



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 99 OF 2001

ANGELINA SILA MUIA PLAINTIFF

V E R S U S

MOTHERS FAVOURITE LTD. DEFENDANT

JUDGMENT

The plaintiff is the legal representative of Alexander Sila Muiya (deceased). She is also the widow of the deceased.

She brought this suit under Law Reform Act and fatal Accidents Act. She gave evidence and said the deceased was working as a mechanic for defendant since 1996. On 13.12.98 she was in Nairobi when she was informed by person that her husband had died on the night of 12.12.98 in Mombasa. She came. She was informed that the deceased was traveling to work in motor vehicle KAH 810M when the vehicle had an accident and the deceased died instantly. She produced, Burial Permit, Certificate of death, Police Abstract.

She testified that she had three children aged between 10-3 and the family depended 100% on the deceased. At the time of death the deceased was aged 25 years and was earning shs. 4920/-. She said she paid shs. 3500/- to obtain the grant of representation and that she spent 15,000/- on funeral expenses.

The plaintiff also called a witness PC. Munyao No. 63578 who produced police investigation file concerning the accident on vehicle KAH 810m. He obtained the file which was handed to him from PC. Kiarie who was retired.

The witness said that as per record the accident took place on 12.12.98 at 7.45 a.m. The report was received in the office at 11.30 a.m. same day. The vehicle rolled and left the road and landed into a ditch. Two victims were found dead and one died at the hospital. The distance from the road to where the vehicle was found was 49 metres and the bodies were scattered around.

The conclusion was that the driver was speeding. He died in the accident. Postmortem report of the deceased body was made and is in police file together with original police abstract report. No defence was offered and neither advocate nor the defendants turned up at the hearing.

The counsel for the plaintiff did not offer any submissions. He chose to leave everything to the wisdom of the court.

Upon perusing the evidence offered particularly that of PW2 I am satisfied that the driver of the

defendants motor vehicle KAH 810M was negligent in the manner he drove the vehicle that morning. He was over speeding causing the vehicle to roll over and was unable to control the vehicle so as to avoid the accident in which he himself died.

I find that the defendant was vicariously liable in the circumstances on 100% basis. I have perused the statement of defence filed by the defendant denying the occurrence of accident and negligence and that demand before action was not made. This defence is not supported by any evidence. The evidence of PW2 confirms the accident occurred and that the manner in which the scene was found points to negligent and careless driving of the driver. The plaintiff has proved that a letter of demand was issued by her advocate and I find that the plaintiff has proved her case on a balance of probabilities.

On the issue of quantum I find the special damages claimed and pleaded shs. 3500/- proved as the grant was produced in court and this is reasonable charge. For police abstract the form shows that shs. 100/- has to be paid before it is issued. I am satisfied that this expense was incurred and I allow both items totaling shs. 3600/- as pleaded. Funeral expenses were not pleaded or proved, I make no award on the claim. On the issue of claim for pain and suffering before death there is no evidence that the deceased suffered at all. Plaintiff said death was instant. No award is made on this claim. On the issue of loss of expectation of life the deceased died at the young age of 25 years and by his death his estate has suffered loss. I consider an award of 100,000/- to be adequate.

On the issue of dependency I find that the deceased being aged 25 years could have lived for a reasonable productive period before the retiring age of 55 years. I, therefore find that after taking into account of all uncertainties of life a multiplier of 25 is appropriate. His monthly salary is said to have been shs. 4970/-. The defendant does not deny this which he should know if not correct as he had all the records as the employer of deceased. I, therefore, shall proceed on the footing that the monthly salary was shs. 4970/- as I find the evidence of the plaintiff quite truthful. The deceased being a young man of 25 years was spending some of that income for his personal use. However he had 3 young children and a wife and he must have spent a larger sum of money supporting them. I find therefore, the dependency of his family was 2/3 of his salary.

The dependency, therefore, can be calculated thus $\frac{2}{3} \times 4929 \times 25 \times 12$ total shs. 984, 000/-.

On the whole the award is thus:

Special damages	shs. 3600.00
Loss of expectation of life	shs. 100.000.00
Dependency	<u>sh 984.000.00</u>
Total	1.087.600.00
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Judgment is therefore entered for plaintiff on the sum of Shs. 1.087.600/- plus costs and interest.

Dated this day of 17th June, 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE

Read in presence of Mr. Mutisya on 17.6.2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE