



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

Civil Suit 98 of 1998

SALIM AMIR.....PLAINTIFF

VERSUS

KHAMIS SAID

BENSON MBALUKU RASHID.....DEFENDANTS

J U D G M E N T

The Plaintiff is the administrator of the estate of **Nassor Salim Amir** alias Nator Salim Ameri who died as a result of a road accident which occurred on 20/1/1997 on Mombasa/Nairobi Road at Miritini. The deceased was a passenger on motor Vehicle No. KAD 482W. Another vehicle KXC No. 060 Nissan Bus owned by first Defendant and driven by second defendant his authorized driver was so negligently driven that the said KXC 060 collided with the vehicle KAD 482W. the deceased sustained serious injuries of which he died. The particulars of negligence are set out in the plaint.

The special damages incurred by the deceased estate are pleaded totaling Shs.17,100/-. The defendants denied the claim and blamed the owner of the vehicle KXC No. 060 for the accident.

Third party Notice against Mohamed Nahfodh was filed on 20/1/2000.

The trial commenced on 27.2.02 when the plaintiff gave evidence. He testified that his son the deceased was brought to his home in Jomvu with serious injuries. He had a nail in his front skull but he died on the way to the hospital.

He was a butcher and was going to Mazaras to the slaughter house. He was in the vehicle of Vipingo Butchery when it collided with a bus on the main Nairobi/Mombasa Highway. The death was reported to police. The birth certificate and death certificate were produced as exhibits. He was issued with police abstract, P3 form and he obtained a limited grant to enable him to file this suit.

The deceased was married and had 3 children. The Plaintiff said he and his wife were depending on the deceased being a son. No records of business were exhibited but butchers licenses were shown. He also testified that he paid funeral expenses of shs.2,000/- and for limited grant 5,000/- .

On cross-examination he disclosed that he now runs the butchery.

The hearing adjourned until 6.5.04 by which time Commissioner Tutui had left the bench. Then after proceedings were typed the hearing continued from where the evidence had reached.

On 19.5.05 the rest of the case came up for hearing. PW 2 was called being a court clerk in charge of traffic registry. She produced the Traffic Case No. 408 of 1997. **R v. Benson Mbaruku Rashid**. It was marked as Exhibit 5. that exhibit shows that the accused was charged with the 2 counts of causing death by dangerous driving contrary to section 46 Traffic Act driving vehicle KXC 060 Nissan Bus by overtaking a vehicle ISUZU KAE 647E and collided with KAD 482 W causing death of Ashur Amir Islam driver and also causing the death of Nasir Salim (the deceased in this case).

After trial the driver 2nd defendant was found guilty and convicted accordingly. No appeal was preferred against the conviction and sentence.

The third party called a witness a private investigator who commenced to investigate this case. This witness came into picture after the accident. He was not present when the accident occurred.

On submissions it was submitted on behalf of the plaintiff that the 2nd defendant was tried and convicted for causing the death of deceased. He was the authorized driver of the first plaintiff's motor vehicle KXC 060 Nissan Bus. There is no contradicting evidence and therefore the first Defendant is liable for negligent acts of his employee.

Upon considering the submissions of plaintiffs counsel and of third party, I find the first defendant and second defendant wholly liable for the accident on 100% basis. No negligence was proved against the third party.

Regarding quantum the deceased died on the same day of the accident. See the death certificate Exhibit 2. He was 27 years of age and a butcher by occupation. It is submitted that he died on the way to hospital one hour after the accident. In those circumstances, I award Shs.10,000/- for pain and suffering. On special damages the father PW 1 said he spent Shs.2000/- and shs.5000/- for the Limited Grant. Therefore the proved special damages amounts to Shs.7000/- plus 100/- Police Abstract fees totaling 7,100/- and not as pleaded.

There was evidence that the deceased had a wife and 3 children and that he was supporting his father and the mother. Evidence on income was not supported either by bank statements or business accounts. It was said he earned 1,000/- - 1.200/- per day depending on the size of carcass of meat. It was not disclosed for how many days he was not able to work in a period of 30 days. It is not shown how much of that sum he spent on business expenses. Doing the best I can in the circumstances I take daily income at shs.500/-. This yields Shs.15,000/-. He had a family and his parents to support. His father PW 1 is now engaged in selling some meat at the butchery and earning a living. Taking it that the deceased spent 2/3 on his family monthly the loss of dependency would therefore amount to shs.10,000/- per month. Being a young person of 27 years he could probably have put in another 20 years in business. Therefore I take a multiplier of 20 years. The loss of dependence is therefore:-

20 years x 10,000/- x 12 months yielding Shs.2,400,000/- which is awarded.

Loss of expectation of life Shs.80,000/-

The total damages:

Special damages	-	7,100/-
Loss of Dependency	-	2,400,000/-
Pain and suffering	-	10,000/-
Loss of Expectation of life	-	<u>80,000/-</u>
TOTAL	-	<u>2,497,100/-</u>

Judgment is therefore entered for plaintiff against first and second defendants jointly and severally in the sum of Shs.2,497,100/-. The plaintiff shall have costs and interest at court rates.

Delivered and dated at Mombasa this 20th day of December 2005.

J. KHAMINWA

J U D G E

20/12/05

Mr. Omido:

I apply for a copy of proceedings and judgement. I apply for stay for 45 days for obtaining instructions.

Mr. Khatib:

The court is proceeding to X-mas holiday. There are many days in between no need for stay.

Court:

In the circumstances stay is granted for a period of 7 days from the end of court Xmas vacation into the new term 2006.

KHAMINWA, J

Proceedings to be supplied upon payment of costs.

KHAMINWA, J

Ms. Kasmani Noorbayi

I apply for costs for third party against the two defendants who has drugged us into court.

Court:

Costs are awarded to the third party against 1st and 2nd defendants plus interest.

KHAMINWA ,J