paying school fees. They were in essence depending on him and they lost that dependency when he died. They are therefore entitled to compensation under The Fatal accidents Act. Deceased was said to have a masters degree in tourism Administration and a diploma in sales and marketing. There were certificates produced by PW1 and there was no evidence to show they were fake. However at the time of death he was employed at Mogusii Tea Factory. PW1 said he was earning shs.25,000/= per month though he did not produce any documents to support that. However there was no other evidence to the contrary. PW2 JOSLINE KWAMBOKA a trainer in marketing told court that a sales representative can earn up to shs.20,000/= per month. Taking all the evidence in account and the lack of proper support documents I would put the total monthly earnings of the deceased at shs.10,000/= and use a dependency multiplier of $\frac{2}{3}$. Deceased was aged 32 years. He was in good health. Retirement age in Kenya Public Service is 55 years. I feel that a multiplier of 20 is proper.

Thus $\text{shs.10,000} \times 20 \times 12 \times \frac{2}{3} = \text{shs.1,600,000/=}$ which I award.

As for special damages none were proved. I was told to take Judicial notice that there are expenses incurred for funerals. I agree with that but then one has to know that he specifically spent his money.

This can only be proved by producing receipts and not to leave court to speculate on how much was spent. I therefore decline to walk the so called well trodden route and award no special damages none were proved.

In the circumstances I enter judgment for plaintiff against the defendant as follows:

1. Pain and suffering shs. 10,000/=
2. Loss of expectation of life shs. 100,000/=
3. Loss of dependency shs. 1,600,000/=

Total shs.1,710,000/=

Less 20% 342,000/=

1,368,000/=

plus interest at courts rate from the date of judgment.

The plaintiff will also have costs of the suit.

Dated 17th October 2006.

KABURU BAUNI

JUDGE

cc. Mobisa

Mr. Nyamurongi for Plaintiff

N/A for defendant – though given notice