



Victoria Engineering Limited v Ngatia & another (Suing as the Administrators of the Estate of the Late John Mbogo Ngatia) (Civil Appeal E076 of 2023) [2025] KEHC 10124 (KLR) (8 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10124 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E076 OF 2023
GL NZIOKA, J
JULY 8, 2025**

BETWEEN

VICTORIA ENGINEERING LIMITED APPELLANT

AND

HANNAH WANJIKU NGATIA 1ST RESPONDENT

GRACE WANGARU WAMBUI 2ND RESPONDENT

SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE JOHN MBOGO NGATIA

(Being an appeal from the judgment delivered on 10th August, 2023 by Hon. Y. M. Barasa (PM) vide CMCC E159 of 2022)

JUDGMENT

1. By a plaint dated 9th March, 2022, the plaintiffs sued the defendant seeking for judgment against the defendant for: -
 - a. General damages under the Fatal Accident Act.
 - b. General damages under the [Law Reform Act](#)
 - c. General damages of Ksh 33,800 with interest from the date of filing the suit.
 - d. Costs of the suit and interest.
2. The plaintiff's claim arose from a traffic road accident along Naivasha – Mai Mahiu road that occurred on or about 1st October, 2021 involving a motor cycle registration No. KMCN 617Y and motor vehicle registration No. KCU 439L in which the deceased lost his life. The plaintiffs averred that the accident



was caused by the negligence of the defendant and/or its agent as per the particulars of negligence tabulated at paragraph 5 of the plaint.

3. The plaintiffs further averred that they incurred expenses as tabulated at paragraph 8 of the plaint as follows:

- a. Funeral expenses.....Ksh 8,200
 - b. Death certificate.....Ksh 50
 - c. Search.....Ksh 550
 - d. Obtaining Letters of Administration---Ksh 25,000
- Total amount.....Ksh 33,800

4. However, the plaintiffs' claim was opposed by the defendant vide a statement of defence dated 13th June, 2022. In a nutshell, the defendant denied the occurrence of the accident, the fatal injuries the deceased suffered and the particulars of negligence attributed to it.

5. Be that as it may, the parties negotiated a settlement on liability and eventually recorded a consent judgment on liability in the ratio of 80:20% in favour of the plaintiffs as against the defendant.

6. Subsequently, the trial court considered the matter on quantum in the light of the evidence adduced and the submissions by the respective parties and by a judgment dated 19th August, 2023, the trial court entered judgment in favour of the plaintiffs in the following terms:

Under the *Law Reform Act*

- a. Pain and suffering.....Kshs 50,000
- b. Loss of expectation of life.....Ksh 100,000

Under the Fatal Accident Act

- c. Loss of dependency.....Kshs 4,080,000

Special damages.....Kshs 33,800

Sub-total.....Kshs 4,263,800

Less 20%.....Kshs 852,760

Total.....Ksh 3,411,040

The plaintiff was also awarded costs of the suit plus interest.

7. However, the defendant is aggrieved by the decision of the trial court on quantum on the following grounds:

- a. The learned magistrate erred in fact and in law by adopting a multiplicand of Kshs 15,000 per month in calculating general damages for loss of dependency under the *Fatal Accidents Act* based on a 'pay slip' which pay slip is non-existent as it was never produced by the plaintiffs in their evidence in chief before trial court.
- b. The learned magistrate erred in fact and in law by using the multiplier approach as opposed to the general global approach in awarding general damages for loss of dependency under the Fatal Accident Act and in so doing disregarded the evidence on record that as at the time of



the accident, the deceased was not an employee of Vegpro Limited, on the basis for which the deceased's alleged pay was premised upon.

- c. The learned magistrate erred in law and fact by using the multiplier approach as opposed to the global sum approach in awarding general damages for loss of dependency under the *Fatal Accidents Act* in total disregard of the principle that 'where the amount of annual or monthly dependency is not known, the court out to apply the global sum approach in award of damages' as there was no evidence produced of the deceased's net earnings in court to justify the adoption of the figure of Kshs 15,000.
 - d. The learned magistrate erred in law by relying on multiplier of 34 years on award of general damages for loss of dependency under the *Fatal Accidents Act* and in so doing:
 - i. Failed to take into account the vagaries and vicissitudes of life which would have likely shortened the life of the deceased.
 - ii. Failed to appreciate that the standard of life and life expectancy in Kenya has generally reduced and factors such as risk of road accidents could make one not to attain the 60 years retirement age adopted.
 - e. The learned magistrate erred in fact ad law by awarding general damages for loss of dependency under the Fatal Accident Act in the sum of Kshs 4,080,000 and in so doing disregarded the following:
 - i. The fact that no pay slip was produced by the plaintiff in their bundle of documents and evidence in chief to support the position that the deceased was employed and earning a salary of Kshs 15,000 per month.
 - ii. The documents on record by the defendant namely a letter from Vegpro limited indicating that as at the time of the accident, the deceased was not an employee of Vegpro Limited.
 - iii. The legal principle that 'where the amount of annual or monthly dependency is not known, the court ought to apply the global sum approach in award of damages.'
 - iv. The vagaries and vicissitudes of life which would have likely shortened the life of the deceased; and
 - v. That the standard of life and life expectancy in Kenya has generally reduced and factors such as risk of road accidents could make one not attain the 60 year retirement age adopted.
 - f. The learned magistrate erred in law and fact by awarding general damages of Kshs 50,000 on pain and suffering under the *Law Reform Act* for the deceased who died on the spot and in so doing disregarded the principles that 'very nominal damages will be awarded on pain and suffering if the death followed immediately after the accident.'
8. The appeal was disposed of vide filing of submissions. In submissions dated 9th May, 2024, the appellant argued that, the respondents never produced a payslip showing that he was earning Ksh 15,000 per month yet the trial court relied on the same. That the Human Resource Manager of Vegpro who was summoned to produce the payslip did not come to court to testify and produce it.
 9. Further, a letter dated 7th September, 2021 from Vegpro (K) Limited indicated that the deceased were no longer in its employment at the time of the fatal accident. That the trial court ought to have adopted



- the global approach in addressing the multiplicand and awarded a sum of Kshs 1,200,000 for loss of dependency. In that case, the issue of a multiplicand of 34 years will be irrelevant.
10. Finally, the appellant submitted that a sum of Ksh 50,000 awarded for pain and suffering is excessive taking into account the deceased died on the spot. That a sum of Ksh 10,000 is sufficient.
 11. However, the respondents submitted that, the deceased died as a result of hypolemic shock, massive internal haemorrhage as per the death certificate and post mortem report produced as exhibits in the proceedings. That it is indicative of pain suffered and therefore a sum of Ksh 50,000 awarded for pain and suffering is not grossly high.
 12. That as regards the claim of loss of dependency, the trial court relied on the letter of employment indicating that the deceased was earning Kshs 15,000 per month and applied a multiplier of $\frac{2}{3}$ and 34 years. That, the award is within the range of other awards and no need to apply the global sum approach. That even where a payslip is missing, a minimum wage should apply.
 13. Subsequently, I have considered the appeal in the light of the materials before the court and in particular, the submissions by the respective parties. The appeal rests on only two issues; the sum awarded for loss of dependency in particular, the basis of Kshs 15,000 considered as the deceased's earning and multiplicand of 34 years, and secondly Kshs 50,000 awarded as damages for pain and suffering.
 14. As regards pain and suffering claim, I note from the police abstract extracted from the report in the OB, states that the deceased died on the spot. The injuries he sustained as indicated by the respondents were indeed severe that he succumbed to death at the scene. But be that as it may, it is clear that he died on the spot.
 15. The authorities cited by the plaintiffs and defendant in the submissions in the trial court indicate a proposal of a sum of Kshs 100,000 and Kshs 10,000 respectively. However, an analysis of the same reveals that the plaintiffs' submissions do not indicate whether the victim in the decisions cited died on the spot or not. On the other part, the decision by the defendant is more guideful as the victim therein died on the spot of the accident as herein. However, that decision relied on by the defendant was rendered in the year 2020, with inflation, it is not tenable to argue Kshs 10,000 is sufficient, five (5) years later.
 16. The trial court in awarding the impugned figure simply stated that; for pain and suffering the deceased died on the spot. "Under this head, I will award Kshs 50,000." The court did not justify why it did not award the Kshs 100,000 proposed by the plaintiffs or Kshs 10,000 by the defendants.
 17. This court has taken judicial notice of the fact that, under the head of pain and suffering, the conventional figure is Kshs 10,000 where the victim dies on the spot however but with inflation, the amount can be enhanced. In that case, I find an award of Kshs 50,000 on this head is high. I set aside that award and substitute it with an award of Ksh 30,000.
 18. As regards the loss of dependency, I find that as correctly submitted by the appellant, the payslip relied on by the trial court to use the figure of Ksh 15,000 as the deceased's monthly income was not produced. Therefore, the trial court erred in relying on it. On that ground alone, the figure awarded for loss of dependency cannot be upheld.
 19. However, the proposal of use of global figure must be justified. Even if the court were to adopt that approach, the fact that there is evidence, supported by the appellant that, prior to his death, the deceased was earning Kshs 15,000 though he had just left employment, then the global figure suggested must consider the same.



20. That said, the proposal of minimum wage is not in vain. In the instant matter, when the accident occurred on 1st October, 2021, the minimum wage regulations applicable were the Regulation of Wages (General) (Amendment) Order 2018. Consequently, the amount indicated for a general worker or labourer is Ksh. 7240.90.
21. As regards the number of years, the deceased was 26 years old and as much as the trial court held that, he could have worked up to 60 years, room must be made for vicissitudes of life, as such the thirty-four (34) years is not tenable. Taking into account the aforesaid, the multiplier of thirty (30) years is reasonable.
22. Pursuant thereto, the sum that arises for loss of dependency is: $7240.95 \times 12 \times \frac{2}{3} \times 30 = 1,737,828$
23. Consequently, the total award is as follows:
- Pain and suffering-.....Kshs 30,000
 - Loss of expectation of life....Kshs 100,000
 - Loss of dependency.....Kshs 1,737,828
 - Special damages.....Kshs 33,800
 - Total sum.....Kshs 1,901,628
 - Less 20%Kshs 380,325.60
 - Total amountKshs 1,521,302.40
- Interest is awarded in the above sum from the date of judgment in the trial court and costs in the trial court.
24. Each party bears costs of appeal.

DATED, DELIVERED, SIGNED ON THIS 8TH DAY OF JULY, 2025.

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms Soi for Okumu for appellant

Mr Owuor for the Respondent

Hannah: Court Assistant

