



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

CIVIL SUIT NO.112 OF 1998 (RD)

SAKLMA
SAID.....PLAINTIFF

VERSUS

NABLE ABEID.....
.....DEFENDANTS

AND

SHOPPERS SUPERMARKET..... THIRD
PARTY

Coram: Before Hon. Justice Mwera
Mrs. Karigithu for the Plaintiff
Were for the Defendant
Court clerk – Sango

J U D G E M E N T

By the plaint filed here on 30-9-98 and amended on 26-7-99 the plaintiff, mother of the deceased, Said Hamisi Said sued the defendant under the Law Reform and Fatal Accidents Act claiming damages for the deceased's estate and loss of dependency to the survivors.

It was averred that on 14.10.95 while the deceased was a lawful passenger in his employer's motor vehicle Reg. No. KAD 455T at Kikambala, the defendant himself or his agent negligently drove motor vehicle KAA 846 F at that said place, whereby he let it violently collide with the motor vehicle in which the deceased, was causing his death. The parties having agreed and apportioned liability (at 20% to the deceased and 80% to the defendant) there is no need to go into particulars of negligence.

It was however added that the deceased left behind his mother the plaintiff, a father, 3 brothers and a sister all of whom were from the time of death on, unable to enjoy the financial support that the deceased Said used to provide. The plaintiff prayed for damages, costs and interest.

A defence (amended on 28.6.99) denied the claim, cast contribution or full responsibility on the driver of Said's employer's motor vehicle and thus brought in that employer as a 3rd party. It filed a

defence. However as stated above liability was subsequently shared between the plaintiff on behalf of the deceased and the defendant. What followed on 6-5-04 was to assess damages.

The plaintiff (PW.1) told the court that her son died on the spot of the said accident – from head injuries. She obtained a police abstract of the accident (Exh. P1) and later Said’s death certificate (Exh. P2). This was followed by a grant dated 29.7.98 to administer the deceased’s estate; she sued on 30.9.98.

PW.1 added that Said died aged 20 years, unmarried and giving his mother Sh.5,000/- p.m. to support her and the rest of the family. That she incurred funeral expenses of about Sh.7,000/-. She produced a security fund card (Exh.P4) to evidence the deceased’s employment with M/s Shoppers Mart. PW.1 did not know how much the son earned per month. After this each side submitted. The plaintiff’s side went over the evidence urging this court to give Sh.20,000/- for pain and suffering and Sh.150,000/- for loss of expectation of life under the Law Reform Act. Under the Fatal Accidents Act it was repeated that the deceased used to give his mother Sh.5,000/- per month. May it be noted that his monthly income was not known or stated in court. A multiplier of 35 was proposed since Said died at age 20. This worked out at Sh. 2.1 m.

As for special damages a figure of Sh.5,000/- was said to have been pleaded, plus Sh.100/- for the police abstract. Without evidence Sh.10,000/- was put forth for obtaining the letters of administration. And without deducting the award under the Law Reform Act as the same plaintiff was due to benefit for under the Fatal Accidents Act grant, a total of Sh.2,285,100/- was arrived at. Nothing was spoken of reduction by a certain percentage due to accelerated payment. All the foregoing are principles governing the awards sought here. (See **Kemp & Kemp on Damages**)

The defence suggested that Sh.10,000/- be awarded for pain and suffering plus Sh.60,000/- for loss of expectation of life. That nothing should be awarded as special damages. That because lack of proof of earning, Sh.3,000/- be taken as monthly income on a multiplier of 18. Again without bearing in mind the aspect of double benefits to the same applicant under both the Law Reform and the Fatal Accidents Act, the defence arrived at a total of Sh.522,000/- to be reduced by 20% contribution leaving a net of Sh.407,600/-.

In this courts view the following awards are made:

Under the Law Reform Act:

Paid and suffering Shs.20,000.00

Loss of Expectation of life “ 80,000.00

Total

Shs.100,000.00

Under the Fatal Accidents Act it was stated above that the plaintiff did not place before the court the deceased’s monthly income from which he gave Sh.5,000/- to her for her use and family support generally. But a social security fund card was exhibited and the court is satisfied that a proposal of Sh.3000/- by the defence is a fair one. The court thus puts this against a multiplier of 20, Said having died aged 20 years. (3000 x 12 x 20 x two thirds)

It comes to Sh.480,000/- loss of dependency. The court is minded to award Sh.7,000/- for funeral expenses, the police abstract and obtaining letter of administration.

Thus under this Act the total award is: Shs.480,000/-

Special Damages “ 7,000/-

Shs.487,000/-

The grant total is:

Under the Law Reform Act: Shs.100,000.00

Under the Fatal Accidents Act: Shs. 487,000.00

Shs.587,000.00

In order to cater for the fact that the same claimant is benefiting under both Acts the award for the former is deducted from the whole total leaving Sh.487,000/-. Due to accelerated payment 5% is deducted leaving a net of Sh.446,650/-. This sum is to be reduced further by 20% contribution leaving the actual net at Sh.357,320/-. (Shillings Three Hundred Fifty Seven Thousand ,Three Hundred Twenty)

The above sum is payable to the plaintiff plus costs and interest at the lower court rates.

Judgment delivered on 9th June, 2004

J.W. MWERA

JUDGE