



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**H.C.CIVIL CASE NO.4831OF 1991**

JERIA M. NYACHAMA MOCHENGO ..... PLAINTIFF

**VERSUS**

MATHEW MUCHIRI GITUTO ..... 1ST DEFENDANT

MBUNI TRANSPORT LTD ..... 2ND DEFENDANT

**JUDGMENT**

This claim arises out of a road accident, which occurred on 20th October 1987 along Mombasa Road involving a motor vehicle registration number **KWN585** in which the deceased **ELIKANA MOCHENGO** was travelling as a fare-paying passenger.

The Plaintiff brought this suit in her capacity as the personal representative of the estate of the deceased.

The Plaintiff in her evidence told the court that when the deceased died his body was taken to Machakos general Hospital Mortuary. The body was later released to her for burial. She incurred **Shs.50,000/=**. Funeral expenses. She had to transport the body from Machakos to Kisii.

She also incurred **Shs.100/=** for police abstract and **50/=** for death certificate. She further told the court that the deceased was a businessman in Mombasa and he used to get between **10,000/=** to **15,000/=** profit every month. He sent her **Shs.2000/=** every month for her use and the rest he spent in her children who stayed with him. She called one witness ELIJA OMANGA (P.W.2) who was with the deceased in the same bus when the accident took place. He blamed the accident on the driver of the said bus whom he said lost control due to high speed.

The defence had no evidence to offer. The Plaintiff's remains unchallenged and I am satisfied that the same is proved in respect of liability. I now move to assess the damages. Counsel for the Plaintiff suggested the following figure. For loss of dependency he suggested a multiplier of 20 at a monthly income of Shs.10,000/- Loss of expectation of life Shs.100,000/= Pain and suffering Shs.10,000/= Funeral expenses Shs.50,000/= and death certificate Shs.150/= while counsel for the defendant suggested a multiplier of 8 at a monthly income of Shs.2000/= and submitted that the rest of claim must fail.

Both Counsels cited various authorities to support the suggested figure. I having considered the evidence and the submissions by both counsels I make the following awards. Loss of dependency I suggest a multiplier of 10 at a monthly income of Shs.5000/= This would work out as follows:  $5000 \times 10 \times 12 = 60,000/=$

Pain and suffering I award **Shs.6,000/=**. For funeral expenses the Plaintiff had told the court that she incurred **Shs.50,000/=**

Although she did not produce receipts, taking into account that when a person dies, funeral expenses must be incurred at his burial and that the body had to be transported all the way from Machakos to Kisii. I award **Shs.40,000/=** funeral expenses. The figure of Shs.150/= for the police abstract and death certificate is not disputed. The figure can be “brought” forward as follows

Loss of dependency. ....	<b>Sh.600,000/=</b>
Loss of expectation of life	<b>Sh.100,000/=</b>
Funeral Expenses	<b>Sh 40,000/=</b>
Other Specials	<b><u>150/=</u></b>
<b><u>TOTAL</u></b>	<b><u>SH.740,150/=</u></b>

Accordingly there shall be Judgment for the Plaintiff and against the Defendant for **Sh.740,150/=** with costs and interest

**Dated and Delivered at Nairobi this 23rd day of March, 2000**

**J.L.A OSIEMO**

**JUDGE**