



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
CIVIL CASE NO. 3215 OF 1997
DORCAS AYIETA AMUNGA PLAINTIFF
VERSUS
JOHALI BAYA SALIM & ANOTHER DEFENDANT

J U D G M E N T

The 1st defendant was the driver of a matatu motor vehicle registration No. KAG 279L. The 2nd defendant is the owner of the said vehicle.

They were both served by the plaintiff who filed this court case seeking Special and General Damages under the Law Reform & Fatal Accidents Act.

Both defendants failed to enter appearance and file defence.

Interlocutory judgement was entered against both of them on the 1st of March 1999.

The suit was set down for assessment of damages. The facts of the plaintiff's case is that she claims that she married the deceased in this case. They had one child.

On the 2.8.96 at about 9.30 a.m. she was travelling on a motor cycle which was being driven by the deceased. The said cycle was knocked down by the 1st defendant driving the vehicle.

The deceased was rushed to hospital where he died.

The plaintiff was able to show that she holds a limited grant to the deceased estate for purposes of prosecuting this suit dated the 29.1.97.

She also produced a police abstract report and the lower court proceedings of the Traffic Case No. 845/96. She was unable to show proof of marriage and children through her evidence. The advocate for the defendant stated that there was no proof that the plaintiff was a wife as such she cannot hold the letters of grant.

Anyone is permitted to hold the letters of grant save that priority is given to a wife where the deceased is a male person and has died intestate. I am satisfied that the plaintiff has locus in this matter to bring the suit before the court.

The advocate for the plaintiff stated that the following awards would be reasonable to make.

Loss of expectancy of life	Kshs. 80,000.00
Pain and suffering	Kshs. 20,000.00
Loss of dependency	Kshs. 1,035,000.00

The advocate for the defendant stated that the salary of Kshs. 5,000/- had not been proved. Even if it had, it can only be 1/2 that amount for the deceased to be able to support his family.

I note that when one has a salary there are deductions such as Income Tax, and statutory deductions. In this instance I would compute the salary at 3,000/- taking into account that 20% or there about would be statutory deductions.

The plaint reflects the salary at around Kshs. 4,000/= and not Kshs. 5,000/-.

As to the multiplier it shows that proof of age has not been shown. The advocate for the defendants states she makes no recommendation here.

The advocate for the plaintiff prays for 20 years.

In fact all her authorities are based on the issue of multiplier.

These are the cases of Kiiru Migato & another H.C.C.C. 35/85 Pauline Kulola Mwadime v. Duncan Mwandago Mwikamba H.C.C.C. 2774/92, Peter Orinda Caipha v. D.M. Transporter Ltd. H.C.C.C. 3127/86.

It seems a multiplier between 18-20 years had been used.

The advocate for the defendant stated that she concedes the deceased may have been alone and may have suffered pain. She recommended 10,000/- for pain suffering and loss of amenities.

Judgment on liability had been entered. I find in this case the negligence and proof of the accident occurring and the deceased being taken to hospital are contained in the lower court proceedings.

This is under section 34 of the Evidence Act whereby those judicial proceedings are admissible in these proceedings.

In assessing the General damages.

For pain suffering and loss of amenities I would compute Ksh. 20,000. The deceased had been in pain until the evening before he died.

Loss of expectancy of life I find Kshs. 50,000.00 as reasonable. As to the loss of dependency I should accept the age of 32 years as pleaded in the plaint.

The plaintiff would have retired as a Civil Servant at age 55 years. The multiplier of 20 years is reasonable.

The salary of 3,000/- x 12 x 20 x 2/3 = Kshs. 480,000/-.

There was a problem in this case on the rules of evidence on the production of copies to court which if produced must be certified.

I do note from Section 35 of the Evidence Act that may allow documents if, when they are to be

obtained, the distance is far.

For these reasons I would make award in this case.

In summary

General damages

Pain suffering and loss of amenities - Ksh. 20,000.00

Loss of expectancy of life Ksh. 50,000.00

Loss of dependency Kshs. 480,000.00

550,000.00

Special Damages are dismissed as having not proven.

I award costs of this suit to the plaintiff and interest from reading of the Judgment.

I am required to apportion the Kshs. 480,000 which I do.

Dorcas Ayieta Amunga Ksh. 180,000

Esther Care Nageta Ksh. 300,000

Ksh. 480,000

Dated this 29th day of January, 2001 at Nairobi

M. A. ANG'AWA

JUDGE