



- 1) Motor vehicle accident/pedestrian
- 2) Male adult aged 30 years in 1990
- 3) Injuries: Fatal
- 4) Liability:- not proved
- 5) Quantum:-
 - a) Law Reform Act – abandoned
 - b) Fatal Accidents Act – (possible)
 $2000/- \times 12 \times 25 = \text{Ksh } 622,000/-$
Discounted Ksh. 22,000/-
Ksh 600,000/-

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 274 OF 1990**

PAUL GITHAIGA PLAINTIFF

VERSUS

PAUL MACHARIA MUTURI 1ST DEFENDANT

CHEGE NDIRANGU 2ND DEFENDANT

JUDGMENT

This is a fairly old case having been filed in 1990. The plaintiff, Macharia Githangu sued the two defendants for damages under the Fatal Accidents Act. This was for the wrongful death of his son, then aged 30 years, who was knocked down by a vehicle driven by the first defendant and owned by the second defendant. The plaintiffs' witness No.2 alleged that as they were walking along a road a vehicle came and knocked down the deceased.

When the case came up for hearing on the 6.11.01, the advocate for the plaintiff in her opening address stated that she was abandoning her claim under the Law Reform Act. This was because no Letters of administration was ever taken out prior to the suit being. She also seems to have abandoned Special Damages claim. This was not pleaded nor proved. She was therefore relying on the claim under the Fatal Accident Act only.

The defence called no evidence.

From the issues agreed for determination, I find that the deceased was lawfully walking along the Ol Kalou-Gilgil road. I find that PW2 stated that he was present at the time they were walking on the said road. He further stated that the motor vehicle then tried to miss a "pot hole" and instead left the road and knocked the deceased. No police abstract report was proved or established by the plaintiff. The reasons being that the defendant admitted that there was an accident. As such the police abstract need not be produced.

I find that it is essential that a police abstract be produced. That proof of an accident occurring must have been reported to the police. Alternatively, the police involved in the accident ought to have been called to give evidence on his investigations where need be.

From PW2's evidence the defendants vehicle knocked the deceased. The issue of his negligence was not proved yet was pleaded as having excessive speed, having no due care and attention swerved the vehicle fatally hitting the deceased and driving unroadworthy motor vehicle on the road. These were not fully proved by the plaintiff.

Negligence was alleged by the defendant that the deceased was the one who came out onto the road and was otherwise knocked. No witness came to give this evidence. In civil matters the law requires the defendant to state and prove his case. In his instance the defendant alleged negligence. It is he to prove it. As this is lacking the defence can be safely disregarded.

I would have computed liability at 100% against the two defendants jointly and severally. As the police abstract form was not produced the suit be and is hereby dismissed.

In the event that the plaintiff was successful in his case I would have had to see whether he was a dependant. The deceaseds sibling ages were never disclosed. They in fact were never dependants as described under section 4 of the Fatal accidents Act. The only persons entitled are his parents. No mention of wife or children has been made.

The plaintiff is said to be a mason. No employer or ex employer confirmed this in writing. This was verbally mentioned by PW2. A work-mate would have alternatively been called to ascertain this.

The court has no idea how much the earning were. PW1 said he would be given Ksh.5000/-. There is no indication as to how this came about.

I would have given the minimum wage of Ksh.2000/- x 12 x 25 years as a multiplier = Ksh.622,000/-.

I would have discounted this by Ksh.22,000/- say Ksh.600,000/- This sum would have been subjected to be shared equally by the father and mother to the deceased.

As it stands this suit stands dismissed with costs to the defendants.

Dated this 7th day of November, 2001at Nairobi.

M.A. ANG'AWA

JUDGE