



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1615 OF 2001

1) Running Down Cause

2) Passenger, female adult aged 23 years old in 2000

3) Collision between two vehicles

4) Injuries:

Fatal

5) Liability: 100% Jointly and severally against the 3rd defendant.

6) Quantum:-I) Law Reform Act

a) Pain and suffering Ksh. 10,000/-b) Loss of expectation of life Ksh. 70,000/-c) Lost years 40,000/-x 12 x 20 x 1/4 Ksh.2.400,000/-II) Special Damages (agreed) Ksh. 112,307.80/-Total Ksh.2.582.357.80/-7)

ase law:-i) Margaret Josephine Orwa v University of Nairobi

ii) Zarina A. Shariff v Noshi P. Sethna

1963 EA 239. page 250-251

iii) Najma Kazuo Miwa v Thomas Wanyoike Kariuki

Hccc 13993/98 Unreported Ang'awa,J.

8) Advocates:

Wekesa advocate for the plaintiff

M. Ngarua Advocate for the 1st and 2nd

defendant

P. Simoni advocate for the 3rd

defendant

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1615 OF 2001

SATWIDNER SINGH BHOGAL PLAINTIFF

VESUS

SATWINDER KAUR BENAURA & TWO OTHERS ...DEFENDANTS

JUDGMENT

The parties in this case are as follows:-

Satwinder Singh Bhogal

is the administrator of the estate of Jaspreet

Kaur Bhogal deceased.

The plaint should have therefore read. Satwinder Singh Bhogal

(suing on behalf of the estate of Jospreet Kaur Bhogal) The plaintiff.

The plaintiff is related to the deceased as the father to his late daughter.

Jaswinder Kaur Benarwa is then sued as the registered owner of a vehicle registration number KAG 686D. The said vehicle was driven by Sundip Singh the 2nd defendant herein. They are the 1st and 2nd defendant respectively.

Manjit Singh Brar was the driver of motor vehicle No.KAD 431E.

According to the evidence and the plaint, the deceased Jaspreet Kaur Bhogal was in the vehicle being driven by Sundrip Singh.

A collision occurred along the Limuru road between the village Market and he Runda turn off – but at a dip. As a result of the said collision Jaspreet sustained injuries and was rushed to the Aga Khan hospital Nairobi. She was admitted to causality at 8.15 p.m. but expired at 9.45 p.m.

Her father, the plaintiff herein sued he drivers of the two vehicles in negligence and claimed damages of the wrongful death of his daughter.

The three defendants entered appearance and filed defence denying negligence.

The advocate for the plaintiff stated that the deceased was a passenger. An accident occurred and the three defendants are to be held liable.

A) LIABILITY.

On the 24.2.04 the parties entered into agreed issued. I would answer the following facts in the affirmative.

1) That the plaintiff is indeed the administrator of the estate of the deceased. Ext. P1.

Grant of letter of administration intestate dated 24.5.01 refers.

2) That Jaspreet Kaur Bhoggal was a lawful authorized passengers in motor vehicle registration KAG 686D. It seems that Jaspeet told her father she was going to the Parklands Sports Club. She appeared to have then left with a young man the 2nd defendant in this case and had an accident. I can only presume and indeed confirm that she was in the said vehicle with his consent. I have no evidence to the contrary on this.

3) There was indeed an accident that occurred on the 8.9.00. A police abstract was in fact produced, Ext P2 confirming this.

The issue that is left is:-

“whether the defendant are liable for the accident and are negligent as pleaded in the plaint?”

From the evidence before the court, the advocate for the 3rd defendant admitted that he did to file a notice under order 21 r1 CPR. Namely,

“Where a defendant desires to claim against another person who is already party to the suit:-

a) That he is entitled to contribution or indemnity

b) _____

c) _____ the defendant may without leave issue and service on such other person a notice making such claim or specify such question or issue.”

The advocate for the 1st and 2nd defendant likewise admitted that he too did not file this notice.

There is no time limit in filing such notice. Nonetheless the advocate for the 3rd defendant implied that such notice is not necessary.

I find that on the issue of liability an accident did occur. This involved two motor vehicles. The said accident having occurred, the defendant are liable jointly and severally at 100% in favour of the plaintiff.

I do so on the grounds of the non-compliance of order 1 r 21 CPR.

There is a case law of:-

Zarina A Shariff v Noshin P. Sethna

1963 EA 239

On the issue of joint tortfeasor that the plaintiff spoke of. I find indeed that the issue there was on the discretion of the court.

B) QUANTUM

The claim before me is that under the Law Reform Act and Special

Damages only.

a) Law Reform Act

i) Pain and suffering

The deceased was rushed to the Aga Khan hospital. She sustained injuries and was admitted to the casualty department at 8.15 p.m. She expired at 9.45 a.m.

I would award a sum a sum of Ksh.10,000/-.

b) Loss of expectation of life

The deceased was a young girl with a bright future. I would award a sum of Ksh.70,000/-.

c) Lost years

The deceased herein was a student in Britain. The plaintiff produced proof of her studies.

A witness was called to give evidence on the similar career that he had and the salary he currently earns.

The career is in information technology. The witness earned a sum of Ksh.54,156/- gross.

The deceased was perusing a degree in Business Information Systems.

I would agree that the salary be Ksh.40,000/-, after the statutory deductions.

d) Multiplier

The advocate for the plaintiff relied on the case law of:-

Margaret Josephine Orwa

V

University of Nairobi & Another

Hccc 2571/93 Juma,J.

Where a 41 year old University Assistant Professor who die din a traffic road accident was given a multiplier of 15 years.

2) Najma Kazuo Miwa

V

Thomas Wanyoike Kariuki

Hccc 1393/1998

Unreported Ang'awa,J.

Where the deceased a passenger aged 21 years old was given a multiplier of 20 years.

I find in this case a multiplier of 20 years be sufficient.

Under lost years the advocate for the 1st and 2nd defendant prayed that I apply ¼ dependency. I would accordingly award-

Ksh.40,000/- x 20 x 12 x ¼ = Ksh.2.4 million

Special damages

The parties agreed to Ksh.112,307/80 in total accordingly being medical expenses together with burial expenses.

I accordingly confirm this.

In summary

1) Passenger female adult aged 23 years old in 2000

2) Injuries:

Fatal

3) Liability: 100% jointly and severally against the 3rd defendants.

3) Quantum:-

1) Law Reform Act

- a) Pain and suffering - Ksh. 10,000/-
- b) Loss of expectation of life - Ksh. 70,000/-
- c) Lost years 40,000/- x 12 x 20 x ¼ -Ksh.2.400,000/-

II) Special Damages

Agreed Ksh. 112,307.80/-

Total Ksh.2.582.357.80

I awards the costs of this suit to the plaintiff. I award interest on Special Damages from the date of filing of this suit interest on General Damages from the date of this judgment.

Dated this 11th day of June, 2004 at Nairobi.

M.A. ANG'AWA

JUDGE

Wekesa & Co. Advocates for the plaintiff

Kipkorir, Titoo and Kiara Advocates for the 1 st and 2 nd defendants

Simani & Co. advocates for he 3 rd defendant

