



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 795 OF 1995

PURITY NYOKABI WACHIRA.....PLAINTIFF

-VERSUS-

JEREMIAH NTOITI KARITHO & ANOTHER.....DEFENDANT

JUDGMENT

BACKGROUND

The plaintiff has sued the defendants as the Administrators of the Estate of the late JAMES MWANGI WACHIRA. The claim arises out of an accident which occurred on 8.4.93 and the plaintiff alleges that the accident was due to the negligent driving of the first defendant who was the driver of the vehicle registration No. KAC 628R. The particulars of negligence alleged are contained in paragraph 7 of the plaint.

They ask for General Damages under the Fatal Accidents Act and under the Law Reform Act. In their defence, the 2nd defendant denies that he was the owner of the vehicle registration No. KAC 628R. The defendant further attributes the accident to the negligent driving of the deceased and gives particulars of the negligence in paragraph 6 of their defence. The parties have recorded a judgement on liability at 90% in favour of the plaintiff. The remaining issue to be determined is the damages payable.

Evidence

The plaintiff gave evidence that the deceased sold second hand clothes earning Shs.20,000/- per month. She was not working and depended on her husband's income. The deceased paid house rent and provided food, all totaling Shs.13,450/- per month. The deceased used to pay school fees for the children amounting to Shs.1,370/- per month. He also paid Shs.1,000/- per year for the building fund at Park Road Primary School where he used to drive them and pick them up after school and in his absence he would hire a taxi to collect them. She said that as dependants they have lost all these services following the death of her husband. PW1 Silas Kaugi gave evidence that he carried out an assessment of the vehicle registration No. KWG 224 and he prepared a report. He gave a pre accident value of Shs.200,000/- and a salvage value of Shs.30,000/- The plaintiff is asking for Shs.170,000/- as the value of the vehicle.

Damages

a) Under the Law Reform Act

Under this head I consider a figure of Shs.100,000/- as reasonable. For pain and suffering, I shall award Shs.5,000/- since the deceased seems to have died soon after the accident.

b) Under the Fatal Accident Act

The deceased was 41 years old and therefore he could have worked for another 24 years. For the assistance to the family, I shall take a figure of Shs.15,000/- It appears that the deceased was a very illustrious businessman as evidenced by the way he cared for his family and even bought a piece of land in Nyeri. I consider a multiplier of 10 years as considerate. For special damages, I shall grant the sum asked for in the plaint as I find it as a reasonable sum for funeral expenses. For the motor vehicle I accept the figure of shs.170,000/- as the value of the vehicle.

Judgment

There shall be judgment for the plaintiff as follows:

a) Under the Law Reform Act	Shs. 105,000
b) Under the Fatal Accidents Act	Shs.2,100,000
c) Value of the vehicle	Shs. 170,000
d) Special damages	Shs. 35,100
Total	Shs.2,410,100
Less 10%	Shs. 241,010
Total	Shs.2,169,090

Delivered and dated at Nairobi this 28th day of January, 2000.

KASANGA MULWA

JUDGE