



REPUBLIC OF KENYA



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**Ena Investment Ltd v Onyaguti (Suing as a legal representative of
the Estate of Jared Ocharo Nyagwaya –Deceased) (Civil Appeal
099 of 2022) [2024] KEHC 2842 (KLR) (11 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2842 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL 099 OF 2022
TA ODERA, J
MARCH 11, 2024**

BETWEEN

ENA INVESTMENT LTD APPELLANT

AND

**BOSISBORI ONYAGUTI (SUING AS A LEGAL REPRESENTATIVE OF THE
ESTATE OF JARED OCHARO NYAGWAYA –DECEASED) RESPONDENT**

*(Being an appeal from the Judgment delivered by Hon. S. N. ABUYA
(CM) on 15th November 2022 in KISII CMCC NO. 400 OF 2021)*

JUDGMENT

Introduction

1. This Appeal arises from the Judgment delivered on 15th November, 2021 in Kisii CMCC NO. 400 OF 2021 in the following terms.
 - a. Liability 50:50% as against the defendant
 - b. Pain and suffering; Kshs. 50,000/=
 - c. Loss of expectation of life Kshs. 100,000/=
 - d. Loss of dependency, 2,236,048
 - e. Costs and interests awarded to the plaintiff
2. Being aggrieved by the Judgment of the lower court the Appellant filed the Appeal herein which was based on the following grounds of Appeal;



- i. The learned magistrate erred in law and misdirected herself when she failed to consider the appellant's submissions points of law and facts.
- ii. That the learned magistrate's decision was unjust against the weight of evidence a't1d was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of Justice,
- iii. That the learned magistrate erred in Jaw and misdirected herself when she failed to consider the provisions set out in. The Insurance (MotorVehicle0Third Party Risks} (Amendment) Act, 2013, CAP 405.
- iv. The learned magistrate erred in law and fact in finding the Defendants/Appellants 50% liable in view of the evidence, produced before the trial Court and in particular the following;
 - a. That the Respondent failed to prove his case on liability against the Appellant
 - b. That the Respondent deceased was to blame tot the occurrence of the accident by being. The owner of motor vehicle registration number KGC 921A Toyota Probox.
 - c. That the Respondent deceased was to blame for the occurrence of the accident
 - d. That the learned magistrate erred in blaming the Appellant's -driver for over speeding vis-a-vis the evidence tendered.
 - e. That the' learned trial magistrate erred in failing to consider that the Respondents did not tender evidence to prove~ that the deceased was not to blame arid the culpability of the Appellants driver.
- v. The learned magistrate erred in law and fact in awarding the -estate of the pain and suffering while not considering the deceased passed on the same day and further that the Plaintiff/ Respondent faired to prove his case on liability against the Defendants.
- vi. The learned trial magistrate erred m law and fact by awarding the estate of the deceased a sum for loss of expectation of life when it was not entitled to the same and/or the same was so excessive as to amount to an erroneous estimate of loss or damage suffered by the estate of the deceased.
- vii. The learned trial magistrate erred in law and in law in awarding the deceased state a sum of Kshs. 1,118,024/= for loss of dependency that was so excessive as to amount to an erroneous estimate of loss or damage suffered by the estate of the deceased.
- viii. The learned trial magistrate erred in using a sum of Kshs. 13,975/= as amount for minimum wage yet the respondent could not prove the deceased occupation and earnings and further that the Plaintiff/Respondent failed to prove his case on liability against the Defendants.
- ix. The learned trial Magistrate erred in act and in law in failing to consider the Appellants Submissions on Quantum and Liability and legal authorities relied upon in support thereof
- x. The Learned Magistrate erred in fact and in law in failing to consider the Appellants evidence and failing to provide an analysis of the same.
- xi. The Learned Magistrate erred in law and fact by overly relying on the Respondent's submissions which were not relevant and without addressing her mind to the circumstance of the case



- xii. The Learned Magistrate erred in fact and in Law in failing to consider conventional awards in cases of similar nature.
3. Based on the above ground the appellant sought from this court the following orders
- a. This Appeal be allowed with costs.
 - b. The Judgement delivered on 15th November 2022 by Honourable S. N Abuya, Chief Magistrate be set, aside and a judgment of this court dismissing the suit against the Appellant with costs be entered in its place
 - c. That without prejudice to prayer (b) above this Honorable court reassesses apportionment of liability, pain and suffering, loss of expectancy of life and loss of dependency and reduce the same That the costs, of this Appeal and that of the trial court be awarded to the appellant
 - d. That such further orders may be made by this Honourable Court may deem fit to grant.
4. The background of the matter is that the Respondent filed a suit against the Appellant seeking Special Damages, general damages, costs of the suit and interests. To support her claim, the Respondent alleged on 16th January, 2020 the Respondent's late husband on whose behalf she mounted this suit was lawfully driving a motor vehicle registration number KCC 921A Toyota Probox along the Kisii-Keroka road when the defendant's driver while carelessly and negligently driving a motor vehicle registration KCR 614W Scania Bus caused it to lose control and overturn and collide with the respondent's late husband motor vehicle leading to the Respondent's late husband suffer fatal injuries which he succumbed to. She decried that said accident has caused his dependents; RUth Onyangutu (wife), Faith Kemunto (daughter), Obed Omwega (son) And Juliet Kerubo (daughter) great pain loss and damages.
5. She claimed too that the deceased died while aged 40 years old; he was a driver earning Kshs. 30,000 per month. The Respondent equally averred that at the time of his death he enjoyed good health, abstained from alcohol and tobacco and was likely to live beyond 70 years. The Respondent therefore sought for general damages under the fatal accident Act and *law reform Act*. The Respondent equally sought for special damages which included special damages to include;
- a. Funeral expenses Kshs 23,000/=
 - b. Post mortem and mortuary fees Kshs 8000/=
 - c. Fees for the limited grant of administration Kshs 20,000
- Total Kshs 51000
6. In its defense the Appellant denied allegations against it and pleaded that if an accident had occurred (which they denied) the same was caused by the reckless, negligence and or the careless act or omissions on the part of the Respondent's late husband.
7. The trial court upon hearing the parties the trial court delivered a judgment wherein held as follows;
- “I have carefully considered the evidence before me and the rival submissions. I find since it is not disputed that the defendant is the owner of motor vehicle registration no. KCR 614W Scania Bus; that on the date in question a Road Traffic Accident occurred involving the said motor vehicle registration no. KCR 614 Scania Bus and motor vehicle registration no. KCC 921A Toyota Probox which the deceased herein was driving and that the deceased herein died a result of the said Road Traffic Accident. I only have to determine the following issues: -
1. Who is to blame for the Road Traffic Accident?



2. What damages/reliefs is the plaintiff entitled to?

Issue 1

I find there is no doubt that Road Traffic Accident occurred between the 2 motor vehicles registration numbers KCR 614W Scania Bus and KCC 921A Toyota Probox on the said date and time, on the said road in my assessment of the evidence on record, both the bus driver and Probox driver failed to exercise the degree of care reasonably expected of a person driving a motor vehicle on a public highway as the driver of the probox abruptly moved from its lane to the lane of the bus after bypassing another bus which was in front of the bus herein. I equally find that the driver of the defendants bus herein must have been speeding and must not have kept a proper distance between him and the other bus ahead of him otherwise he could have been able to swerve to his extreme left off the road on time and not collide with the probox head on but on the side. The two drivers were in my view equally to blame for the RTA and I therefore apportion liability at 50:50% against both drivers of the probox motor vehicle and the Scania Bus herein. I find the defendant vicariously liable for the negligent act of his driver (the driver of the Scania Bus REG. NO. KCR 614W).

Issue 2-quantum

I will deal with the same under 2 heads: -

1. General damages under *law reform Act*
2. General Damages under *fatal accidents Act*

General Damages Under The Law Reforms Act

I will deal with the same under 2 sub heads: -

- a. Loss of expectation of life
- b. Pain and suffering.

Loss of expectation of life

The plaintiff's counsel proposed Kshs. 100,000/= under this head and the defendant's counsel proposed Kshs. 60,000/=. However, I find Kshs. 100,000/= is sufficient.

Pain and suffering

The plaintiff counsel proposed Kshs. 150,000/= as the deceased herein did not die on the spot and the defendant's counsel proposed kshs.10,000/= since the deceased herein died on the date on the Road Traffic Accident. However, I find Kshs. 50,000/= is sufficient as the deceased herein did not die on the spot but died in hospital on the date of the Road Traffic Accident.

General Damages Under Fatal Accident Act

I will deal with the same under 2 sub heads: -

- a. Loss of dependency



b) Special damages.

a) **Loss of dependency (multiplicand and Multiplier)**

The plaintiff's counsel proposed the minimum wage of a driver of Kshs. 21,147/= be adopted since no documentary evidence was produced to prove earnings of the deceased. On the other hand, the defendant's counsel proposed a minimum wage of unskilled employee of Kshs. 6736.30/= be adopted. However, since as per the death certificate the deceased herein was a driver but plaintiff did not produce a pays lip to show what his salary per month was, I will adopt the minimum wage of a driver as per the regulations of wages (general) amendments order, 2018 where the salary of a driver is Kshs 13,975.30/= as the multiplicand.

The plaintiff proposed a multiplier of 20 years since the deceased died aged 40 years. On the other hand, the defendant's counsel proposed 7 years. However, the deceased having died aged 40 years I adopt a multiplier of 20 years.

Dependency ratio

The Defendant proposed a dependency ratio of 1/3 and the plaintiff proposed a dependency ratio of 2/3. However, I find a dependency ratio of 2/3 is sufficient as the plaintiff had a wife and 3 children who were depending on him I therefore award the plaintiff Kshs. 2,236,048/= under this sub head Calculated as hereunder: $13,975.30 \times 20 \times 12 / 2/3 = 2,236,048/=$

c. Special damages

I will not award the plaintiff any sum under SD as she pleaded for Kshs 51,000/= for the same but she did not produce any receipts to prove the same.

Having stated the above, I find the plaintiff has proved her case against the defendant on a balance of probabilities and I enter judgement for the plaintiff against the defendant as follows: -

a. Liability at 50:50%.

b. GD under *law reform Act* Kshs. 150,000/=.

GD under *fatal accidents Act* Kshs. 2,236,048/=

Kshs 2,386,048

Less 50%Contribution (kshs.1, 193,024/=)

Total GD KSHS 1,193,024/=.

c. Plus, costs and interest at court rates.

d. Apportionment

i. Ruth Bosibori Onyagutu (Wife) Kshs 743,024/=

ii. Faith Kemunto (Daughter) Kshs 150,000/=

iii. Obed Omwega (Son) Kshs.150,000/=



iv. Juliet Kerubo (Daughter) Kshs. 150,000/=

The minor children's' shares to be deposited in an interest earning bank account in the name of the court administrator Kisii law courts & the plaintiff until the minor children attain the age of majority but the plaintiff can apply from time to time for interest in the said account to maintain the minor children.

8. It against this decision that the Appellant filed this Appeal. This court with the consent of all the parties directed that the Appeal to be disposed of by way of written submissions. The Appellants filed the written submission through the learned counsel on 19th January, 2023, while the Respondent's submissions were filed on 18th November, 2022.

The Appellants' Submissions

9. The learned counsel for the Appellant on liability submitted the respondent did not prove her case that the Appellant was negligent. According to the learned counsel the police occurrence book produced before the trial court indicated that the motor vehicle registration KCC 921 Toyota Probox veered of its proper lane and encroached into the lane of motor vehicle registration KCR 614 W Scania Bus. He also argued that there was equally a police abstract produced before the trial court that clearly demonstrated that the motor vehicle registration KCC 921A Toyota Probox was to blame for the accident. It was his submissions too that the evidence of all the witnesses who testified before the trial court attested to the fact that the motor vehicle registration KCC 921A Toyota Probox was to blame for the accident due to its encroachment to the lane of motor vehicle registration number, KCR 614W.
10. He contended that there was no evidence to the contrary to demonstrate that motor vehicle registration number KCC 921A Toyota Probox was to blame for the accident. The learned counsel equally argued that the respondent failed to call the investigation officer to produce a sketch map and police file to support her negligence claim against the Appellants. It was his final submission on liability that this court should dismiss the trial court's apportionment of liability in the ratio of 50% in favor of the respondent and hold that the respondent did prove any negligent act or conduct by the Appellant on a balance of probability.
11. On quantum, the learned counsel for the Appellant submitted that the award Kshs. 50,000 for pain and suffering was high considering that the deceased did not suffer for long period of time before succumbed to his injuries. He learned counsel proposed an award of Kshs. 10,000 as sufficient compensation for pain and suffering. To support his proposal, the learned counsel relied on the case of Teresia Sebastian Massawe (suing as the legal administratrix of the estate of the late Silvia Sebastian Massawe) vs Solidarity Islamic (Kenya office) and another (2018) eKLR where the court found an award of Kshs. 50,000 for deceased person who died even before being attended to in a medical facility to be on a higher side and went on to reduce the same to Kshs 10,000.
12. Regarding loss of expectation of life, the learned counsel agreed with the trial court that an award of Kshs was sufficient 100,000. The learned counsel relied on the case of Kenya Red cross vs IDS (Suing as the legal representative of the estate of MDR (Deceased) (2020) eKLR where the court held that:

“On loss of life; the award of Kshs. 100,000 under this head is conventional and well merited and in accordance with the applicable principle of law.”



13. The learned counsel equally relied on the case of Makario Makonye Monyancha vs Hellen Nyangena (2014) eKLR where Sitati J held as follows;

“I find no reason to interfere with award of loss of expectation of life under the as the same is always awarded across board and the same was eventually deducted to avoid double award to the same beneficiaries.”
14. The learned counsel for the appellant equally submitted that the trial court erred in using a wrong multiplicand of Kshs. 13,975.30 and 20 years as the multiplier yet the deceased was age 40 years. He contended that the trial court in using 20 years as the multiplier did not take into consideration the vagaries and vicissitudes of life. The learned counsel contended that 10 years was ideal as the multiplier. He relied on the case of Midland media limited & another vs Pauline Naukot Aule (suing as the legal representative of the estate of the late Esinyon) (2020) eKLR where a multiplier of 10 years was considered to be reasonable for deceased who was aged 57 years old.
15. Regarding the dependency ratio the learned counsel argued that the 2/3 ratio relied by the trial court was erroneous because the Respondent had revealed she is a business lady and thus the ratio should have been 1/3.
16. From the forgoing the learned counsel proposed a sum of Kshs. 10,000 for pain and suffering, a sum of Kshs, 100,000 for loss of expectation of life and Kshs. 180,616.40 for loss of dependency less contribution.

The Respondent's Submissions

17. The learned counsel for the Respondent on liability submitted that the trial court's finding on liability was a correct and logical reflection of the probative value of the evidence that was tendered. The learned counsel faulted the Appellant's argument that it was the deceased who was wholly to blame for the accident. He contended that there was no evidentiary or adjudicative rule in law that demands that a court cannot apportion liability when all police documents purport to impute absolute blame on one party.
18. While relying in the case of Crown Petroleum Kenya Ltd & 3 others vs Anderson Sumata Saoli and 7 others (2019) eKLR, the learned counsel contended that it is trite law that when police investigations purport to blame some party for an accident, the same is no more than an opinion which the court is not absolutely bound to adhere to. The learned counsel further contended that the trial court took into consideration of the fact that, being a head on collision there was a high likelihood that both vehicles were being driven in such reckless high speed the head on collision could not be avoided.
19. On quantum the learned counsel defendant equally defended the decision of the trial court. Regarding general damages for pain and suffering he stated that the award of Kshs. 50,000 was reasonable given that deceased succumbed to his injuries after more three hours after the accident. The learned counsel referred this court to the case of Mercy Muriuki and another vs Samwel Mwangi Nduati (suing as the legal representative of the estate of the late mwangi) (2019) eKLR where the court held that the conventional award for pain and suffering ranges between 10,000 with higher damages being if the pain and suffering was prolonged before death. He also relied in the cases of EKM & another vs EOO (2018) eKLR and Bidii Muimi and another vs Patricia Munanie Mutemi & another (2020) eKLR.
20. Regarding damages for loss expectation of life the learned counsel submitted that the Respondent tendered uncontroverted evidence that the deceased died while in good health and a fruitful age of only



40 years and therefore Kshs. 100,000 a reasonable award. He relied in the case of EKM & another vs EOO (2018) eKLR.

21. Regarding the damages for loss of dependency, the learned counsel submitted that the trial court reasonably granted an accumulative value of Kshs. 2,336,048/= as general damages. The learned court relied in the case of Beatrice Wangui Thairu vs Ezekiel Barengetuny and another (1998) eKLR where the principle of calculating the amount of compensation for loss of dependency. The learned counsel submitted that the trial court correctly relied on the Regulations of Wages (General Amendment) order, 2018 by adopting Kshs. 13,975 as the multiplicand the deceased person monthly income.
22. The learned counsel equally submitted that the multiplier being 20 years applied by the trial court was reasonable in the circumstance of the case. He contended the contrary to the submissions of the Appellant the trial court properly addressed its mind to the vicissitudes of life and the fact that the deceased was engaged in the informal sector where there is no statutory set age of retirement. The learned counsel faulted the Appellants respondent multiplier of 10 years which would mean the deceased would be expected to work up to the age of 50 years. He contended that the Appellant was inconsiderate of the clear facts tendered in court that the respondent had left behind very young children as young as 7 years who would have been dependents on him beyond 60 years. To support the multiplier of 20 years the learned counsel relied the cases of;
 - i. Commercial transporters ltd vs Dorcas Adoyo Owiti and another (2017) eKLR where the court upheld a multiplier of 21 years where the deceased died aged 44 years.
 - ii. James Mbinda vs Stephen Mwalu Mulwa and another (suing as the legal representatives of the estate of Winfred Mbatha Mwaluli (deceased) 2021 eKLR where the high court adopted multiplier of 16-year where the deceased had aged 44 years.
 - iii. Benedeta Wanjiku Kimani vs Changwon Cheboi and another (2013) eKLR where multiplier for a deceased person 44 years old was 16 years.
23. Regarding the dependency ratio, the learned counsel submitted that the dependency of 2/3 was not contested in the Appeal and thus the same was not in issue and should remain undisturbed.

Issues Of Determination

24. Having analyzed the grounds of Appeal, reviewed the written submissions of the parties in respect to this appeal and re-evaluated the evidence presented at the trial and also considered the Judgment of the trial, I find that the sole issue of determination are:
 - a. Whether the trial court erred in finding that the Appellant was 50 percent liable for the accident
 - b. Whether appeal has not met the threshold for this court as an appellate court to disturb the amount of general damages awarded by a trial court.

Analysis And Determination

25. This is an appellate court and it has a duty to re-evaluate the evidence on record and arrive at its own decision bearing in mind that it did not see the witnesses during their testimony as was held in the case of Gitobu Imanyara & 2 others V Attorney General (2016) eKLR, to wit;

“..... Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect”.



Whether the trial court erred in finding that the Appellant was 50 percent liable for the accident.

26. The trial court in finding that Appellant was 50% liable for the accident had stated as follows;

“I equally find that the driver of the defendants bus herein must have been speeding and must not have kept a proper distance between him and the other bus ahead of him otherwise he could have been able to swerve to his extreme left off the road on time and not collide with the probox head on but on the side. The two drivers were in my view equally to blame for the RTA and I therefore apportion liability at 50:50% against both drivers of the probox motor vehicle and the Scania Bus herein.”

27. As correctly observed by the learned counsel for the Respondent, the only evidence that was available to the court was the OB abstract, the investigation report and the sketch plan. DWI during cross-examination yielded that in as much as there were eye witnesses who witnessed the accident he did not make any step in ensuring that such witnesses were present to testify. It was therefore difficult for the trial court not to apportion blame when there clearly sufficient evidence especially evidence of an eye witness to prove that Appellant was blameless. In the case of *Crown Petroleum Kenya Limited & 3 others v Anderson Sumata Saoli & 7 others* [2019] eKLR the court held as follows:

“Of course, the evidence of an expert as a police officer who visits the scene of an accident is only an opinion to which the Court is not bound if evidence available to the Court indicates a different result, and I respectfully agree with the Courts in *Choge & Others v. R* (1985) eKLR; *Stephen Kinini Wangonde v. The Ark Ltd.* 2016) eKLR and *David Kajogi M’Mugaa v. Francis Muthomi* (2012) eKLR on the nature of expert evidence as a guide for the Court which must make its own conclusion on the matter on the facts proved in the case. However, in arriving at its conclusion should give consideration to such expert evidence in the light of all other available evidence. Moreover, as held in the criminal case of *Mutonyi v. R* (1982) KLR 203 “expert evidence is given by a person skilled and experienced in some profession or special sphere of knowledge from facts reported to him or discovered by him by tests, measurements and the like” and an expert witness need to prove his competence. The Court is entitled to make its mind as to the credibility of an expert witness and not to rely on lack of rebutting evidence (*Muzeyi v. Uganda* (1971) EA 225). In this case, the Police officer PW4 while not demonstrating any special knowledge in scene of accident assessments would have his evidence considered along with other evidence by other witnesses in the case.

The entry in the Police Occurrence Book (OB) entry on the accident suggesting the accident was caused by the trailer driver’s overtaking is no evidence. Indeed, the report itself does not state its basis as information from eye-witnesses or measurements taken at the scene. It clearly appears to be a surmise as to how the accident may have happened by the police officer at first visit to the scene before any investigations were done.

16. As held by the Court of Appeal in *Japheth Gituma Joseph & 2 others v Republic* [2016] eKLR, OB extracts are not Evidence. While considering an OB entry in a criminal case, the Court in *Gituma* said:

“Reports of commission of alleged crimes are normally made to a duty officer at a police station and may be made by a person who is not the complainant as in cases where the complainant is admitted in hospital. The report is merely a report of



occurrence – a bare report of a crime and not evidence of commission of an offence against any person.”

28. The court further observed that;

“Drivers owe other drivers on the road a duty of care to avoid collision accidents and lane discipline does not preclude an obligation to swerve and or otherwise take action to avoid a collision with other vehicles on the one or other lane. In this case, it was not shown that the driver of the trailer did all that he could have done including swerving off road to avoid the accident. He was also partly to blame for the accident.”

29. Similarly, in the case of *Anne Wambui Ndiritu vs Joseph Kiprono Ropkoi & Anor (2004) eKLR*, the Court of Appeal, (O’Kubasu Githinji & waki JJ. A) while apportioning liability held;

i. We have considered the submissions of both counsel, the authorities cited before us and we are persuaded by Mr. Mwangi learned counsel for the appellant that we must interfere with the judgment of the superior court. There is no doubt that an accident occurred between the two vehicles on the Nyeri - Mweiga road at the time stated by the two witnesses. In our assessment of the scanty evidence on record however both the lorry driver and the motorcyclist failed to exercise the degree of care and skill reasonably to be expected of a person driving a vehicle on a public highway. They were in our view equally to blame. We therefore apportion liability for the accident at 50/50

30. Considering reason given by the trial court drawing persuasion from the two decided cases I see no reason to interfere with the decision of the trial court apportioning liability to both parties in the accident at 50/50.

Whether appeal has not met the threshold for this court as an appellate court to disturb the amount of general damages awarded by a trial court.

31. In assessing damages in this matter the trial as assessment at two levels;

a. General damages under *law reform Act* wherein she dealt with damages for pain and suffering which she assessed at 50,000 for reasons that the deceased did not on spot or rather he died at the hospital and damages of expectation of life which she awarded at Kshs.100,000.

b. Damages under *fatal accidents Act* where she discussed damages for loss of dependency and special damages. For loss of dependency she set the ratio of dependency as 2/3 as the plaintiff had a wife and 3 children who were depending on the deceased, the multiplier as 20 years and the multiplicand as Kshs. 13,975. In granting the multiplicand at Kshs 13,975 the trial court noted that there was no sufficient evidence to show how much the deceased earned and thus she relied on the minimum wage of a driver as per the regulations of wages (general) amendments order, 2018 which is Kshs. 13,975. In the end the learned trial Magistrate awarded the plaintiff Kshs. 2,236,048/= Calculated as 13,975.30x20x12/2/3. For special damages the trial court declined to grant the same

32. The Appellant has challenged the award of Kshs 50,000 for general damages for pain and suffering as the deceased died on the same day and thus proposed a value of 10,000. However, I find that the explanation given by the trial court as hereinabove captured in granting Kshs. 50,000 as sufficient for the pain and suffering the deceased when through. Unlike what the Appellant will want to believe, the evidence at the trial court is clear that the deceased died three hours after the accident as was held in the case of *Mercy Muriuki and another vs Samwel Mwangi Nduati* (suing as the legal representative of



- the estate of the late mwangi) the prolonged period before the deceased eventually died was sufficient consideration for grant of Kshs. 50,000 as damages for pain and suffering.
33. The award of Kshs. 100,000 as general damage for loss of expectation of life was agreed to by both part as the same is the conventional award for such damages and thus the same is upheld.
 34. Regarding the issue of the multiplier, I am not persuaded that the trial court made any error in using a 20 years as the multiplier to calculate damages for loss of dependency for a deceased person who died aged 40 years. I have taken my time to review the cases the Respondent referred this court as the multiplier and I find that the same are comparable to this case. I equally gone through the case Midland media limited & another vs Pauline Naukot Aule (suing as the legal representative of the estate of the late Esinyon) (2020) eKLR relied by the applicant and found that the same is not applicable to this case given that the deceased therein was 57 years old as opposed to the deceased in this case who is aged 40 years.
 35. Regarding the multiplicand I hold that the trial court was in order to have relied on the minimum wage of a driver as per the regulations of wages (general) amendments order, 2018 which is Kshs. 13,975 in the absence of proof of what he was earning as a driver and thus I do find any reason sufficient reason to hold otherwise.
 36. The Appellant claims that the court erred in using a ratio 2/3 disregarding the testimony of the Respondent who revealed that she was a business woman thus the ratio should have been 1/3. However, a review of the testimony of PWI, the Respondent herein especially during cross-examination stated that when the deceased was alive she was a housewife and not a businesswoman and that she only became a businesswoman upon the death of her husband. From such evidence I do not find any reason to doubt the trial court that the Respondent and her minor children were dependents of the deceased and thus the ratio of 2/3 was reasonable.
 37. From the forgoing therefore I find no merit in the Appeal and thus I proceed to dismiss the same with costs to the Respondent.
 38. It so ordered.

T.A. ODERA

JUDGE

11.3.2024

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF;

Miss Nduhikire for respondent.

N/A for appellant

CA-Oigo

Nduhukire: May the decretal sum which was deposited in a joint interest earning account which had been deposited in a joint interest earning account in the names of both counsel be released to us within 7 days.

Order: The decretal sum which had been deposited in a joint interest earning account in the names of both counsel be released within 14 days from today.

T.A. ODERA

JUDGE

