



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII

CIVIL SUIT NO.393 OF 1998

CHETUNDA MORAA NYAMWAMU PLAINTIFF

VERSUS

PHILIP KIPKEMBOI CHELULE 1ST DEFENDANT

OBUYA EXPRESS & ANOTHER 2ND DEFENDANT

JUDGMENT:

CHETUNDA MORAA NYAMWAMU (plaintiff) brought this suit as the personal representative of the Estate of the late COSMAS NYAMWAMU NYAREKI who was her husband. She told court that on 17th January 1997 the deceased was traveling in an Obuya Express Bus which was being driven by PHILLIPH KIPKEMBOI, the 2nd defendant. The bus was involved in an accident and the deceased died. The 2nd defendant was charged with the offence of causing death by dangerous driving.

In their written defence the defendants blamed the accident on the negligence of the driver of motor vehicles Reg. No.KYW 622 and KYX 436. They however did not enjoin them as 3rd parties.

The defendants were ordered on 29/11/01 to make their discoveries within 30 days or the defence be struck out. They did not comply with the order and on 26/1/04 the defence was struck out. They therefore did not offer any evidence.

PW1 the plaintiff was not at the scene when the accident occurred. However she produced a police abstract – Exh.P3, which indicated that the 2nd defendant was charged with the offence of causing death by dangerous driving.

I am satisfied that the 2nd defendant was 100% to blame for the accident. He was negligent. He was a driver of the 1st defendant who is also vicariously liable.

As for damages the plaintiff did not prove any special damages. They were not even pleaded.

Court was not told how soon the deceased died after the accident. I would assume he died instantly. I will award shs.10,000/= for pain and suffering. As for loss of expectation of life the deceased was 42 years old when he died. I will award a sum of shs.80,000/= under that head.

As for loss of dependency the deceased was 42 years old when he died. Normally people retire at 55 years of age meaning he had 13 more years. However taking into account the exigencies of life I feel that a multiplier of 10 years is reasonable and I will apply the same.

Deceased's salary was shown in the letter of offer as shs.5000/= per month. It is not clear if there were any statutory deductions but if there were, it would have been shown in the letter. I will therefore take the monthly salary as shs.5000/=.

Deceased had a wife and six children. A dependency of 2/3 is therefore proper.

Thus $\text{shs.5000/=} \times 10 \times 12 \times \frac{2}{3} = \text{shs.400,000/=}$

I therefore enter judgment for the plaintiff against both defendants jointly and severally as follows:-

Pain and suffering shs. 10,000/=

Loss of expectation for life shs. 80,000/=

Loss of dependency shs.400,000/=

TOTAL shs.490,000/=

The plaintiff will also have the costs of the suit and interest.

KABURU BAUNI

JUDGE

Signed, dated and delivered this 3rd June 2003.

KABURU BAUNI

JUDGE

Mr. Kaburi for Nyaencha.

KABURU BAUNI

JUDGE