



1. Motor vehicle accident
2. deceased, female passenger aged 17 years in 1992
3. Fatal accident
4. Liability 100% jointly and severally against the 1st and 3rd defendant.
5. Quantum

- a) Law Reform – nil not proved
- b) Fatal accidents ac

Father Ksh.96,000/-

Mother Ksh.96,000/-

- c) Special Damages nil not proved.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE 2975 OF 1995

PETER ONDORO PLAINTIFF

VERSUS

ANDREW HAYANGA & OTHERS DEFENDANT

JUDGMENT

Peter Ondoro brings this suit on behalf of himself and the estate of Lillian Atieno Ondoro (now deceased). The deceased was related to him as his daughter.

On the 4.10.97 at 9.00 a.m the deceased was walking with other groups of students when they flagged down a motor vehicle Reg. Number KAB 700U. The vehicle travelled along the Bondo/Usinge road. It lost control and overturned. The students www.kenyalawreports.or.ke 2 were thrown out of the vehicle. The deceased was rushed to hospital where she later died The plaintiff on suing the 1st defendant as owner of the vehicle and the 3rd defendant as the driver, also sued the 2nd defendant as the financier.

PW 2 and 3 were students at the said school and were traveling with the deceased at the time of the accident. They were unable to know whom the owner of the vehicle or driver was. They nonetheless confirmed that an accident occurred. In their defence the 1st and 3rd defendants claimed the deceased entered the vehicle at her own risk. She jumped out of the moving vehicle leaving all the other students

there inside. The vehicle had been driven over an unknown sharp objects on the road.

The defence of the 2nd defendant is that he was merely a financier. That the vehicle has been fully paid for and transferred two years later to the 1st defendant. There was no attendance form either of the defendants No. 1 and 3.

The agreed issues between the parties can be determined as such:-

Issue No.1

The plaintiff has sued in his capacity as the personal representative of the deceased Lillian Atieno Ondoro. He sued on behalf of himself and other beneficiaries. He has failed to produce letters of administration as proof of such legal representative. As such he is entitled only to claim under the Fatal Accident Act and not the Law Reform Act. Issue

No.2

An accident did occur on or about the 4.10.92. There was no accident or evidence of an accident on 14.10.92 as stated in the agreed issue.

Issue No.3

The cause of the accident according to PW2 and 3 was speeding. The defendants 1 and 3 did not attend court to speak of the cause of the accident as outlined in their defence. As I only have the evidence of the plaintiffs witness I would find that the accident was caused by traveling at a high speed. The deceased did not contribute to her demise. There has been no evidence called that she jumped out of the vehicle.

The witness PW3 was not truthful by saying she was with the other student thrown out. If this was true she would have been injured. She sustained no injuries whilst the deceased did. **Issue No.5**

There is no evidence to the contrary that the 3rd defendant was not the driver of the said vehicle. I also find that none of the parties addressed me on this issue.

Issue No.6

Who are the beneficiaries of the estate of the deceased?

The plaintiff father to the deceased and one Benta mother to the deceased are mentioned in the plaint as dependants under the Fatal Accidents Act. It reads:-

“Section 4(1)

Every action brought by virtue of the provision of this act shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused, and shall subject to the provision of section 7, be brought by an in the name of the executor or administrator of the person deceased, and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought, and the amount so recorded after deducting the costs not recovered from the defendants, shall be divided amongst those persons in such shares as the court by its judgment shall find it direct; provided that no more then one action shall be for and in respect of the same subject matter of complaint and that every such action shall be commenced within 3 years after the death of the deceased person.”

The advocate for the 1st and 3rd defendant implied that the plaintiff was not entitled to this claim, as the deceased was not his dependant. Namely; the deceased being a minor could not to have supported her father.

Section 4 above is quite clear. The person to claim are persons who are the family of the deceased. This includes the parents. The parents are entitled to claim. How can this be done? The child's probable income and the support she may have given to her parents.

She is said to have been, wishing to be a teacher like her elder sister (who died two years later after her). I believe her support would not be there or it would diminish at the time she would get married say at 25 years old. I would compute the multiplicand at 8 years and Ksh.2000/- being the minimal wage per month.

This $8 \text{ years} \times 12 \times 2000 = \text{Ksh.192,000/-}$. I am required to apportion this amongst the family members. They are only the parents.

Peter Ondoro father Ksh.96,000/-

Benta Miyara Ondoro mother Ksh.96,000/-

Ksh.192,000/-

I do not discount this because there was no claim that succeeded under the Law Reform act (See the case of Davis & Another V Pawell duffryn Associated Colliers Ltd (1942) IALL ER unnoted page 657).

The other issue that I require to address myself by way of Obiter dictum is that under section 7 of the Fatal Accident Act. A person who is beneficially interested in the estate of the deceased whereby the deceased death was caused by a wrongful death, that persons may bring suit and need not acquire letter of administration. I make my award in the light of this.

I wish to state that in Issue No.7 the deceased was a student prior to the accident. I have only the oral evidence of the witnesses.

Issue No.10 concerns the second defendant. I note that the said 2nd defendant called evidence to show that their role in this matter was merely as a financier. The plaintiff should not have sued them. The agreement they had was one of "hire". In such instance, once they have hired out the vehicle on hire purchase, the defendant No.1 is responsible of the same. They would not be responsible.

I would agree with this proposition forwarded by the 2nd defendant. I would actually dismiss the suit against them. I also dismiss the claim by the plaintiff under the Law Reform Act. I would enter judgment against defendant No.1 and 3 jointly and severally. Defendant No.1 being vicariously liable for the action of his agent or servant.

I dismiss the claim on Special damages as having not been proved.

In summary:

1. Motor vehicle accident (overturned)
2. Female passenger aged 17 years
3. Fatal accident
4. Liability 100% jointly and severally against the 1st and 3rd defendant .
5. Quantum:
 - a) Law Reform nil not proved

b) Fatal Accident Act

Father - Ksh.96,000/-

Mother - Ksh.96,000/-

Ksh.192,000/-

c) Special Damages nil not proved.

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

Dated this 25th day of June 2001 at Nairobi.

M.A. ANG'AWA

JUDGE