



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1738 OF 1996

MOSES NGARACHU MUHORIA ----- PLAINTIFF

VERSUS

1. D.K. GITHENYA)

2. DIXON MACHARIA KAMAU) ----- DEFENDANTS

JUDGMENT

The facts of the case which are no longer disputed as the parties have now entered a consent judgment, are that on 12th January 1995, motor vehicle registration number KYT 307 was involved in an accident at a place near Sagana. It was then owned by the 1st defendant and driven at the material time by his authorized driver, the 2nd defendant.

James Munene Ngarachu, who was traveling in the said vehicle as a fare-paying passenger, sustained fatal injuries, as a result of which he died on the same day.

His father having obtained a Limited Grant of Letter of Administration brought this suit against the two defendants under The Fatal Accidents Act and The Law Reform Act.

He claims that the accident arose due to the 2nd defendant's negligence particulars of which have been enumerated in the plaint. As stated earlier, on 9th May 2001, prior to the hearing of the suit, the parties recorded a consent order, and judgment was entered at 85% to the plaintiff, and the matter proceeded on quantum.

The plaintiff's claim against the defendants is for special damages, general damages interest on the above and costs of the suit. The plaintiff led evidence in support of his claim. It was his testimony that at the time of his death, James Munene Ngarachu was single. He was aged 25 and was employed as a court clerk by a firm of advocates at a monthly salary of Shs.7500.00. The pay-slip that was produced as an exhibit did not indicate that his salary had been deducted with personal tax and other statutory deductions. In view of the fact that the said deductions are mandatory, and should have been deducted, I shall proceed on the assumption that, was it done, his net pay would have been Shs. 6800.00.

The plaintiff who stated that he had previously been in employment but was now a subsistence farmer with no land of his own, testified that he had seven other children, who were all younger than the deceased. While two of them, being girls were already married, while five were then in school. The deceased, who lived away in Thika, would send him a monthly sum of Shs.4000.00 for maintenance and school fees.

Though he stated that he had been able to educate his children with farm proceeds, he however testified that all but two had dropped out of school after the death of his eldest child.

I am convinced that the deceased a son, and being the first child was under a responsibility both moral and social, to maintain not only his parents, but also his siblings, for whom he would be expected to pay school fees, except for the two who were married. The responsibilities would have even weighed more heavily upon him, after the plaintiff's retirement from gainful employment in December 1994.

It should not escape my mind that a single man of his age, who lived away from home, would have to meet his rental payments, basic necessities of life and would also set aside some money not only for leisure but also, for savings. In my estimation, this would account for about ½ of his net pay. He would therefore have set aside and given his father, who was still in employment then, a monthly sum of shs.3,400.00. I would thus base my findings on a multiplicand of Shs.40,800.00.

At the material time the plaintiff was 48 years old. At the material time only two of his children in school. It would be safe to assume that his dependency on his son would diminish significantly in time. It would be expected that all being well, the deceased would have provided for them only up to the age of maturity. It is also worthy of note that at the material time, the youngest sibling was twelve years old. The plaintiff did testify that none of his children had gone before primary school level. That would tend to support the fact that, he would be expected to have started his own family, which would in turn reduce his level of support for the plaintiff.

Having taken the above into account, and also the vicissitudes of life I would thus apply a multiplier of 15 thus arriving at a sum of shs.612,000.00. I also award a sum of Shs.15,000.00 only for funeral expenses, due to the fact he admitted that family members and well wishers had assisted him. I do award a further sum of Shs.150.00 for the death certificate and Police Abstract Report for though in most instances receipts are not issued, I do take judicial notice of the fact that the sum payable before one can obtain the same.

I do grant a sum of Shs.80,000.00 for loss of expectation of life and Shs.70,000.00 for pain and suffering. This should therefore amount to:

Special damages	shs 15,150.00
Loss of dependency	shs 612,000.00
Los of expectation of life	shs 80,000.00
Pain and suffering	shs 70,000.00
	Shs 777,150.00

I also award him costs of the suit. Interest on special damages shall accrue from date of filing suit while interest on general damages shall accrue from today. The plaintiff shall however be entitled to only 85% of the above as per the consent judgment.

All interest shall accrue on the award at court rates until payment in full.

Dated and delivered at Nairobi, this 27th day of June 2001.

JEANNE W. GACHECHE

COMMISSIONER OF ASSIZE

27.6.2001

Delivered in the presence of:

Mr. Keige for the Plaintiff

Mr. Mayanya for the Defendant