



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 518 OF 1999

MUMBU J. WAMBUGU.....PLAINTIFF

-VERSUS

BONIFACE NGIGE THAMAINE.....DEFENDANT

JUDGMENT

The Plaintiff is the mother of the deceased Daniel Githinji, who died in a road accident on The 30th July, 1993. She sued, filed this suit as the administratrix of her late son's estate having obtained a limited grant of Letters of Administration. PW2 James Maina told the court that he and the deceased were standing at the Dandora cinema stage when a Matatu swept speedily into the stage directly to where they were standing. He managed to jump to avoid the matatu but it knocked down the deceased. The rear wheel of the matatu went over him killing him instantly. He identified the matatu as KAD 069A. PW3 Francis Muthemba Muoki gave evidence that he had employed the deceased in his business of scrap metal at monthly salary of Shs.4,000/-.

The Defendant who was the driver of the matatu in his defence said that as he was entering the stage he felt his rear wheel go over something. He had seen some two people at the entrance who looked drunk and were struggling. One of the two ran and tried to enter the matatu but fell and was overrun by the rear wheel. On cross examination he admitted that he actually had not seen the two people as he had said before but was told by people that he had over run some one and that is when he stopped. As to how the accident occurred, I believed the evidence of PW2 James Maina. The defendant gave evidence which he changed on cross-examination and from his demeanor when giving evidence it was evident that he was lying to the court. He admitted that he had not seen two people who appeared drunk and were struggling. He also admitted that he actually did not know how the deceased was knocked and was made aware by the people, when they told him that he had overrun someone.

Mr. Maina was consistent in his evidence of what happened and I find that the Defendant drove into the bus stage at high speed and carelessly and therefore knocked the deceased killing him instantly. The Defendant was wholly to blame for the accident.

Damages

(a) Loss of expectation of life.

For this I award a sum of Shs.100,000/-

(b) Pain and Suffering.

The deceased died instantly and therefore a sum of Shs.5,000 for pain suffering will be reasonable

(c) General damages

The Plaintiff said that the deceased used to support her by giving her Shs.1,000 to Shs.1,500 per month. He was aged 22 years at the time of the accident. The Plaintiff cited two cases in support of his claim.

(1) Julius Kanya Kamau Vs. Njue Kiarie & Another HCCC No. 5725 of 1989

(2) Fredrick Gataka vs. George Kibinyi and Njoroge HCCC No. 1993 of 1990

I have considered the awards in these two cases. I will take a multiplicand of 26 and Shs.1,500 as the amount for support of the Plaintiff. The deceased was not married and had a good chance to advance in her job.

(d) For Special Damages

There were no receipts produced to support the expenses for burial. Under the circumstances I consider Shs.10,000/- as reasonable taking into account that a coffin must have been bought and some expenses must have been incurred for transportation. There will be judgment for Plaintiff as follows:

(a) General damages Ksh.468,000/-

(b) Loss of expectation of life Ksh.100,000/-

© Pain and suffering Ksh. 5,000/-

(d) Special damages Ksh. 10,000/-

Total Ksh. 583,000/-

The Plaintiff shall have the costs and interest.

Delivered and dated at Nairobi this 1st day of August, 2000.

KASANGA MULWA

JUDGE