



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1080 OF 1995

MARY WANJIRU MUKURIA PLAINTIFF

VERSUS

KENYA BUS SERVICES LTD. DEFENDANT

JUDGMENT

Only two witnesses gave evidence in this trial. The widow of the deceased, also the legal representative of the estate. The driver of the motor vehicle bus Reg. KTM 946 Leyland bus.

DW1, the bus driver informed this court that as he was driving along the Juja road, he noticed the vehicle in front of him with people shouting at him and looking at arrangement.

He looked through his rear mirror. He saw nothing. He continued to drive his bus and felt as if he had gone over something. He went out to check and found that his back wheels had gone over Benard Mukuria Kabui.

He rushed Bernard to hospital. It was about 8.00 a.m. in the morning. The doctors at the Kenyatta National hospital attended to Bernard. Within 30 minutes he died.

It was the death certificate produced by P.W1, the widow that reflected that the deceased had in fact been run over. The injury was over his pelvis. The bladder and bowels having been effected.

DW1 reported the Matter to the police. He denied that he caused he said accident to the deceased. Mr. Kamiro for the plaintiff stated that the doctrine of res Ipsa loquitor should apply. It seems that he did not plead this and as such cannot rely on it.

PW1 was not present during the accident.

I would compute liability in this case at 50%:50% between the parties. I believe both parties ought to have taken due care.

As to the quantum I would under General damages find that the plaintiff did not immediately die. He was in pain and suffered during the time before his death. I would compute the damage award of pain and suffering at Ksh.50,000/-.

As to loss of expectation of life - I award Ksh.60,000/- as being conventional.

The plaintiff claimed her husband worked with the municipality council. No proof of this was given, not even a witness from his last place of employment came to give evidence.

I decline to make award under his heading.

As to damages under the Fatal Accidents Act this fails due to lack of proof.

In the event that I am required to make an award. I would have taken the multiplicand at Ksh.2000/- being the minimum average. I would thereafter have taken a multiplier of 7 years. The plaintiff's husband being aged 48 years at the time of death. The retiring age in Kenya being 55 years. This would have come to Ksh.168,000/-. I would have discounted this amount to allow for a lump sum payment. Only 4-3 dependants are named including the plaintiff. I would have divided this amount equally among them.

In summary

1. Liability

I hereby enter judgment on liability at 50%:50%.

2. Injuries

Fatal

3. Quantum

a) General Damages

i) Pain and suffering Ksh.50,000

ii) Loss of expectation of life Ksh.60,000/-

b) Special Damages Nil

Funeral expenses Nil

(not proved)

Ksh.110,000/-

Less 50% Contributory

negligence Ksh. 55,000/-

Ksh.55,000

I award cost of this suit to the plaintiff.

I award interest on general damages from the date of this judgement

Dated this 28th day of February 2000 at Nairobi.

M. ANG'AWA

JUDGE