



1. Pedestrian accident
2. Female aged 10 years old
3. Interlocutory judgment
4. Quantum
General Damages:-
 - i) Pain & suffering Ksh .10,000/-
 - ii) Loss of expectation of life Ksh .70,000/-
 - iii) Lost years Ksh.100,000/-
 - V) Special Damages – Nil no proved

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO.2225 OF 1997**

ALI ELMY SANEY 1 ST PLAINTIFF

HALIMA ABDI RAHAMAN 2ND PLAINTIFF

VERSUS

MOHAMED BAKARI 1ST DEFENDANT

ALI HARAMEIN ISLAMIC FOUNDATION 2ND DEFENDANT

JUDGMENT

Mohamed Khalif Sambul is a businessman at Garissa town. On the 12.9.94 at about 10.00 a.m., he was walking along Harambee Road in Garissa, when he spotted the defendants vehicle registration number KAD 47A a Toyota Hilux being driven at a high speed. He saw a school girl crossing the road. When the girl saw that the vehicle was coming at a high speed she stood still. The vehicle knocked the girl then overturned. Mr. Sambul then took the girl to hospital. She died later.

He came to know her father was PW1 Ali Elmy Sane. PW1 sued the defendants. They failed to enter appearance or file defence. An interlocutory judgment was duly entered against them.

The issue before this court is one of assessment of damages. The advocate for the plaintiff claimed that an award for pain and suffering be Ksh.10,000/-.

Only a claim under the Law Reform and Fatal accident act was pleaded. Apart from special damages,

Loss of expectation of life Ksh.70,000/-

Lost years Ksh.400,000/-

Special damages Ksh. 50,000/-

I would find that under the Law Reform Act Loss of expectation of life in the sum of Ksh.70,000/- is acceptable and conventional to award.

For pain and suffering, the deceased died after being taken to hospital. I compute at Ksh10,000/-. In order to prove lost year the plaintiff must be able to show what type of income the deceased may have earned. No such evidence was given by the plaintiff as was in a case where the deceased was a male aged 17 years old. He was a student and expecting to be an architect.

In this case, no evidence was led to show how much the deceased would have probably achieve in her life. I would note whatever status she may achieve to be a reasonable sum of Ksh.100,000/- should be adequate.

Under the Fatal Accident Act, parents are entitled to claim for dependency from their children. The deceased herein was a minor. She was in fact dependent on the father. I would dismiss the claim. I do not accept the claim for special damages. It was never proved. I dismiss the same. I enter judgment for the plaintiff as follows:-

In Summary:-

- 1) Female aged 10 years old
 - 2) Pedestrian – motor vehicle accident
 - 3) Liability 100% (interlocutory judgment)
 - 4) Quantum:
General Damages
 - i) Pain and suffering Ksh.10,000/-
 - ii) Loss of expectation of life Ksh.70,000/-
 - iii) Lost years Ksh.100,000/-Special damages Nil
Not proved
Fatal accident Nil_
-
- Ksh.180,000/-

I award costs to the plaintiff and interest from the date of this judgment.

Dated the 3rd of May 2001 at Nairobi.

M.A. ANG'AWA

JUDGE