



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA OF KISII

Civil Case 154 of 2002

**MILKA NYANCHOGI OMAMBIA (suing as the
personal representative of ANGIRA OMAMBIA - DECEASED)..... PLAINTIFF**

VERSUS

GOHIL SOAP FACTORY LIMITED DEFENDANT

JUDGMENT:

Plaintiff MILKA NYANCHOGI OMAMBIA has brought this suit on behalf of the Estate of her late husband ANGIRA OMAMBIA. She told court that on 9/1/2001 her husband was riding a bicycle along Ikonge-Ngoina road. Suddenly the defendant's m/v Reg. No. KAG 695 K, which was being driven by KIMUTAI ARAP KOSKE (DW1), come from behind and hit the deceased. He died on the spot. PW1 told court that at the time she was near the road collecting firewood and she clearly witnessed the accident. Her husband was riding on the extreme left side of the road. The vehicle was moving at high speed and did not swerve to avoid the accident.

DW1 said he was the driver of the vehicle. He had taken soap with the vehicle, a lorry, to Nyamira from Nakuru. After off loading his cargo he started driving back. As he was approaching a corner he saw a cyclist ahead riding in the same direction as he was driving. As he was passing the cyclist, the cyclist hit a pothole and lost control of the bicycle and moved to the right. DW1 swerved to the far left side to avoid him but he hit the front tyre of the lorry with his head. He said he was then driving at about 30 kph.

The first issue is that of liability. There is no dispute that the accident happened and Angira died. I find the evidence of his wife (PW1) to be candid and straightforward.

She was an eyewitness. She said her husband was riding on the extreme left. DW1 admitted that when he first saw the cyclist indeed he was on the left side. PW1 said there was no hooting and the vehicle never swerved to the right. She also said it was on high speed. I believe she was telling the truth and the allegation of deceased hitting a pothole is not true. DW1 had said he had offloaded the vehicle of its cargo. It was therefore light. He was perhaps speeding to get back to Nakuru in time.

I therefore find that the driver of the defendant vehicle was negligent. He was driving at high speed and hit the deceased who was then riding on his proper lane. It is clear he did not keep a clear look out for other road users and thus caused the accident. I am not at all convinced that the deceased ever contributed to the accident. I find him 100% liable and since he was an employee of the defendant the defendant is consequently vicariously liable.

Plaintiff had claimed special damages of shs.5000/- coffin, shs.100/- abstract and shs.100/- death certificate. It is trite law that special damages should not only be pleaded but specifically proved. She did not give any documents to prove these claims. That claim of special damages therefore fails.

Plaintiff died on the spot. Even though he must have undergone certain amount of pain before he died. I will award shs.10,000/- for pain and suffering.

As for loss of expectation for life case law shows that an amount of shs.100,000/- will be fair and I award the same. He had some children and a wife whom he left behind.

PW1 said the deceased was a tea plucker, a farmer and a businessman and earned about shs.6000/- a month. She produced a pay slip from his employer showing that he earned shs.4,700/- per month and the net was shs.3,700/-.

In absence of any other evidence I will take the amount of shs.3,700/- as the correct figure he was earning per month.

Deceased was 40 years old when he died. It was submitted that the court should use a multiplier of 15 years by both the plaintiff and the defendant and I will adapt the same with dependency of $\frac{2}{3}$. Thus $shs.3,700 \times 15 \times 12 \times \frac{2}{3} = shs. 444,000/=$.

Thus I enter judgment for the plaintiff against the defendants as follows:-

1. Pain and suffering shs. 10,000/-
 2. Loss of expectation for lifeshs.100,000/-
 3. Loss of dependency shs.444,000/-
- Total shs.554,000/-

The plaintiff will also have costs and interest.

Dated this 26th October 2004 at Kisii.

KABURU BAUNI

JUDGE

26/10/04

Mr. Onyancha for Mr. Onyango for the defendant

Mr. Onyango: I pray for 30 days stay of execution.

KABURU BAUNI

JUDGE

Order: There be 30 days of execution.

KABURU BAUNI

JUDGE