



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

Civil Suit 98 of 1999 (RD)

JACOB MUTAHI GITHAIGAPLAINTIFF

VERSUS

SAID K. MSELLENDEFENDANT

J U D G M E N T

The Plaintiff in this case shows that the Plaintiff is acting as a personal representative or administrator of the estate of JANE THAARA NJUE under the Fatal Accidents Act Cap 32 Laws of Kenya and the Law refers Cap 26. The defendant is sued as owner of motor vehicle No. KAH 510 D which was being driven by his driver servant and or agent in the scope of his employment.

On or about 6th September 1996 at 6.15 a.m. the deceased was traveling as a fare paying passenger in the said motor vehicle when the defendants said driver servant and or agent so negligently drove an/or controlled the aforesaid motor vehicle that he caused it to overturn thereby causing the deceased fatal injuries. The particulars of negligence are set out in the plaint. The deceased was a passenger. She did not contribute to the accident. The driver was convicted after full trial.

Damages are on 100% liability. Special damages pleaded is Shs.15,000/- funeral expenses. At the time of her death the deceased was aged 33 years and had a good and reasonable expectation of a long life. She was carrying on business and she supported her family, which consisted of her husband, a daughter then aged 11 and a son then aged 9 years.

It is pleaded that following the accident, the driver of the vehicle was prosecuted with the offence of causing death by dangerous driving and convicted. The plaintiff prays for special damages General damages and costs and interest The defendant was served but failed to enter appearance or to file defence. The plaintiff by way of formal proof gave evidence. He said he was the husband of deceased after customary marriage. He produced as exhibit a Grant to administer her estate. He testified that his wife died on 6/9/1996 on Malindi/Mombasa Road at Kijipwa. While traveling in vehicle KAH 510 D - a matatu. She was going to Kongowea. When he received the report of accident, he visited Kilifi District Hospital mortuary where he saw her body. He later purchased Police Abstract from Kijipwa Police Station. He also produced court proceedings in Traffic case No. 2807/1996 at Malindi. The record shows that the driver was charged and convicted on all 5 counts after full trial.

Death certificate was also produced. The burial took Shs.15,000 for transport receipt was exhibited. He also testified that she was engaged through tender to supply food to Kilifi Prison and she had done the business for 8 years. Documents of tenders and bank statement were exhibited. She was earning about 20,000/- p.m. The husband now resides with the two children meeting all their expenses.

In his submissions Counsel for Plaintiff submitted that for pain and suffering a sum of

Sjhs.70,000/- be awarded. However, there is no evidence as to how long the deceased suffered pain before death. The death certificate shows she died on the same day of accident (6/9/96). Therefore the award can only be a nominal sum. I award Shs.10,000/- regarding the loss of expectation of life. Counsel proposes 140,000/- relying on the case of: **Jeria M. Nyanchama Mochago vs. Mathew Muchira and another. NRB HCC 4831 of 1991; NRB HCC 2750 of 1988 REBECCA S. MUREGI vs. EASTERN BUS SERVICES LTD.**

In both cases the court awarded Shs.100,000/- on this head. I am satisfied that a sum of Shs.140,000/- is adequate to compensate here.

Special damages pleaded and proved amounts to 15,000/- which is hereby awarded. There is submissions on loss of dependency and also on lost years under Law Reform Act Cap. 26 to her estate. These two items would be awarded to the same people who are her survivors. It would amount to double benefit.

An examination of copies of Bank Statements show that Account No. 110044949 was a joint account so that the funds on credit balance on her death went to husband and it is not clear who was bringing in what amount. A/C No. 110044394 is the one in the name of deceased alone. There is no effort to prove she was earning Shs.20,000/- per month. I find from the joint account that the husband was earning good income to support the family. The contribution of the deceased to the finances of the husband could not have exceeded 5,000/- p.m.

It appears the family affairs were run from the joint account. The contribution of the deceased is not known. The upshot in that there are no satisfactory proof that the deceased earned 20,000/-. To show how the deceased earned 20,000/- p.m. there are no accounts at all apart from the bank statements exhibited.

On the multiplier the deceased was a young woman aged 33 at her death. However, no life is guaranteed to last for any number of years. There is disease accidents and other causes of death and disabling circumstances in the world that length of life can only be estimated. In this case a period of 15 years brings the deceased to an age of 48 years of a useful life.

Therefore I take a multiplier of 15 years dependency which yields $15 \times 12 \times 5000/- = \text{Shs.}900,000/-$

The total award is therefore awarded as follows:-

Special damages 15,000/-

Pain and Suffering 10,000/-

Loss of expectation of life 140,000/-

Loss of dependence 900,000/-

1,165,000/

Judgement is therefore entered against the defendant in the total sum of Shs.1,165,000/- plus interest at court rates and costs.

**Delivered and dated at Mombasa this 27th day of September
2005.**

J. KHAMINWA

J U D G E