



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII
CIVIL SUIT NO.242 OF 2002

AMBROSE OLUOCH OTIENO PLAINTIFF

(suing as personal representative of

KENNETH ONYANGO OLUOCH – DECEASED)

VERSUS

CHEMELIL SUGAR CO. LTD. DEFENDANT

JUDGMENT:

AMBROSE OLUOCH OTIENO has brought this suit as the administratrix of the Estate of the late KENNETH ONYANGO OLUOCH who was his son.

On 26th February 2000 the plaintiff sent his son to a nearby market to have his bicycle repaired. On the way Kenneth was hit by a tractor belonging to the defendant company. He was injured and taken to hospital. He died on 7th March 2000.

The defendant filed a defence but failed to appear on the hearing day. Case proceeded ex parte.

The first issue is that of liability. In their defence the defendant had pleaded that the deceased was to blame for the accident. There is no doubt that the accident occurred. The deceased was hit by the tractor and died several days after.

VINCENT ODHIAMBO ODUMA (PW2) told the court that he witnessed the accident. He was at the scene. The deceased was riding in the same direction the tractor was traveling. He was pushing the bicycle. The tractor came from behind and hit him. The driver did not even hoot to warn him. That was the only eye witness who testified. His evidence was not contradicted.

It is therefore clear that the tractor driver was to blame. He hit the deceased from behind as he pushed the bicycle. I find that he was 100% to blame. Being a servant of the defendant, the defendant is vicariously liable.

Plaintiff said he spent shs.3000/= for a coffin. However he chose not produce any receipts. The only receipts produced were for shs.18,945/= medical expenses. However he had only pleaded shs.2000/= in the plaint. I award the same as special damages.

As for loss of expectation of life the deceased was 17 years old. Court was referred to the case of LABAN NJOGU WAINAINA –vs.- DAVID KARIUKI KINGORI NBI HCCC NO.4148 where shs.80,000/= was awarded for a deceased aged 15 years. The case is an old one. I will award a sum of shs.100,000/= for loss of expectation of life.

For pain and suffering the deceased died 10 days after the accident. I concur he must have suffered pain and suffering. I will award shs.30,000/= under that heading.

As for loss of dependency court was told that the deceased though a student was part time carpenter and was earning shs.1800/= per month. There was no evidence called to support that but I believe if he had shown an interest in carpentry he most probably would have grown up to be one. I would put his monthly earning to shs.1,500/=.

As he was 17 years I will take a multiplier of 20 years and dependency ratio of 1/3 thus:

$$1,5000/= \times 20 \times 12 \times 1/3 = 120,000/=.$$

I therefore enter judgment for plaintiff against dependant as follows:

1. Special damages shs.2000/=
2. Loss of expectation of life shs.100,000/=
3. Pain and suffering shs.30,000/=
4. Loss of dependency shs.120,000/=

Total shs.252,000/=

The plaintiff will also have costs of the suit and interest.

It is so ordered.

Dated and delivered at Kisii on 19th March 2004.

KABURU BAUNI

JUDGE