



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**Civil Suit 74 of 2002**

**BEATRICE AGOLA OPONDO.....PLAINTIFF**

**VERSUS**

**SWALEH SALIM SAID.....DEFENDANT**

**JUDGMENT**

This suit is brought by the widow who also holds a grant of representation for the estate of Arthur Ogutu Otieno who died in a road accident on 25<sup>th</sup> September 2000.

The deceased was traveling as a fare paying passenger in motor vehicle No. KAC 456 M Isuzu Minibus registered and owned by the defendant and driven by his authorized driver/agent or employee.

The eye witness PW2 Bernadette Amollo Okoth was also traveling in that vehicle. They had gone to Siaya for a funeral and were returning back to Mombasa on 25/9/00. She said that the vehicle overturned and 13 persons died including deceased who was her uncle. She said no other vehicle was involved. The driver lost control and the vehicle overturned. The deceased died instantly.

The widow was informed of the accident. She arranged for the funeral by buying a coffin at shs.18,000/= as exhibited in Exhibit 3. She purchased suit and clothing shs.4,800/=..... Exhibit 4. She paid mortuary fees shs.3,500/=. She said she spend total of shs.30,000/= and that other receipts were lost during the funeral. She also purchased police abstract form shs.100/=. She also said she paid advocate shs.10,000/= to obtain Letters of Administration to her husband's estate. In total she claimed shs.40,100/= special damages.

On the issue of dependency she said she had never worked during her marriage and that she and her seven children depended wholly on her husband for maintenance and upkeep. Her husband was working with the Telecom Company as mechanic earning shs.19,410/= per month at the time of death. She did exhibit his pay slip for the month of March 2000.

The widow said she got shs.13,000/= for house.

Keeping an examination at the pay slip shows that the deceased had several deductions and for the month of March 2000 he received net pay of shs.11,043.85.

In his submissions the counsel proposed shs.2,005,020/=. Using the formula salary 15,000/= x12 months x 14 years at the time of death the deceased he was aged 51 years. For loss of expectation of life he proposed 100,000/= and for pain and suffering he proposed shs.10,000/=.

This suit was not defended. After considering the evidence offered I find that the liability is on 100% basis. There being no contradictory evidence on loss of expectation of life the deceased was 51 at time of death and was due to retire at 55. He was an engineer and could easily have got himself busy in the private sector. I find that the sum of shs.100,000/= is a reasonable award on this claim of loss of expectation of life. On the issue of pain and suffering it is clear he died instantly and therefore the award should be minimal. I find a sum of 2,000/= to be adequate in the circumstances.

On special damages I find shs.22,900/= supported by exhibits. The balance 17,200/= is also said to be funeral expenses receipts of which were not produced but said to have been lost at the funeral. It is true that during the funeral there are always some expenses incurred and it may not be possible to keep receipts. There is normally food consumed by mourners and other such expenses incurred because of our customary ways of dealing with burials. Acknowledging this I consider that a reasonable allowance should be made even if no receipts were produced. In this case I consider sum of shs.5000/= should be allowed for such expenses. The special damages awarded is therefore shs.27,900/=.

On the issue of dependency it is proved that the deceased was earning shs.19,410/= however it is not clear which portion he spent on his family. According to the pay slip exhibited he had a large number of deductions amounting to shs.8306.15 apart from statutory deductions. It appears he had loans to purchase furniture and fridge for family and medical items presumably for family. I find that in addition to the rent he paid of shs.2,000/= . He must have been paying school fees for all his school going children at the time of his death. Out of gross 19,410/= the statutory deductions have to be made before coming to his net income of shs.17,447/= (19410 – 1963).

The deceased must have spend 2/3 of his money on his large family for the feeding, educating and housing and medical fees and other necessity and one third thereof on his own personal needs.

The other item to be considered is the length of time this man could have continued to earn that amount of money in the Civil Service, there is compulsory retirement at the age of 55 years. The remaining years of employment were only 4. Considering that he would have moved into private sector as his wife said he had a garage opened to operate on retirement. One can say taking all other considerations of uncertainty in life that he had another five years after retirement . In the circumstances loss of dependency should be calculated at 9 years x  $\frac{2}{3}$  x 12 = 17467/= yielding shs1.046,820/=.

I therefore find the plaintiff claim as follows:

For pain and suffering	Kshs. 2,000
Loss of expectation	Kshs. 100,000
Special damages	Kshs. 28,900
Dependency	Kshs. <u>1,046,820</u>
Total	Kshs. <u>1,176,720.</u>

Judgment is entered against the defendant in the sum of the total shs.1.176,720/- plus interest and costs.

**Dated this 11<sup>th</sup> day of August, 2003.**

**JOYCE KHAMINWA**

JUDGE