



REPUBLIC OF KENYA



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Okiro & another v Manani & another (Suing as the Personal Representatives and Legal Representatives of the Estate of Alloys Manani Gitaga – Deceased) (Civil Appeal E009 of 2024) [2025] KEHC 8717 (KLR) (19 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8717 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E009 OF 2024
WA OKWANY, J
JUNE 19, 2025**

BETWEEN

BENARD BOSIRE OKIRO 1ST APPELLANT

MOTOROLOGY LIMITED 2ND APPELLANT

AND

EMELDA KEMUMA MANANI 1ST RESPONDENT

EVANS OMWANGE MANANI 2ND RESPONDENT

**SUING AS THE PERSONAL REPRESENTATIVES AND LEGAL
REPRESENTATIVES OF THE ESTATE OF ALLOYS MANANI GITAGA –
DECEASED**

*(Being an Appeal from the Judgment and Decree at the Chief
Magistrate’s Court in Nyamira CMCC No. 161 of 2022 delivered by
Hon. B.O. Okong’o, Resident Magistrate on 30th November 2023)*

JUDGMENT

1. The Respondents herein, who were the Plaintiffs before the trial court, sued the Appellants/ Defendants through a Plaint dated 9th September 2022 seeking the following orders: -
 - a. Special Damages as per paragraph 6 of the Plaint.
 - b. General Damages under the Fatal Accidents and [Law Reform Act](#).
 - c. Cost of the suit and interests
 - d. Interests on a, b and c at court rates.



- e. Any other reliefs that the court may deem fit.
2. The Plaintiffs' case was that on or about the 28th February 2022, the deceased herein Aloys Manani Gitaga was a lawful passenger travelling aboard Motor Vehicle Registration No. KCZ 828V along Kisii - Kericho road when at Nyabioto area or thereabouts, the Appellants driver drove the said motor vehicle recklessly, negligently and/or carelessly thereby permitting it to lose control and collide with motor vehicle Registration No. KAR 424B ZC 0473 thereby causing an accident in which the deceased suffered fatal injuries.
 3. The Defendants/Appellant filed their Statement of Defence dated 29th September 2022 in which they denied the contents of the Plaint and attributed the accident to the negligence of the deceased.
 4. The matter proceeded for hearing where the Plaintiffs presented the evidence of No. 33327 PC Justus Kipkoech (PW1) who produced the Police Abstract (P.Exh 1) and Evans Omwange (PW2) who adopted his witness statement as his evidence-in-chief. PW2 produced the Plaintiffs' bundle of documents (P.Exh 2-9) as follows: -
 1. Police Abstract
 2. Post Mortem Report
 3. Receipts for funeral expenses in the sum of Kshs. 94,450/=
 4. Death Certificate
 5. Grant from Nyamira CMCC No. E062 of 022 and a receipt for Kshs. 30,000/=
 6. Copy of the Chief's Letter
 7. Copies of Birth Certificates
 8. Copy of Motor vehicle records and receipt for Kshs. 550/=
 9. Copy of Demand Letter
 5. The Defendants did not call any witnesses in support of their case. In a judgment delivered on 30th November 2023, the trial court entered judgment as follows: -

Liability at 100% against the Defendants

Damages under the Law Reform Act: -

 - i. Loss of Expectation of Life – Kshs. 100,000/=
 - ii. Pain and Suffering – Kshs. 10,000/=

Damages under the Fatal Accidents Act:-

 - i. Loss of Dependency Global Sum – Kshs. 1,700,000/=

Special Damages – Kshs. 125,550/=

Total Award – Kshs. 1,935,550/=
 6. Aggrieved by the said decision, the Appellants filed the present Appeal vide Memorandum of Appeal dated 2nd April 2024 wherein they seek orders to set aside the judgment of the trial court on quantum. They urged this court to substitute the trial court's findings on quantum with its own assessment of damages. They also seek the costs of the Appeal.



7. The Appellants listed the following grounds of appeal in the Memorandum of Appeal: -
1. That the Learned Trial Magistrate erred in law and in fact and misdirected himself when he failed to consider the Appellant's submissions on both points of law and facts.
 2. That the Learned Trial Magistrate's decision was unjust against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
 3. That the Learned Trial Magistrate erred in law and misdirected himself when he failed to consider the provisions set out in the Insurance Motor Vehicle (Third Party Risks) (Amendment) Act of 2013, Cap 405.
 4. The Learned Magistrate erred in law and in fact in awarding the Estate of the deceased a sum of Kshs. 1,700,000/= of loss of dependency that was excessive as to amount to an erroneous estimate of loss or damage suffered by the Estate of the deceased.
 5. That the Learned Trial Magistrate erred in law and in fact in addressing the issue of age discrepancy which was noted during the trial.
 6. The Learned Trial Magistrate erred in law and in fact by overly relying on the Respondent's submissions which were not relevant and without addressing his mind to the circumstances of the case.
 7. The Learned Trial Magistrate erred in fact and in law in failing to consider conventional awards in cases of similar nature.
 8. The Appeal was canvassed by way of written submissions which I have considered.
 9. The duty of a first appellate court was stated in the case of *Kamau vs. Mungai & Another* 1200611 1LR 150 where the Court of Appeal held thus: -

“This being a first appeal it was the duty of the Court of Appeal to re-evaluate the evidence asses it and reach its own conclusions remembering that it had neither seen nor heard the witness and hence making due allowance for it...

A Court on Appeal will not normally interfere with a finding of fact by the trial Court in a civil or criminal case unless it is based on evidence or on a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching the findings he did...”
 10. I have considered the grounds of Appeal and the parties' rival submissions. Since the issue of liability was not contested, I find that the only issue for determination is whether the trial court arrived at the correct finding on quantum.

Analysis and Determination

11. The principles governing instances when an appellate court can interfere with the trial court's assessment of general damages were aptly stated by the Court of Appeal in the case of *Catholic Diocese of Kisumu vs. Sophia Achieng Tete* Civil Appeal No. 284 of 2001 [2004] 2 KLR 55 where it was held thus: -

“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded



by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

12. In *Stanley Maore vs. Geoffrey Mwenda* [2004] eKLR the Court of Appeal stated: -

“Having so considered we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”

13. Damages under the *Law Reform Act* include pain and suffering, and loss of expectation of life. I am guided by the case of *Mercy Muriuki & Another vs. Samuel Mwangi Nduati & Another* (Suing as the Legal Administrator of the Estate of the late Robert Mwangi) (2019) eKLR where the court observed that:-

“The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs. 100,000/- while pain and suffering the awards range from Kshs. 10,000/- with higher damages being awarded if the pain and suffering was prolonged before death.”

14. I have considered the Post Mortem Report (P.Exh2) and I note that the deceased is reported to have died instantly, on the spot, as a result of the injuries he sustained in the said accident. I therefore find that the award by the trial court for pain and suffering was fair and in line with the set legal principles. I also find no reason to interfere with the award made under loss of expectation of life.

15. I have considered the award under the *Fatal Accidents Act* being loss of future earnings or loss of dependency. The trial court employed a global sum approach and awarded the Estate of the deceased the sum of Kshs. 1,700,000/= under this heading. I have considered the issue of whether the trial court erred in adopting the global sum approach as opposed to the multiplier approach.

16. Courts have held, in various decisions, that the multiplier approach is merely a method of assessing damages that should be abandoned if the facts of a case do not suit it. In other words, where the multiplicand cannot be ascertained with precision, the court can apply the Global Sum approach. In *Gammel vs. Wilson* (1981) 1 ALL ER 578 Lord Scarman spoke held as follows in this regard: -

“The correct approach in law to the assessment of damages in these cases presents, my Lords, no difficulty, though the assessment itself often will. The principle must be that the damages should be fair compensation for the loss suffered by the deceased in his lifetime. The appellants in *Gammel’s* case were disposed to argue, by analogy with damages for loss of expectation of life, that, in the absence of cogent evidence of loss, the award should be a modest conventional sum. There is no room for a ‘conventional’ award in a case of alleged loss of earnings for the lost years. The loss is pecuniary. As such, it must be shown, on the facts found, to be at least capable of being estimated. If sufficient facts are established to enable the court to avoid the fancies of speculation, even though not enabling it to reach a mathematical certainty, the court must make the best estimate it can. In civil litigation it is the balance of probabilities which matters. In the case of a young child, the lost years



of earning capacity will ordinarily be so distant that assessment is mere speculation. No estimate being possible, no award, not even a 'conventional' award should ordinarily be made. Even so, there will be exceptions: a child television star, cut short in her prime age of five, might have a claim; it would depend on the evidence. A teenage boy or girl, however, as in Gammell's case may well be able to show either actual employment or real prospects, in either of which situation there will be an assessable claim. In the case of a young man, already in employment (as was young Mr Furness), one would expect to find evidence on which a fair estimate of loss can be made. A man well established in life, like Mr Picket, will have no difficulty. But in all cases it is a matter of evidence and a reasonable estimate based on it. (see page 593)."

17. In the present case, I note that the deceased was 42 years old at the time of his death as shown in the Death Certificate (P.Exh 4). The Respondents stated that the deceased enjoyed good health and was a farmer earning a monthly income of about Kshs. 30,000/=. I however note that no documentary evidence was presented to support this assertion. In the absence of proof of income, I find that the trial court correctly applied the Global Sum approach which decision I hereby uphold.
18. I have considered the following comparable cases where the deceased was a farmer and died at the age of 42 years: -
 - a. In Gilbert Kimatare Nairi & another (suing as personal representatives of the Estate of Lemayian Richard Kimatare (Deceased) vs. Civiscope Limited [2021] eKLR Mwita J. upheld the trial court's award of Kshs. 600,000/= for loss of dependency for the Estate of a farmer who died at 42 years of age.
 - b. In Moses Wetangula & Another vs. Eunice Titika Rengetiang [2018] eKLR, the court awarded Kshs. 500,000/= to the Estate of a 42-year old deceased.
19. Guided by the above cited similar cases, I find that in the circumstances of this case, the award of Kshs. 1,700,000 was on the higher side and I therefore set it aside. I find that an award of Kshs. 800,000/= would be adequate compensation under this heading.
20. At paragraph 6, the Respondents pleaded the particulars of Special Damages as follows: -
 - a. Coffin and Transport Expenses – Kshs. 45,000/=
 - b. Catering Services – Kshs. 30,000/=
 - c. Tents, chairs and Public Address System – Kshs. 20,000/=
 - d. Letters of Administration Ad Litem – Kshs. 30,000/=
 - e. Copy of Motor Vehicle Records – Kshs. 550/=Total – Kshs. 125,550/=
21. In Capital Fish Kenya Limited vs. The Kenya Power & Lighting Company Limited [2016] eKLR, the Court of Appeal outlined the principle governing the award of Special Damages thus: -

“We do not discern from our reading of this decision a departure from the time tested principle that special damages should not only be specifically pleaded but must also be strictly proved ... We are of course aware of the court occasionally loosening this requirement when it comes to matters of common notoriety for example a claim for special damages on



burial expenses where the claimant may not have receipts for the coffin, transport costs, food etc. However, the claim herein did not fall in that class.”

22. I have perused the trial record and I find that the receipts produced as exhibits correspond with the expenses incurred for the deceased’s funeral. I am satisfied that Special Damages were specifically pleaded and proved. I therefore uphold the award of the trial court under this heading.
23. In the final analysis, I find that the Appeal is merited, albeit only to the extent of damages under the *Fatal Accidents Act* for loss of dependency. I uphold the assessment by the trial court on quantum but set aside the award under this heading and enter judgment as follows: -
- Liability at 100% against the Defendants
- Damages under the *Law Reform Act*:-
- i. Loss of Expectation of Life – Kshs. 100,000/=
 - ii. Pain and Suffering – Kshs. 10,000/=
- Damages under the *Fatal Accidents Act*:-
- i. Loss of Dependency Global Sum – Kshs. 800,000/=
- Special Damages – Kshs. 125,550/=
- Total Award – Kshs. 1,035,550/=
24. I award the Respondent interest on the above amount at court rates until payment in full.
25. I make no orders on the costs of the appeal.
26. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 19TH JUNE 2025.

W. A. OKWANY

JUDGE

