



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Case 301 of 2002

FLOICE ADEMA ONAMIPLAINTIFF

VERSUS

KEZIA MOTHONI NGURE

TOTAL COAST SERVICE STATION LTD.

THEOPHILUS OOGA MOGUNDEDEFENDANT

J U D G M E N T

The plaintiff has sued 3 defendants under the provisions of Fatal Accidents Act and Law Reform Act as administrator of the estate of deceased Staus Omuga Onami who died after sustaining fatal injuries in an accident which occurred on Mombasa/Malindi Road on 28th July 1999 at about 7.00 a.m. while the deceased was traveling as a fare paying passenger in first defendant vehicle No. KAK 532 r which was driven far negligently that it violently collided with vehicle KAD 729 W belonging to second and third defendants.

The particulars of negligence are set out in paragraph 8 of the plaint. The first Defendant denied being registered owner of vehicle No. KAK 532 R and that there was an accident and that the deceased was not a fare-paying passenger in that vehicle.

The first defendant blames the owner of motor vehicle KAD 729 W and sets out particulars of negligence.

The second defendant also filed a statement of defence who also denies the plaintiffs claim and blames 1st defendant and sets out particulars of negligence.

The 3rd Defendant was served by substituted service but failed to enter appearance. On 9.3.05 the trial commenced. The plaintiff gave evidence and narrated how she came to learn of her husband's death at noon that day.

She produced a grant issued to her and another person on 14/11/2001. She also produced two certificates from Registrar of motor vehicles one showing that the owner of KAK532R as at 28/7/99 was KEZIA MUTHONI NGURE first defendant and that of KAD 729W was 2nd defendant Total Coast Service Station.

She spent Shs.45,000/- for the transport of the deceased body Mombasa to Bunyore shs.13,000/- cost of the coffin, shs.17,600/- Pandya hospital Shs.44,560/- deposit for legal fees 5,600/- Shs.50/- death certificate, Police abstract 100/-, shs.3,600/-for search of ownership of motor vehicles. The last pay slip of the deceased was shown. His pay was gross Shs.54,545/-. She testified that deceased was spending Shs.20,000/- for home expenditure school fees, clothing and food.

She had 4 children and one grand child. 3 of which were attending school. One of her children Andrew is sickly and cannot work. She now cultivates shall in Kitale. She testified that her husband was aged 50 years.

She came to know that the driver of vehicle KAK 532R died instantly at the accident. The Police file was produced by PW 2 which shows that many people were involved.

The deceased was a passenger and no negligence can be attributed to him. However, KAK 532R collided head on with KAD 729W. There was a traffic case No. 9946 of 1999 in which the Police PW 2 stated that the surviving driver of KAD 729 W and was convicted after full trial in respect of the deceased Staus Onami. The defence offered no evidence to support their respective defences.

Upon considering the evidence and circumstances as detailed in the police file, I have come to the conclusion that both vehicles were to blame. The sketch plan on the scene shows that collision happened on the right side of the road facing Malindi side. The vehicle KAD 729W had left its side and hit KAK 532 R on its side. The driver of this vehicle did not take any action to avoid the collision. An accident between two vehicles cannot be said to be caused only by one driver. In this case there was opportunity for the driver of KAK 532 R to swerve on the left side of the road to avoid the accident. He did not.

I therefore find him 20% blameworthy and the driver of KAD 729 W more to blame at the rate of 80%.

On quantum special damages the plaintiff claims shs.156,000/- as tabulated in the plaint. I find these proved and I award the same. For loss of expectation of life, I award shs.100,000/-.

The deceased died on the same day and therefore for the pain and suffering, I award Shs.5,000/- . On loss of dependency the deceased was aged 50 years working in a bank (Standard chartered) as a telephone operator. The job has no risks except that he had to travel to the bank to work which is a very risky affair as it proved here.

However, multiplier of 20 is on higher side. In my view the proper multiplier should be 15. the pay slip it shows that money paid to the bank (net pay after taxation) was Shs.31652.15. This is the money he was running the affairs of the home with.

The wife PW 1 testified that she used to receive shs.20,000/- for running the home including education and clothing with 4 children and I grandchild. It appears a reasonable figure to maintain such a family. There dependency should be:-

15 x 12 x 20,000/- total Shs.3,600,000/-.

Total award amounts to Shs.3,600,000/- dependency

Shs. 5,000/- pain and suffering

Shs. 100,000/- Loss of Expectation of life

Shs. 156,000/- Special damages

TOTAL Shs. 3,861,000/-

The plaintiff shall have costs and interest at court rates.

Delivered and dated at Mombasa this 12th day of October 2005.

J. KHAMINWA

J U D G E

Judgement read in the presence of Mr. Ananda

No appearance for Defendants.

KHAMINWA J