



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

Civil Appeal 40 of 2001

AKAMBA PUBLIC ROAD SERVICES LTD

JOSEPH MUNYAO MBAI.....APPELLANTS

VERSUS

CHARLES K.MUTHOKA (suing as legal representative of

ALICE K.MUTHOKA Deceased.....RESPONDENT

(From the Judgment and Decree of Maxwell N. Gicheru -, P.M.Kitui PMCC No. 345 of 1999).

J U D G M E N T

In a plaint dated 14.9.1999 and filed in Kitui Court on the same day, the respondent suing as a legal representative of the deceased Alice K.Muthoka, sought special and general damages and costs. The general damages were sought under both the Fatal Accident's Act and Law Reform Act. The suit arose out of a fatal road accident in which the respondent's mother aforementioned, died.

The evidence on record shows that on 27.7.1999 the respondent obtained a Grant of Letters of Administration limited to the filing of the said claim only. Two months thereafter he filed the lower court claim.

The trial court assessed the quantum, apparently after liability was recorded by consent of both parties. The trial court accepted the evidence from the respondent to the effect that the deceased used to do a small farmers business of buying and selling food crops. He accepted that she made an average sum of Kshs. 3000/= per month of which she spent 2000/=, and saved Kshs. 1000/=. The trial court also accepted that Kshs. 25,000/= was spent during the funeral. He awarded Kshs. 100,000/= as loss of expectation of life and Kshs. 96,000/= as lost earnings being the 1000/= saved per month for 8 years the court believed the deceased would have lived had she not been killed in the accident. Since liability had been distributed at 90% in favour of the plaintiff, the final sum of Kshs 221,000/= less 10% came to the final sum of Kshs. 198,900/= which the court award.

The appellant who was the defendant appealed to this court raising the following issues.

1. That the respondent had no legal competence to file the suit because he had not obtained the Grant of Letters of Administration on the date of filing.
2. That the sum of Kshs. 96,000/= awarded as loss of earnings was awarded without evidence to prove it.

3. That special damages of 25,000/= were not proved nor had they been pleaded.

I have carefully considered the grounds of appeal and the evidence on record related to each.

As to the issue of lack of Grant of Letters of Administration, there was before the lower court adequate evidence that the same had been issued on 27.7.1999, two months before the suit was filed. The appellant's counsel Mr. Musyoka admitted this fact before closing his arguments in this appeal. This ground therefore has no merit.

On the sum of Kshs. 96,000/= awarded as loss of earnings, I have considered the evidence on record. The respondent produced evidence that the deceased was a small business lady who traded in farm products and earned an average of Kshs. 3000/=. This evidence was not rebutted. The trial court which heard it believed it. This court will have no ground for overturning the trial court's finding on this issue. In any case, called upon to give its view, this court finds the evidence of the earning of Kshs 3000/= acceptable and believable. Only a balance of Kshs. 1000/= was saved from Kshs. 3000/= earned per month, which also appears reasonable. I also find that the second ground of appeal as having no merit.

The third ground of appeal is about Kshs. 25,000/= awarded as special damages. The respondent in his plaint had failed to insert the figures of items on funeral expenses. Instead he had pleaded that he would produce the receipts at the hearing which he indeed did. The appellant's contention was that unless those items are pleaded and proved, they should be rejected.

In this case the respondent pleaded that he would prove them at the hearing and he did so. Without laying any specific rules about pleadings of special claims, there is the understanding that in such fatal accident cases, a funeral will be undertaken and reasonable expenses like escorting the body home, buying a coffin and clothes and other very mandatory items, will be undertaken and purchased. In my view, it would be shutting the court's eyes to justice to refuse to grant such reasonable expenses well knowing that the expenses have indeed been incurred. If the basis for refusing to accept them was that they did not occur and that the defendant should not be burdened with false claims, then where the court strictly believes from the evidence that they were indeed incurred, the court should consider to allow them. It is in that respect that I understand and appreciate the Court of Appeal's pronouncement in the case **Jacob Ayiga Maruja & Another** versus **Simeon Obayo** (Suing as the Administrator of the Estate of Thomas Ndaya Obayo), Civil Appeal No. 167 of 2002. the court states at page 4:-

“We do not subscribe to the view that the only way to prove the profession of a person must be by the production of certificates and that the only way of proving earnings is equally the production of documents. That kind of stand would do a lot of injustice to very many Kenyans who are even illiterate, keep no records, and yet earn their livelihood in various ways. If documentary evidence is available, that is well and good. But we reject any contention that documentary evidence can prove these things.”

And later in the same case at page 5:-

“...The material to be bought or paid for must have been the coffin... the mortuary bill... transportation of the body...to its place of internment and so on. We agree and the courts have always recognized that reasonable award ought to be made in respect of reasonable and legitimate funeral expenses...”

I accordingly find that the trial courts acceptance of the expenses that made the special expenses of 25,000/= were correct and objection to the same in this appeal has no merit.

For the above reasons I find that this whole appeal has no merit. I dismiss it with costs to the respondent.

Dated and delivered at Machakos this 3rd day of November, 2006.

D.A. ONYANCHA

JUDGE