



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 482 OF 2002

DOROTHY NAITORE M'INOTI PLAINTIFF

VERSUS

HITSH KANJI DAMJI & ANOTHER DEFENDANT

- 1) Running Down Cause
- 2) Male adult aged 51 years old in 1999
- 3) Pedestrian/Motor vehicle accident
- 4) Injuries:-Fatal
- 5) Liability:- 100% against the 1st and 2nd
defendant jointly and severally.

The 2nd
defendant being vicariously liable.

Interlocutory Judgment 14.8.02

Principal Deputy Registrar

6) Quantum:

I: Law Reform Act.

- a) Pain and suffering Ksh. 10,000/
- b) Loss of expectation of life Ksh. 70,000/-II:

Fatal accidents Act

- a) Loss of dependency

Ksh.22,000/-x 4 x 12 x 2/3rd

Ksh.717,333/33

Discounted Ksh. 7,333/33

Total Ksh.710,000.00/-

Subject to apportionment

III: Special Damages

Police abstract fee Nil

Limited Grant Nil

Funeral Expenses Nil

Medical Expenses Nil

Not proved _____

Total Ksh.790,000.00/-7)

Advocates:

C. Mureithi advocate for the plaintiff

No appearance for the defendant

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JUDGMENT

Wilfred Kinyua M'Ikiugu, a male adult aged 51 years old (now deceased) was on the material day of the 3rd of November 1999 walking along the Parklands Avenue. A vehicle driven by Hitsh Kanji Danji and owned by M/s Antiqua Furnishers Ltd was driven so carelessly that it collided with and into Mr. M'Ikiugu; who died the following day of the 4th of November 1999.

His widow, Dorothy Naitore Inoti filed suit on 18.3.02 after obtaining letters of grant of representative limited ad colligenda bona on the 13.3.00. She sued the driver and owner of the said vehicle that caused fatal injuries to her late husband.

Defendant No.1, Hitsh Kanji Damji is said to be a director of the 2nd defendant M/s Antiga Furniture Ltd. He was duly served with the plaint and summons to order appearance on the 18.6.02. He and the company failed to file their memorandum of appearance and defence.

1) LIABILITY

On the 14th of August 2002 the Principal Deputy Registrar entered an Interlocutory Judgment against the two defendants jointly and severally. The effect of this judgment is that the issue on liability is final against both defendants at 100%.

What was left was the issue of the assessment of damages by way of formal proof.

2) JURISDICTION

The suit came up for hearing on 1.10.03 before Ouma J. who was then temporarily assigned the running down portfolio. He took the evidence of the plaintiff – the widow and administratrix of the deceased estate judgment was reserved for the 3.11.03.

Ouma J was not available to proceed to give judgment on this case. The then duty judge, Lenaola J directed that it be mentioned further before him on 31.3.04. The case came before Ransely J who directed that this matter come before me for direction as I deal with the running down cause.

Under order 17 r 10 CPR I directed that I could proceed with the finalization of this case. This rule allows another judge to continue with the case where the proceeding had stopped and where the judge is not in the station. I further directed that from the proceeding the original documents (seen by the previous judge) be tabled to court at a later date which was done.

I therefore rule that I have jurisdiction to hear and determine this trial on grounds that the previous judge is no longer available to proceed with this trial under order 17 r 10 CPR.

III: QUANTUM

The deceased was a teacher by profession and was employed as an assistant chief inspector of schools.

At the time of the accident he was aged 51 years old. The police abstract reflect that the accident occurred on the 3.11.99 and the death certificate confirms the death occurred on 4.11.99.

I would in the light of this evidence make the following award:-

I: LAW REFORM ACT

a) Pain and suffering

The deceased died the following day. The actual number of hours it took to die is not disclosed in the documents. All I have is from the police abstract report, the death occurred at 9.00 p.m.

I would award the conventional amount of Ksh.10,000/- for the head of pain and suffering.

b) Locus of expectation of life

I award a sum of Ksh.70,000/- as being fair in the circumstances.

II: Fatal accident act

a) Loss of Dependency

Dependant

The deceased had three children who depended on him. The plaintiff his widow is also an administratrix would not be entitled to claim under the two acts. I had made no award under the Law Reform Act. Birth certificates for the children were produced. The dependency be at 2/3rds.

b) Multiplicand

The salary reflects the basic sum of Ksh.21,177/-. I would not include the other allowances given to him. I would round off this figure to Ksh.22,000/-. A salary slip was duly produced to prove this claim

c) Multiplier

It is without a doubt that the deceased working for the Kenya Government would have retired at the age of 55 years old.

The multiplier be 4 years.

Under this head I would hereby grant the following:-

$$\text{Ksh.22,000/-} \times 12 \times 4 \times \frac{2}{3} = \text{Ksh.717,333/33}$$

This sum is to be discounted by Ksh.7,333/33 to provide for a lump sum payment on early remarriage, giving me a total of ksh.710,000/-.

The law requires that I apportion this sum amongst the dependants, if not applied for:-

Dorothy Naitore M'Inoti - widow	Ksh.110,000/-
Gakii – daughter born 1986	Ksh.200,000/-
Kathure daughter born 1988	Ksh.200,000/-
Mutugi son born 1991	Ksh.200,000/-
Total	<u>Ksh.710,000/-</u>

Mutiga – a son and a minor is not to be paid the said sum of Ksh.200,000/- until he attains the age of majority. That the said sum is to be placed in an interest deposit earning account with the East African Bundling Society in the name of the Registrar of the High Court of Kenya and the administratrix together with a second administrator as provided under section 58 of the Law of Succession Act.

That the said sum to remain in the said account until the minor attains the age of majority. Any interest earned maybe utilized for the upkeep of the minor.

III: SPECIAL DAMAGES

a) Police abstract fee Ksh.100/-

There was no receipt produced to prove his sum. The same is duly dismissed.

b) Limited grant fee - Ksh.925/-

There was no official receipt to prove this sum the same is dismissed.

c) Funeral expenses Ksh.41,000/-

This sum must be particularize and pleaded. The plaintiff did not do so. She was unable to produce the original documents to prove some of the claims on the grounds that someone else took them. That person was never called to court to give the said evidence.

The claims are dismissed

I hereby enter judgment on the proved claim.

In Summary:-

- 1) Running down cause
- 2) Pedestrian male adult aged 51 years old in 1999.
- 3) Injures:-

Fatal.

- 4) Liability: 100% against the 1st and 2nd defendant jointly and severally.

The 2nd defendant being vicariously liable.

Interlocutory Judgment 14.8.02

Principal Deputy Registrar

5) Quantum

I: Law Reform Act

- a) Pain and suffering Ksh. 10,000/-
- b) Loss of expectation of life Ksh 70,000/-

II: Fatal Accidents Act

Ksh.20,000/- x 4 x 12 x 2/3 Ksh.773,333/33

Discounted Ksh. 7,333/33

Total Ksh.710,000/00

Ksh.790,000/00

Subject to apportionment

III: Special Damages

Police abstract fee	Nil
Limited grant fee	Nil
Funeral expenses	Nil
Medical expenses	Nil

Dismissed not proved

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

Dated this 9th day of June 2004 at Nairobi.

M.A. ANG'AWA

JUDGE

Muriithi & Co. Advocates for the plaintiff

Hitsh Kanji Damji & Another – the defendants