



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

H.C.CIVIL CASE NO.2576 OF 1997

JOSEPH WESONGA OUNDO PLAINTIFF

VESUS

RASHID MBARUK T/A

TAWFIQ SERVICES DEFENDANTS

JUDGMENT

The Plaintiff brings this action as the personal representative of the case Coroline Anyango Wesonga who died in a traffic accident which occurred on the 28th June, 1995 whilst traveling as fare paying passenger in vehicle Regis No .KAD 038J along the Eldoret Nauru Road.

The Defendant in its Defence Advocate the fact of the accident but allege it was caused by the negligence of an unknown lorry as particularized in the Defence.

The Defendant's Advocate on the 9th October, 2002 asked for leave to cross examine the Plaintiff and the matter was stood over to the 22/10/2002 when the Defendants advocates did not appear. The matter was then stood over to the 29th October, 2002 for submissions and a hearing notice to the Defendant was issued but again the Defendant's advocate did not appear.

I accept the deceased was a fare-paying passenger in the Defendant's vehicle.

In its Defence the Defendant allege that the accident was caused solely or substantially constituted to by the driver of an unknown lorry.

The particulars of negligence are as follows

- (a) Driving at a speed which was excessive in the circumstances**
- (b) Driving without due care and attention**
- (c) Failing to keep any or any proper lookout.**
- (d) Failing to have any regard for the safety and welfare of the passengers he was carrying.**
- (e) Allowing and/or causing motor vehicle registration number KAD 038J to be involved in an accident.**
- (f) Failing to brake, to slow down, to swerve or in any way manage, control and/or handle the**

said motor vehicle as to avoid the accident.

From this it appears the lorry was stationery. The Defendant admitted that the accident occurred.

In my view the Defendants driver was if not wholly at least in part to blame for the accident. It is notorious in Kenya that unlighted vehicles may be left in the road. A careful driver has therefore to drive within the stopping distance of its light. This the defendant's driver clearly failed to do. I find the Defendants liable for the accident.

So far as the death of the deceased is concerned. She was badly injured in the accident and the cause of death is said to be in the post mortem report "Acute Peritonitis due to the Post Reptured Spinal (sic) due to road traffic accident" The word Spinal should read "Spleen" and is a typing error.

Dr. Owinga gave evidence and adduced in evidence his reports of the 8th March, 1996 and 7/2/2002. the deceased died on the 23rd September, 1999 over four years after the accident. I accept however that the deceased's spleen was damaged in the accident and eventually led to her death was as a result of the traffic accident.

In the result I award a sum of Shs.70,000/= by way of damages and the Law Reform Act.

The deceased suffered for a number of years after the accident and I award a sum of Shs.200,000/= in respect of the pain and suffering and loss of amenities of life. The deceased was a young girl of 21 at the time of the accident and was still studying. She did not contribute to her parents tenancies as she was not earning. She was doing well in school and wanted to be a doctor or lawyer. The father said that by her death he had lost a lot. Where a young person dies is different to qualify a preliminary loss. Nevertheless a court is entitled to award something for the loss of the child services to its parents in this case I award a sum of Shs.50,000/= With regard to special I allow the sum of shs.183,465=00 as supported by receipts.

The Plaintiff will have the costs of the suit and interest as prayed in the plaint at court rates.

Dated and delivered at Nairobi this 19th day of November, 2002

P.J. RANSLEY
COMMISSIONER OF ASSIZE