



1. Collision between two vehicles
2. Fatal accident
3. Passenger, male adult 29 years old
4. Liability
5. Quantum

General Damages

Law reform – abandoned

Fatal accidents act: 700,000/-

Special Damages (agreed) Ksh.10,150/-

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1456 OF 2000

JANE WANGUI NJENGA PLAINTIFF

VERSUS

ELDORET BUS SERVICES LTD. DEFENDANTS

JUDGMENT

This suit was originally filed at the Milimani Commercial courts. It was transferred from the subordinate courts to this High court (Osiero J 29.10.99).

When the suit came for trial on the 27.02.01 I noted that the advocate for the defendant failed to attend court. The defendant was also absent. This suit proceeded for hearing under order 9b r 3 CPR.

The parties had agreed on Special Damages to be awarded to the plaintiff by consent at Ksh.10,150,-. The issue in dispute was that of liability and quantum. In brief,

The plaintiff is the widow of one Peter Njenga Kamau. She sues the defendant Eldoret Bus Services Ltd for the wrongful death of her husband under the Fatal Accidents act. The plaintiff abandoned the claim under the Law Reform act as she took out Limited letters of grant ad colligenda bona from Kiambu courts. The Kiambu courts have no powers nor jurisdiction to issue the said Limited grant ad colligenda bona. It is only Nairobi, Mombasa, Nyeri, Nakuru and Kisumu only who may issue the said letters (See the succession act Cap.160 Probate and administration rules).

Liability:

The plaintiff called PW2 as her witness. He claimed that the matatu transport had finished. He wished to travel home and found a small vehicle that was willing to take him and two others. He identified the two as David Muchiri and Njenga (the deceased)

As they were going to Biririoni, a place along the Naivasha – Nairobi road, a bus was overtaking another vehicle at high speed. It was unable to go back to its lane and therefore collided with the vehicle they were traveling in vehicle eg. KMH 953.

PW2 stated he sustained injuries. He came to discover that Njenga had died.

I find that the plaintiff has established negligence the part of the defendants. No third party notice was taken out by them. I would hold that the defendants are liable for the said accident at 100%.

Quantum

The plaintiff having abandoned her claim under the Law Reform Act now relied on the Fatal Accidents Act. She produced a letter from the employer outlying the wage earned by the deceased at Ksh.5,000/-. The deceased was employed at a night club as a cashier. He was aged 29 years at the time of death. He was depended on by a wife and two children prior to his death.

The plaintiff produced two birth certificates to prove the children belonged to the deceased.

The advocate for the plaintiff recommended a multiplier of 30 years namely, 59 years as a possible date of retirement.

I find that the plaintiff must prove that she was dependent on the deceased together with her children.

She stated that she was a farmer and housewife and had no employment. I do not believe her evidence that the deceased sued to give her Ksh.4000/- per month. He seems to have other commitments according to the chiefs letter.

There was also the issue of the multiplier. This means in fact given as 30 years which was rather on the high side.

The authority of:-

Kayugira Vs Tergut

Hccc 635/91

Awarded a multiplier of 22 years for a 33 year old male adult.

In this particular case I believe a fair multiplier is 20 years old.

Thus $20 \text{ years} \times 12 \times 5,000/- \times 2/3 = \text{Ksh.}800,000/-$.

The plaintiff has no marriage certificate only a note from the chief stating that she is married. The law of the land requires to change to provide each woman with a marriage certificate.

In this case I shall take the plaintiff to be a widow of the deceased.

I would be required to apportion the above head of damages on loss of dependency amongst the dependents.

I hereby discount the sum of Ksh.800,000/- in the event the widow remarries and to cater for the lump sum payment that would be made to her. I do so by Ksh.100,000/-. This gives a sum of ksh.700,000/-.

Appointment:-

Jane Wangui Njenga Ksh.100,000/-

George Kamau (son) Ksh.300,000/-

Antony Gitau (son) Ksh.300,000/-

Ksh.700,000/-

I order that the sum of Ksh.300,000 respectively for the two sons be invested in an interest earning account with the Housing Finance Company until the two minors attain the age of 18 years old. The widow is entitled to the interest per annum to be used for the up keep of the said children.

I award costs to the plaintiff. I award interest from the date of trial.

In Summary:

- 1) Male adult aged 29 years
- 2) Fatal accident
- 3) Liability 100% against defendant
- 4) Quantum

Law Reform – Abandoned.

Fatal Accident Act Ksh.700,000/-

Special Damages Ksh.10,150/-

(agreed)

Ksh.710,150/-

Dated this 28th day of February, 2001 at Nairobi.

M.A. ANG'AWA

JUDGE