

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 3344 OF 1994

CONSTANCE KANYOROTA NGUGI..... PLAINTIFF

VERSUS

COAST BUS CO. LTD & ANOTHER.....DEFENDANT

JUDGEMENT

The Plaintiff is suing as the administratrix of her late husbands estate. She gave evidence that they got married in 1967 and renewed their marriage in 1992. The deceased was a passenger in the coast bus travelling from Machakos to Kitui. She was left with six children. The deceased was 51 years old at the time of the accident. He was a farmer and was earning ksh.50,000/- To support this income she produced a bundle of receipts. During his life time he supported the family paying the school fees. She buried him at Githunguri.

The second witness Daniel Gachachi Njoroge produced the bundle of receipts. He is a certified accountant and that he had compiled these accounts. According to him the deceased was earning between Shs.26,000 to Sh.30,000/- per month and this amount would be taxable to the extend of Shs.6,000/-

LIABILITY

The deceased was a passenger in the bus registration number KAC 642H. The defendants will be 100% liable as there was no evidence to contradict the plaintiff's evidence that the accident was due to the fact that the accident was due to the negligent driving of the 2nd defendant.

QUANTUM

Under Fatal Accidents Act

The deceased income was contested by the defendants Mr. D.G. Njoroge the accountant gave a figures of between Shs.26,000 and Shs.30,000 as the income of the deceased. This income was based on the invoices which he had compiled. He said this figure did not take into account the tax element. The figures given represented the gross income of the deceased per month. I note that it is difficult to get the correct figure of income from the records as they were and doing the best one can do under such circumstances. I would take the deceased income to be Shs.20,000 per month, the tax would be kshs.6,000/-. In arriving at this figure I considered that for these invoices to be issued a job must have been executed and payment made. The invoices were genuine. The income was however gross and did not take into account the tax element. I also considered that the deceased spend 2/3 of the income in support of his family. He was 51 years old and he could have gone on with business up to the age of 65. I would therefore consider a multiplier of 14 years so that the amount payable would be $14 \times 14,000 \times 12 \times \frac{2}{3} = 1,568,000$. In arriving at these figures I have considered the cases cited by the counsels in support of their sides of the case. Under Law Reform Act Under this claim I award the sum of Shs.100,000 Special Damages

The Plaintiff was not able to produce all the receipts to support her claim for the funeral expenses. The deceased was buried in Githunguri. It is quite evident that expenses were incurred in transporting the body from Kenyatta to the place of burial in Githunguri. In all I consider that the plaintiff must have spent Shs.40,000 for the funeral expenses. There will therefore be judgement for the plaintiff and the plaintiff shall be paid damages as follows:

Law Reform Act Shs. 100,000

Under Fatal Accidents Act for loss of dependency $14 \times 12 \times 14,000 \times \frac{2}{3}$ Shs. 1,568,000

Special damages Shs. 40,000

Total Shs.1,708,000

There shall be judgement for the plaintiff for the sum of Kshs.1,708,000/- The Plaintiff shall be paid the costs of this suit and interests. Dated and delivered this 4th day of October, 2000.

KASANGA MULWA

JUDGE