



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT EMBU  
HCC 60 OF 1999**

**NJUE NYAGA.....PLAINTIFF**

**(Legal Representative of Estate of ANTHONY KIVUTI NYAGA (Deceased))**

**VERSUS**

**JIMS FREIGHT FORWARDERS LTD.....DEFENDANT**

**JUDGMENT**

1. The Plaintiff herein, Njue Nyaga is the legal representative of Anthony Kivuti Nyaga (deceased). By his Plaint filed on 17.8.1999 he seeks general damages for pain, suffering and loss of amenities, special damages, costs and interests thereof.
2. The facts as pleaded are that on or about 15th November 1998, the deceased was walking along Embu-Mwea Road when the Defendant's motor vehicle registration number KAK 395 Z (amended at the hearing to read KAK 395 U knocked him and he suffered fatal injuries. It is further pleaded that the driver of the said motor vehicle was negligent in that he drove at a speed that was excessive in the circumstances; that he failed to apply brakes in time or at all; that he failed to keep away any proper lookout and thereby causing the accident and the death of the deceased.
3. A sum of Ksh.31,780/= is claimed as special damages and a claim for loss of dependency is made on behalf of Prisca Ngandu, aged 60 years and who is the mother of the deceased. That claim is expressed to be brought under the Fatal Accident, Cap 32. Further, particulars under the Law Reform Act, Cap 26 are supplied and it shows that the deceased was aged 25 years and as a Matatu driver, he was earning Ksh.20,000/=.
4. The Defendant filed a statement of Defence in which it admits that the accident subject of this suit took place on the material date. It however denies that the driver of the motor vehicle was negligent as claimed in the Plaint. It avers on the other hand that the deceased was himself negligent in that he failed to exercise kerb drill ; that he crossed the road in an errant and haphazard manner; that he failed to have due and sufficient regard for other road users; that he failed to heed the presence of other motorists on the said road. All particulars of loss and the claim for damages is also generally denied. The Defendant prays that the suit be dismissed with costs.
5. On the day the matter was listed for hearing (1.12.2004) there was no appearance from the firm of M/S Mathenge & Muchemi Advocates although served. There was also no appearance by any representative of the Defendant and the matter therefore proceeded in their absence.
6. PW1, Njue Nyaga, brother of the deceased produced the Police Abstract (**P.Exh.1**), Death Certificate (**P.Exh.2**) and receipts for burial and related expenses (**P.Exh.3-6**).

The total amount was Ksh.26,840/=. He also produced the burial permit as (**P.Exh.7**). He stated that he did not know how much the deceased was earning and therefore he could not confirm to court the basic figure to be used in calculating the general damages.

He however testified that the deceased would send Ksh.1,000-2,000 per month to assist the Plaintiff and his aged mother. 7. PW2 – Muthee Ndambiri was present when the accident occurred and he testified that motor vehicle KAK 395 U was speeding and that it hit the deceased off the road and off the tarmac.

8. I have no evidence to the contrary and therefore it is safe to hold that the accident was caused by the overspeeding motor vehicle pointing to negligence on the part of its driver, the evidence of PW2 is unchallenged in this regard and I would safely believe that the deceased was hit off the tarmac as he testified.

9. The next question would be quantum for damages. I would comfortably award Ksh.26,840/= as Special damages for burial and related expenses based on (P.Exh.3-6).

10. The claim for loss of dependency under the Fatal Accidents Act must fail as no evidence was led nor Submissions made with regard to it.

11. The fact that PW1 could not tell how much the deceased earned per month makes it difficult for this court to assess damages for loss of expectation of life and for lost years.

12. I would award Ksh.50,000/= for pain and suffering as the deceased died a day after the accident.

13. I shall enter judgment as follows in summary.

a) General Damages for pain and suffering - Ksh.50,000/=

b) Special Damages -Ksh.24,840/= Ksh, 76,840/=

c) Costs

d) Interest on (a) and (b) and court rates from the date of filing suit .

Orders accordingly.

Dated and delivered in open court on this 17th day

of January 2005.

**I.LENAOLA**

**JUDGE**

**Presence of;**

**Miss Ndorongo for plaintiff**

**N/A for Defendant.**

**I.LENAOLA**

**JUDGE**