

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

**AT NAIROBI
CIVIL CASE NO. 2197 OF 1998**

CECILIA RACHIER & ESTHER OLWALO.....PLAINTIFFS

VERSUS

FLOYD PETER RAVAL.....DEFENDANT

JUDGMENT

On 1/3/1994, while walking along Mbagathi Way Nairobi, the deceased was knocked down by the defendant's vehicle, registration Number KMT 537. He died instantly.

The plaintiffs, who are his wife and mother, proceeded to obtain Letters of Administrations of his Estate of the deceased. They then filed this suit, whose cause of action arose out of negligence and recklessness of the defendant.

The defendant though served failed to enter appearance and file his defence, and interlocutory judgment was entered on 11/10/2000, and the case was set down for formal proof. The 1st plaintiff adduced evidence to the effect that the deceased who was her husband, died as a result of the defendant's negligence, carelessness and recklessness.

He was survived by the plaintiffs and by his two children who were then aged 8 and 4 years. The wife has not remarried.

The 1st plaintiff informed the court that he was the sole supporter for her and the children. Although it is averred in the plaint, that he was survived by his mother and as one would expected that he supported her, no evidence was adduced to this effect by the 1st plaintiff, nor did she give any sort of indication that he also supported his mother. From the evidence that was placed before, I am satisfied that the defendant caused the death of the deceased and that he is liable in damages. In any event the suit was not defended.

Counsel submitted that the deceased could have worked up to the age of 70 years, and that it would be proper to adopt a multiplier of 26. I have taken note of the fact that the deceased was a healthy person and under normal circumstances, it is likely that he would have continued to earn a stable income for several years up to retirement at the age of 55 years. However, one can not rule out the vicissitudes of life and the fact that he would have retired earlier than expected. I do therefore adopt a multiplier as 17.

At the time of his death, the plaintiff was aged 36 years and was gainfully employed by the Ministry of Co-operative as a Co-operative officer. He was a monthly basic salary of shs.7,115.00. His net pay was shs.2449.40. He had no other source of income. From the said income I would deduct a sum of shs. 700.00 for Income Tax and other statutory deductions. I therefore award a sum of shs. 6415.00
 $6415.00 \times 17 \times \frac{2}{3} = \text{shs.}872,440.00.$

I do also award as sum of shs. 50,000.00 for pain and suffering as the deceased died instantly upon being hit by the subject vehicle.

I do also award shs. 60,000.00 for loss of expectation of life. For loss of dependency, I award a sum of shs.200,000.00 to each of the two children who were left without a father at a tender age, while to the wife who became a widow at an early age I award Shs.100,000.00. Although special damages were

neither specifically pleaded and nor were they strictly proven, I have however taken into account the fact that funerals are an expensive affair and for a man of the status of the deceased, a sum of shs. 30,000.00 would be reasonable, and I award the sum under that heading.

I therefore enter judgment for the plaintiffs against the defendant in the sum of shs.1,467,440.00 together with interest thereon at court rates until payment in full. The plaintiffs shall also have the costs of this suit and interest thereon at court rates.

Dated and delivered at Nairobi this 18th day of January 2001

JEANNE GACHECHE

COMMISSIONER OF ASSIZE

Delivered in the presence of Mr. Okeyo for the Plaintiff