

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.670 OF 2000

FRANCIS MAGARA PLAINTIFF

VERSUS

DOUGLAS OJWANG ONACHI & ANOTHER DEFENDANTS

JUDGMENT

The Plaintiff is the father of late Judy Magara who was killed in car accident on the 14th May 1997, and brings this action for damages under the Law Reform Act in respect of lost years and under the fatal accidents Act for a dependency. Liability in favour of the Plaintiff was established in HCCC No.698 of 2000. The Plaintiff is the father of his deceased daughter Judy who was 17 years of age at the time of her death. In his evidence the Plaintiff gave evidence that his daughter was at Mugumo School in Form 4 and that she wanted to become a Medical Doctor. A School report was produced which shows average grades. However I do not take too much account of that as a student if determined can improve his or her academic achievements.

No evidence was adduced however as to the salary a Doctor would get assuming. Judy achieved her dream and a court cannot take a judicial notice of a Doctor's salary. No rates for doctors in public service were produced although Mrs. Wambugu says that a doctor in public service earns Shs.60,000/= per month.

The principles for awarding damages under the Fatal Accident Act springs from the case of Taff Vale Railway Company V. Jenkins App. Case 1913 page 1, in which Lord Atkinson stated the law to be at page 7 as follows:

“ I think it has been well established by authority that all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact – there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that the deceased earned money in the past, and second, that he or she contributed to the support of the Plaintiff.”

The earning capacity of Judy is somewhat speculative, however, it is my duty to try to assess what that loss would be. I must take into account that Judy would no doubt marry and leave home. She also would require a portion of her salary for her own expenses, and would do no more than contribute to her expenses whilst living with her parents.

In *Harris –vs- Empress Motors Ltd, Cole vs - Crown Poultry Parkers Ltd (1988) 3ALL E.R. 561* referred to and cited with approval by Githinji J., (as he then was) in *Ernest Mwara Sikutuma vs Aziz Bin Ali Chiragdin HCC 510 of 1989 (Mombasa)* the proportion of living expenses deductible, will be general greater than the 2/3 deduction able under the Fatal Accident Act

The Defendant in his submission proposes a salary of Shs.3000/= per month as a starting point. This may well be too low having regard to inflation.

I therefore propose a figure of 6000/= per month which grosses up to Shs.72,000/= per year. Deducting 2/3 for expenses we are left with a figure of Shs.24,000/= I would not expect Judy to have assisted her parents for more than 10 years after her earnings started and adopt a multiplier of 10. The damages would then be Shs.240,000/= which sum I award.

I also award a sum of Shs.90,000/= under the Law Reform Act. The Plaintiff claims damages for pain and suffering, as Judy was still alive after the accident, I will award Shs.50,000/= under this heading. Special damages were agreed at Shs.85,000/=. There will be Judgment therefore for these sums plus the costs of the suit. Interest at cost rates will apply to the special's from the date of filing of the suit and on the general damages from the date hereof.

Dated and delivered at Nairobi this 18th June 2004

P.J. RANSLEY

JUDGE