



**REPUBLIC OF KENYA**

**HIGH COURT AT NIROBI (MILIMANI LAW COURTS)**

**civ case 1161 of 96**

**NEERA NATWARIAL CHELANI.....PLAINTIFF**

**-VERSUS**

**CHRISTOPHER CHEGE NDUNGU & ANOTHER.....DEFENDANT**

**JUDGEMENT**

**A. LIABILITY**

The parties in this suit have agreed between themselves on the question of liability that the FIRST defendant was 70% negligent and the deceased 30% negligent. The liability between the Plaintiff and the Defendants is agreed to be apportioned accordingly. The parties have also agreed on the issues that:

- (a) The Deceased was 20 years old at the time of the death.
- (b) The Deceased was earning a salary of Kshs 20,000/= at the time,
- (C) The Plaintiff is 52 years old.
- (d) Damages for Pain and suffering shall be Kshs 90,000/= The issue the parties could not agree and which remains for the court to determine is the question of damages payable.

**B. DAMAGES**

The Plaintiff gave evidence that on 9.8.1995 Rajesh Natwarlal Ghelani (the deceased) aged 20 years old was fatally injured in traffic accident along Enterprise Road Nairobi, when motor vehicle registration Number KSK 140 owned and driven by the deceased was involved in a collision with motor vehicle registration Number KVH 240 and KZJ 080 driven by the First Defendant. Letters of Administration were granted to the plaintiff who was the mother of the deceased in High Court of Kenya in succession cause No. HC 714 of 1965. She in her suit is asking for her own benefits under the Fatal Accidents Act and also under the Law Reform Act for :-

- (a) Pain and Suffering and
- (b) for loss of Expectation of Life.

The Plaintiff is also claiming special damages which were also agreed upon.

It is suggested by the plaintiff that a multiplier of 20 should be used in assessing the damages under the Law Reform Act.

The defendant in their submissions raised a number of issues which include challenging the plaintiffs claim for damages. All the 11 points the defendants raise amount to saying that the plaintiff did not lead evidence to show that she suffered any loss which would need to be compensated. The defendants have cited a number of authorities mostly English and Hong Kong authorities on the principles governing payment of damages under the Fatal Accidents Act. The counsel for the defendant appears to take the view that the High Court and Court of Appeal decisions on damages under the Law Reform and the Fatal Accidents Act have been wrongly decided and need to be corrected. He submits that these authorities provided the right guidance on the matter. He further contents that in Kenya the process of calculating multiplies by our courts is not only haphazard but arbitrary.

## FINDINGS

Under the Law Reform Act, the figures as suggested by the plaintiff of Ksh.10,000/- for pain and suffering and Shs.90,000/- for loss of Expectation of Life are not disputed and accordingly, I find these figures are reasonable.

Under the Fatal Accidents Act I note that the age of the plaintiff and that of the deceased are not in dispute. The defendants challenge the income of the deceased but there is no doubt that the deceased had been called from the University to manage the family business at the death of the father. Under these circumstances, I do not find Ksh.20,000/- per month as unreasonable and I accept the evidence that was the salary earned.

It was said by the plaintiff that the deceased supported her with between ksh.10,000 and Sh.15,000/- per month out of this salary.

It is normally not practical to expect the plaintiff to keep a record of how much a child gives to a parent in form of support as if such a parent expected the accident to happen and that he or she would be giving evidence. From the practical point of view the son who is unmarried would normally give bigger support to the parents than he would when married with his own family. In this case I would accept the figure of Shs.10,000/- as being a reasonable amount.

The plaintiff suggest a multiplicand of Ksh.13,333/- based on a dependency rate of 2/3 while the defendants suggest the multiplier should not be more than 1/3 of the income of the annual income of the deceased. I would accept that the deceased supported the plaintiff with a sum of ksh.10,000/- per month which is  $\frac{1}{2}$  of the monthly earnings.

## Multiplier

The evidence shows that the deceased was aged 20 years at the time of the accident and it is assumed that he was going to get married and thereby assume more responsibilities to his own family and probably reduce the amount he gave in support to his own mother. The mother was 46 years old at the time of the accident and it can be assumed that she could live up to 65 years. In this case I would accept a multiplier of 20 as being reasonable.

## JUDGEMENT

There will be judgement for the plaintiff as follows:

(a) Under the Law Reform Act

(1) Damages for pain and suffering Shs. 10,000/-

(2) Loss of expectation of life Shs. 90,000/-

(b) Under the Fatal Accident Act

1/2 x 20,000 x 12 x 20 Shs.2,400,000/-

© Special Damages Shs. 78,692/50

Total Shs.2,578,692/50

Less 30% Kshs.773,607/75

Kshs.1,805,084/75

In coming to these figures, I have considered the judgments which were submitted by the counsels, both the local cases and the English and Hong Kong cases which were cited. I note what the counsel for the defendant says about the approach by our courts to the question of calculating the multipliers as being haphazard and arbitrary. This may appear to be so but the process normally used by the courts here is simple enough for the parties to follow and may be that is why the courts continue to use this process.

The plaintiff shall be entitled to the costs and interests.

**Delivered and dated at Nairobi this 18th day of January, 2000.**

**KASANGA MULWA**

**JUDGE**