



Kenya Red Cross Headquarters v Ochola (Suing as a Legal Representative and Administrator of the Estate of the Late Irene Patricia Achieng Obunga) (Civil Appeal E137 of 2021) [2023] KEHC 18589 (KLR) (16 March 2023) (Judgment)

Neutral citation: [2023] KEHC 18589 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E137 OF 2021
MS SHARIFF, J
MARCH 16, 2023**

BETWEEN

KENYA RED CROSS HEADQUARTERS APPELLANT

AND

JACOB OBUNGA OCHOLA (SUING AS A LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF THE LATE IRENE PATRICIA ACHIENG OBUNGA) RESPONDENT

JUDGMENT

A. Case Background

1. Vide a Complaint dated 23rd October 2021 the Respondent brought a Claim of tort of negligence against the Appellant in Maseno Civil Suit 116 of 2019; Jacob Obunga Achola vs The Kenya Red Cross Headquarters, following the fatal injuries sustained by Irene Patricia Achieng in a road traffic accident which occurred on 20th February 2019 along Bondo – Kisumu road involving the Appellant’s Motor Vehicle Registration No KCC 154Y a Toyota Land Cruiser and a Motor Vehicle Registration No KAL 913U Suzuki. The deceased was a passenger in the latter vehicle.

B. Liability

2. Liability was settled by parties through apportionment of the same at 20% against the deceased and 80% against the Appellant.

C. Quantum

3. The case proceeded for assessment and Judgment on quantum was entered as below:
 - a. General damages for pain and suffering Kshs 200,000



- b. General damages for loss of expectation of life Kshs 150,000
- c. General damages for loss of dependency Kshs 7,200,000
- d. Special damages Kshs 840,200

Total Kshs 8,390,200

Less 20% contributory negligence, thus the final computation was as hereunder:

- a. General damages for pain and suffering Kshs 160,000
- b. General damages for loss of expectation of life Kshs 120,000
- c. General damages for loss of dependency Kshs 5,760,000
- d. Special damages Kshs 672,160

Total Kshs 6,712,160

D. Appeal

- 4. The Appellant later moved court for leave to file an appeal out of time and the leave was granted hence this appeal whose sole issue is whether the award on quantum was excessive.
- 5. It is noteworthy that the appellant's insurer has since paid a sum of Kshs 3,000,000 to the respondent; that being the statutory limit covered under the insurance policy.

E. Submissions

- 6. Whereas parties were directed to file written submissions on the appeal, the appellant have left it to court to exercise its discretion to write the judgement.
- 7. The respondent has resisted the appeal and maintains that the trial court did not err in any way and that the awards on quantum under all heads were proper, regular and based on precedents.

F. Analysis and Determination

- 8. As a first appellate court I am duty bound to re-evaluate, re-assess and reanalyze the evidence and make my own conclusions while taking into account that I did not see nor hear the witness. In the case of *Selle & Another vs Associated Motor Boat Company Limited & Others* (1968) EA 123 the court stated that:-

“...this court is not bound necessary to accept the findings of fact by the court below. An appeal to this court...by way of a retrial and the principles upon which this court acts in such an appeal are well settled. 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 wake due allowance in this respect.”

a. General damages for pain and suffering.

- 9. The deceased was involved in an accident on February 20, 2019 and succumbed to her injuries on May 29, 2019. She indeed endured prolonged pain and suffering wherefore the award of Kshs 200,000 under this was proper and adequate in the circumstances of this case. The Trial court cited relevant authorities to support the award.



b. General damages for loss of expectation of life.

10. In the case of *[Mercy Muriuki & Another vs Samuel Mwangi Nduati & Another \(Re Robert Mwangi\)](#)* (2019) eKLR the court stated:

“In assessing damages for this purpose, the question is not whether the deceased had the capacity or ability to appreciate that his further life on earth would bring him happiness, the test is not subjective and the right sum to award depends on an objective assessment of what kind of future on earth the victim might have enjoyed, whether he had justly estimated that future or not. Of course regard must be had to financial losses or gains during the period of which the victim has been deprived. The damages are in respect of loss of life, not f loss of future pecuniary prospects..... 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 for pain and suffering the awards range from Kshs 10,000/= to Kshs 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death. (See *Sukari Industries Ltd v Clyde Machimbo Juma* (2016) eKLR)

11. A sum of Kshs 150,000 was made under this head. The deceased was at all material times aged 25 years wherefore the award made was adequate and reasonable.

c. General damages for loss of dependency.

12. The evidence presented before the Trial court proved that the deceased had been employed by Plan B Holding Limited as an Administrative Secretary and her salary was Kshs 45,000 per month which was adopted by the trial court as the multiplicand. A multiplier of 20 years was used and a dependency ration of 2/3 given that the deceased was a single mother of one young son. Her parents who also survived her were dependent upon her. Dependency was thus proved. I cannot find any fault with this assessment by the trial court.

13. In the case of *[Abdalla Rubeya Hemed v Kayuma Mvurya & Another](#)* [2017] eKLR the court rendered itself as follows :-

“Dependency is always a matter of fact to be proved by evidence. It is not that the deceased earned a sum and therefore must have devoted a portion or part of it to his dependence. Rather the claimant must give some evidence to show that he was dependent upon the deceased and to what extent.”

d. Special damages

14. As regards the award on special damages I am persuaded by the case of *[Shiv Hauliers Ltd v Fredrick Makokha Sisala](#)* (2017) eKLR where the court quoted the holding in the case of *[Hahn v Sigh](#)* [1985] KLR 716 thus :

“Now the next two grounds of the memorandum concern special damages which must be not only claimed specifically but proved strictly for they are not the direct natural or probable consequences of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and the nature of the acts themselves.”

15. Special damages were specifically pleaded and proved.



G. Conclusion

16. The principles upon which an appellate court can disturb a judgement of a trial court were enunciated in the case of Butt v. Khan Civil Appeal No. 40 of 1997 thus: -

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles or that he misapprehended the evidence in some material respect, and so arrive at a figure which was either inordinately high or low.” See also Kemfro Africa Ltd v/a Meru Express Services Gathogo Kanini v. A.M. Lubia C.A. 21 of 1984 (1882-1988)1 KAR 727

17. I have re-evaluate, analyzed and scrutinized the evidence presented before the trial court and I do find that the general damages awards made under the different heads both under the Fatal Accident Act and the Law Reform Act are premised on precedents and are a reasonable assessment in the circumstances of the case and I cannot find fault with the Judgment of the Trial court.

18. This appeal is devoid of merit and is thus dismissed with costs to the respondent.

It is hereby so ordered.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 16TH DAY OF MARCH 2023.

MWANAISHA S. SHARIFF

JUDGE

