



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO.4 OF 1999 RD

JOSEPH MUTURIA M'LIBIYO.....PLAINTIFF

=V E R S U S=

PATRICK NJOROGE GATHOGO.....DEFENDANT

JUDGMENT OF COURT

This suit was filed by the Plaintiff as a personal representative of the deceased one M'Mucheke Mabuange who was on 8th May, 1998 knocked down by a motor vehicle KSH 505 and died on the same day. The accident took place along Haile Sellasie Avenue. The motor vehicle was being driven by a person employed by the defendant, the latter being also the registered owner of the said motor vehicle. Apart from the Plaintiff seeking damages for the estate of the deceased he also did so on behalf of the deceased's dependants. When the defendant was served with the summons to enter appearance, he failed to file the same. Nor did he file any defence. As a result an interlocutory judgment was entered on 26.6.2000 for the Plaintiff who later set the case for a formal proof on 15th February, 2001. Before the case went into a hearing, the Plaintiff with the leave of this court, amended the plaint by stating that the words "making a profit of Kshs.2000/- per day" be added to paragraph five.

The formal proof was partly heard by Waki, J. and the final evidence was recorded by me. Thereafter the counsel for the Plaintiff was allowed to file his written submission on or before 14th February, 2002. I have now considered the evidence on the record and the submissions by Plaintiff's counsel.

The summary of facts are as follows – that the deceased M'Mucheke M'Abuange was walking along the pavement of Haile Sellasie Avenue on 8.5.1998 when motor vehicle registration number KSH 505 was driven off the road to the pavement. There it knocked the deceased down and caused serious injuries on him, and from those injuries, he died. The deceased was 66 years old and unmarried. His only relative at the time, and at the time when this case was finally heard was the Plaintiff Joseph Muturia M'Libiyo who himself is 56 years old. The latter took out a Limited Grant of Letters of Administration claiming for the estate of the deceased and for himself as the only dependant. He brought the claim under the Fatal Accidents Act and under Law Reform Act.

It is not in dispute that the deceased was taken to hospital soon after the accident but died by the time of arrival. That means that if he suffered pain he did not endure under such pain for long. I think Kshs.10,000/- for pain and suffering would be appropriate.

The Plaintiff sought for Kshs.57,115/- as funeral expenses. He showed receipts for several of the claims. I notice that the cementing of the grave at Kisauni cost Kshs.12,000/-, mortuary fees costs Kshs.400/-, the coffin costs Kshs.2500/-. I also noticed from the records submitted as exhibits in support of the case that the deceased was buried in Kisauni Cemetery in Mombasa. Police Abstract cost Kshs.100/- and Kshs.215/- was cemetery charge. I am therefore prepared to award the above sums which

all add up to Kshs.15,365/- being the special damages. The Plaintiff claims another Kshs.42,000/- being in relation to what he claims to have paid in the purported hire of mini buses. He did not convince this court that he really had such big sums to spend. Furthermore it is not convincing that he spent such a big sum, even if we assume he could raise it, to hire vehicles from one part of Mombasa to another. Doing the best I can I would award as a vehicle hire expense, a reasonable sum of Kshs.5000/-. Add to this Kshs.100/- Police Abstract and Kshs.50/- for burial permit. The total is a sum of Kshs.20,315/- under this heading of funeral expenses.

The deceased who was 66 years old and apparently in good health, was a miraa trader. The Plaintiff gave evidence to the effect that he made Kshs.2000/- per day. This in my view is a little on the higher side. I think Kshs.600/- net profit per day would be more reasonable and acceptable in a small business such as retail miraa business that the deceased was conducting. This would make a net income of Kshs.18,000/- per month. In the circumstances of this case I consider the multiplier of 8 years to be proper and reasonable. Of this net income the deceased must have spent 2/ 3 of it in living expenses for himself and his brother the Plaintiff who according to the evidence on record, resided with him. This left him with a net sum of Kshs.6000/- p.m. as a surplus. Loss of dependency would therefore come to $Kshs.6000 \times 8 \times 12 = 575,000/-$. I will award Kshs.70,000 as loss of expectation of life.

The final award will therefore be as follows:-

Pain & suffering	Kshs. 10,000.00
Funeral expenses	Kshs. 20,365.00
Loss of Expectation of life	Kshs. 70,000.00
Loss of dependency	Kshs.576,000.00
Total	Kshs.676,365.00

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I accordingly award a total sum of Kshs.676,365/- as general and special damages as aforesaid. The Plaintiff shall also have costs of the suit and interest at court rates.

I accordingly so order.

Dated and delivered at Mombasa this 12th day of June, 2002.

D. A. ONYANCHA

J U D G E

Delivered in the presence of:-

Makioto - for Plaintiff