



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE NO. 3186 OF 1991

VICTORIA WALUBWA.....PLAINTIFF

-VERSUS

JOHNKIARIE & ANOTHER.....DEFENDANT

JUDGMENT

The Plaintiff claims general damages and special damages against the 1st and 2nd defendants. She also claims special damages and cost of the suit. The Plaintiff is the widow of the deceased. She gave evidence as the administrator of her husband's estate.

PW2 Omolo Okello gave evidence that he and the deceased were crossing the road and the deceased was behind him when the deceased was knocked.

According to him they had managed to cross and the deceased was knocked while on the pavement. They had looked at either side and saw that there were no vehicles were coming from both sides before they crossed. The road was straight at the place they were crossing. They had been working the whole night as watchmen and the accident occurred at about 6 a.m. along the Ngong road.

The deceased salary was Shs.1,280 per month according to the salary slip produced. The witness attributed the accident to the high speed the vehicle was driven. The defendant did not call evidence to contradict the evidence by the Plaintiff. The Plaintiff asks the court to find that the defendants driver was 100% to blame for the accident but under the circumstances in which the Plaintiff crossed the road, I find that the Plaintiff did contribute to the accident. The witness says that they had seen no vehicle and that the road was straight and yet there was a vehicle. This indicates that they did not ensure that there was no vehicle or they miscalculated the speed of the vehicle.

To that extend, I would find 10% contributory negligence on the part of the Plaintiff. Quantum

Loss of expectation of life. For this claim I award Shs.100,000/- Loss of Dependency

The deceased left a widow and 13 children who he sued to support from the salary. The widow said that out of his salary he used to give them Shs.600 per month for food and school fees. I will take that the deceased could have worked for another 10 years so that the dependency would be $600 \times 12 \times 10 =$ Kshs.72,000/- Special Damages:

I accept the figures of Shs.25,150/- given by the Plaintiff. For Pain and Suffering I will award the sum of Shs.50,000/- In arriving at these figures I gave consideration to the cases cited in support by the Plaintiff.

There will be Judgment for the Plaintiff as follows:

- (1) For Pain and Suffering Shs. 50,000/-
- (2) Dependency Shs. 72,000/-
- (3) For Loss of Dependence Shs. 100,000/-
- (4) For Special Damages Shs. 25,150/-

Sub total Shs.247,150

Less 10% Shs. 24,715

Grand Total Shs.222,435

The Plaintiff shall have the costs and interest of the suit.

Delivered and dated this 28th day of July, 2000.

KASANGA MULWA

JUDGE