



1. Fatal accident deceased passenger in vehicle
2. Proof of liability between the two vehicles
3. Liability
4. Quantum

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1917 OF 1996

RAHAB WAMBUI MUNGAI PLAINTIFF

VERSUS

P.P. SHAH DEFENDANT

JUDGMENT

Rahab Wambui Mungai married Peter Mungai Muriuki under the Kikuyu customary law. She had two sons by him who were aged 5 years and 21/2 years old on the 5.8.96 when this suit was filed.

Her husband was on the 13.11.93 traveling in a motor vehicle KWR 108 along the Muranga-Nairobi road. This road is commonly known as the Kenol Muranga road. The vehicle was a Volvo saloon. It was a left hand vehicle that was driven by another of his brother in law. He was a passenger in the said vehicle.

Whilst traveling along then said road, the vehicle registration KWR 108 passed a canter lorry vehicle KAA 700 Q that was traveling on the opposite side. In the process the Volvo vehicle the deceased was in was knocked and the whole side of the Volvo vehicle on t he right side was damaged. The deceased died.

I shall describe the exact way the accident may have occurred according to an expert witness.

Rahab sued Mr. P.P. Shah – a male adult who is a registered owner of the vehicle. This is the canter lorry Reg. KAA 700Q. The driver was not sued nor was the owner of the vehicle registration KWR 108 sued.

The defendant entered appearance, filed defence and denied that his driver and or agent was negligent. That the negligence was attributed to the negligence of the driver of vehicle reg. KWR 108 Volvo make

A third party notice was applied for and issued. The said driver failed to enter appearance or file any papers.

When the trial commenced on 8.5.2000 the plaintiff gave evidence. She called an eye witness who is said to have witnessed the accident

The defence called one defence witness who was available to attend court. I would answer the agreed issues for determination as follows:-

1) Does the plaintiff have capacity to deny this suit on behalf of the Estate of the deceased? The plaintiff was unable to produce the death certificate or even a certified copy of such death certificate. The reasons she gave was that the brothers to the deceased took the certificate and refused to release it. She nonetheless produced a Limited grant ad colligenda bona whereby it was issued for purposes of filing this suit. She said that she had a copy of the death certificate she used to obtain the grant. As the Limited grant has been issued by a High court judge and has not in anyway been challenged I hold that the plaintiff has capacity to bring this suit despite the irregularities.

2. Was the deceased a passenger in motor vehicle registration number KWR 108 at the material time and if so, was he a lawful passenger? From the evidence before this court the deceased was a passenger in motor vehicle reg. KWR 108. This is supported by the police abstract form that disclosed that the deceased fatally died after the accident. I hold that the deceased Peter Mungai Muriuki was a passenger (lawful) in motor vehicle KWR 108.

3. Was the defendant the registered owner of motor vehicle reg. Number KAA 700Q at the material time. The plaintiff produced the registration of motor vehicles copy of records and confirmed that P.P. Shah & Co. and United France Ltd of P.O. Box 4872 Nairobi are the registered owner of the Isuzu van. I hold that the defendant is the registered owner of the said vehicle.

4. Was there any accident involving motor registration number KAA 700Q on 13th November, 93. Yes, there was an accident that occurred on the 13.11.93 involving vehicle reg. KAA 700Q.

5. If there was an accident on 13.11.93 was it caused by the negligence of the defendant or his authorized agent. If so to what extent.

The accident was caused according to PW2 – the eye witness by the defendants vehicle which was traveling at a high speed. PW2 had first left his vehicle at the Kenol petrol station. He and another were strolling to go and get some tea. The vehicle passed at a high speed. He looked behind and saw the vehicle knock the Volvo vehicle. He claimed the Volvo vehicle was traveling at 80 Kph – 90Kph. That it was the canter lorry van that knocked the Volvo.

In cross examination he admitted he knew the plaintiff. He came from the deceased home area. He denied that he failed to go to the police to be as a witness. He infact went twice and the person to record his statement failed twice to show up.

The defence called Mr. Darani Sigh Sembi a former Chief Inspector who had formerly worked in the Kenya police Traffic department for 29 years. He also taught traffic law in Kiganjo.

On retirement he began his private investigations whereby he was able to investigate traffic cases and other related cases for insurance companies.

He had been assigned to investigate this particular case. He visited the scene together with the traffic personnel, he found at the accident occurred along the Muranga-Nairobi road (Kenol). That the point of impact, so pointed to him by the police who had been on the scene and also disclosing the debris was at the left side where the defendants vehicle was.

He took photographs of the two vehicles.

His opinion was that as the canter lorry was traveling towards one direction the Volvo vehicle which is a left had driver vehicle was trying to over take. In order to do this it must completely come out on the other lane to see on coming vehicle. In attempting to do this – or in overtaking another vehicle, the Volvo was not able to completely go back to its side of the lane. The Volvo then scraped the canter lorry van at the side. The lorry was made of hard steel. There was scraping to the side but no material damage. The Volvo was scraped on the right and extensively damaged whereby the whole of the right side as shown in his photographs was damaged.

The blame he attributed to the vehicle KWR 108 . He denied that as he was appointed by the insurance company he was biased.

From the sketch produced and the photograph of the scene and vehicles I hold that the accident herein was attributed to the negligence of the motor vehicle reg. KWR 108 make Volvo. The vehicle whereby the plaintiff deceased's husband was traveling in as a passenger.

I attribute this negligence at 100% against the said driver who is the third party in this case. This covers issues 8,9, and 10.

6 Is the estate of the family of the deceased is entitled to compensation from the defendant and if so to what extent. Yes, the estate of the deceased is entitled to compensation Issue II

Are the persons listed under para 6 of the plaint entitled to the claim?

Yes.

What was the age of the deceased and his earning as at the time of the accident?

There has been no proof given to this court as to the age of the deceased. The plaintiff produced no documents to this effect. As to the salary earning this was never disclosed. The plaintiff produced a letter from M/s Sera Coating Ltd. Which showed that the deceased used to work as a mechanic attendant grade C. That he was a mechanic attendant Grade C but had left employment.

On 30.9.93 it seems that the company had gone under receivership.

The plaintiff had no idea that her husband was unemployed. She said he used to give her Ksh.1,500/- per month out of a salary of a little one Ksh.2000 per month.

The advocate for the defendant took this in issue stating how is the court going to assess loss of dependency when the age and salary is unknown of the deceased.

The plaintiff was to prove her case. She could have called a parent of the deceased or elder to inform the court his age.

He could also have requested the former company to disclose the salary earned as a guide.

As it stand the deceased had been unemployed for about one year.

I decline to grant this head of damages.

I would nonetheless grant the conventional sum of Ksh.100,000/- for loss of expectation of life.

Under the claim for special damages, the plaintiff abandoned the funeral expenses of ksh.20,000/- as she was unable to produce any documentary evidence to show this is how much she spent.

She was unable to produce the receipt of 100 to pay for the abstract report.

She claimed that she paid Ksh.120/- for a death certificate which she has never been in possession of as her brother in law took this. I hereby dismiss the claim under "special loss."

I have no proof as to how long the deceased was alive after the accident. PW2 was not able to tell us this, nor any witness.

I decline to make any award under this head of damages. In summary

1. Passenger Car accident collision between two vehicle.
2. Injuries: Fatal
3. Liability 100% on the 3rd party
4. Quantum

General damages

1. Loss of expectation of life Ksh.100,000/-
2. Fatal accident Act – Nil
3. Special Damages – Nil (not proved)

Total Ksh.100,000/-

I award costs of this suit to the plaintiff.

I award interest on the General Damages from the date of this judgment.

Dated this 10th day of May, 2000 at Nairobi.

M.A. Ang'awa

Judge