



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

**AT MOMBASA
CIVIL CASE NO. 6 OF 1995**

RISPA OGEMA ELIJAH PLAINTIFF

V E R S U S

ALI SALIM TRANSPORTERS 1ST DEFENDANT

RAMADHAN SAID MTONGOJA 2ND DEFENDANT

JUDGMENT

This was a suit based on Law Reform and Fatal Accidents Act filed by the mother of the deceased, the Administratrix of the Estate of the deceased PAUL OTIMBO who dies on 10.8.1994 from injuries occasioned by the accident caused by the Scania Trailer Reg. Number TZF 1794 – TZF 2321, TZF 2322 along Mbaraki Mnazi Moja Road in Mombasa. The suit is for the benefit of the Estate and the surviving dependants.

At the hearing of the Suit on 4.4.2003, the Defendants although served did not attend the hearing so the case was heard exparte. Giving evidence, PW1 the mother and the Administratrix of the Estate said that the deceased was her son and was working with Signon Freights Limited. He was then earning a gross pary of Kshs. 6,041.30 per month but would take home Kshs. 3,255.20. He was living with his mother and would pay her Kshs. 2,000/- per month for upkeep and maintenance. He was 31 years at the time of his death, according to the Certificate of Death.

PW2 HAIDARI HAFITH RASHID the only eye witness was a pillion passenger on the fateful bicycle ride by the deceased as they went for lunch. He said:-

“I was a pillion passenger (in a cycle peddled by the deceased) as we crossed near Mnazi Moja near Mbaraki a lorry trailer came at a speed. It crossed the road and lost balance and hit us. I was thrown down. Paul Otieno was pushed under the trailer and crashed. He died there and there. The road was straight. Visibility was clear.”

That evidence was not controverted and it is quite clear that the trailer was negligent in failing to see the two on the bicycle and recklessly taking the corner at high speed and crashing the deceased. The Trailer TZF 1794/TZ was according to the Police Abstract No. A146638 dated 2.9.1994 belonged to Ali Salim of Ali Salim Transporters Limited of P.O. Box 5653 Tanga Tanzania, but was insured by MS STALLION INSURANCE COMPANY LIMITED of Kenya, P.O. Box 12584 Nairobi. I find same wholly to blame and liable.

Damages payable under law reform:-

Pain and suffering = Kshs. 100,000/-

Under Fatal Accidents taking that he would have worked upto 55 years taking a multiplier of 20 years from age of 31 at a salary of Kshs. (3,400 X 20 X 12 X 1/3) = Kshs. 272,000/- Special damages. This ought to be pleaded and proved as pleaded.

(i) Funeral Expenses =	Kshs. 100,000/-
(ii) Cost of abstract =	Kshs. 100/-
TOTAL	Kshs. 100,100/-

So, in my judgement, the Plaintiff is awarded:-

Loss of future earning =	Kshs. 272,000/-
Loss of expectation of life =	Kshs. 100,000/-
Pain and suffering =	Kshs. 100,000/-
Loss of amenities of life =	Kshs. 50,000/-
Special damages =	<u>Kshs. 100,000/-</u>
TOTAL	<u>KSHS. 622,100/-</u>

Plus costs and interest on the same from date of filing to date of payment.

Delivered at Mombasa this 20th Day of August 2003.

A. I. HAYANGA
JUDGE