



1. Motor vehicle accidents/pedestrian
2. Male adult aged 30 years in 1995
3. Liability agreed 60% against defendant: 40% against plaintiff
4. Quantum:
 - a) Law Reform act- abandoned
 - b) Fatal accidents Act $2765 \times 18 \times 12 \times 2/3 = \text{Ksh } 398,160/-$
 - c) Special Damages ksh.86,934/-

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 2872 OF 1996

ZADOCK KASEMBELI PLAINTIFF

VERSUS

ALBERT THANDE DEFENDANT

JUDGMENT

According to the plaint, on the 26th of September 1995 Boniface Waliaula the deceased was a pedestrian along Haile Selassie Avenue when he was knocked down by a motor vehicle registration KYN 212.

PW1 his brother received news of the accident. He came to Nairobi and found Boniface in a coma. Boniface never recovered from that coma. As a result of the injuries sustained, Boniface died.

On the 19.11.96 PW1 filed suit on behalf of the estate for the wrongful death of the deceased. The Plaint was later amended to include the particular earlier on left out.

The parties conceded that the plaintiff had no locus to bring this under the Law Reform Act. This was in fact the defendants defence. This head of damage was thereafter abandoned. What the parties agreed to determine are five issues. The one on locus has partially been settled. The plaintiff has a right to bring a case under the Fatal Accidents Act.

As to the issue on liability No.2 and 3 the parties entered into a consent judgment. This is that the plaintiff bear 40% contributory negligence whilst the defendant be liable for 60% of negligence. The deceased estate as a result of the fatal accident suffered loss under the Fatal Accidents Act. The parties agreed to 2/3rd being applied to prove that the deceased was employed by the Coffee Board of Kenya on 5.3.93. That his basic salary is 2,765/- House allowance 1,480/- and he would have overtime. The gross salary would be 5,588.05. As to the multiplicand the advocate for the plaintiff suggested this be Ksh.4,421/-.

I shall take the multiplicand of the basic salary to be Ksh.2,765/- As to the multiplier I would agree with the sum of 18 years. The deceased was aged 30 years at the time of death. He would have continued another 25 years. Due to any eventually that may have come across his life I would agree to the suggested multiplier of 18 years.

I note that the deceased was single and had no dependents. I also note that there has been no claim made under the Law Reform. As such I make no orders as to the discount. I therefore find that the deceased estate is entitled to a claim of $Ksh.2,765 \times 12 \times 18 \times 2/3 = Ksh.398,160/-$. As to that dependants there are four persons mentioned in the amended plaint. There has been no description as to who these four are. I would note one Damari Nafula Kasembeli aged 60 years. I believe if she is the mother it is her alone who is entitled to the estate together with her husband. As he is not mentioned I do not include him.

I further find that there was spoken of a son. No proof was given as to this such as a birth certificate.

I hereby am required to apportion this sum. I do so only to Damari Nafula Kasembeli as mother to the deceased. The parties entered into a consent on Special Damages as per the amended plaint for Ksh.86,934/-. I would award this. The other claim have been withdrawn. I hereby enter judgment for the plaintiff against the defendant at 60% liability.

In summary

- 1) Motor vehicle/pedestrian accident
- 2) Male adult aged 30 years in 1995
- 3) Liability agreed 60% against the defendant and 40% against the plaintiff.
- 4) Quantum:

a) Law Reform act – abandoned	
b) Fatal accidents Act. Loss of dependency $(2765/- \times 18 \times 12 \times 2/3)$ =	Ksh.398,160/-
c) Special Damages (Agreed)	Ksh.86,934/-
	Ksh.485,094/-
Less 40%	Ksh.194,037.60
Net	Ksh.291,056.40
Say	Ksh.300,000/-

I award interest on Special Damages from the date of filing suit. I award interest on General Damages from the date of this judgment. I award costs to the plaintiff.

Dated this 26th day of July 2001 at Nairobi.

M.A. ANG'AWA

JUDGE