Wachira & another v Chirchir & another (Suing as the Administrators of the Estate of Simon Videlis Omwaro - Deceased) (Civil Appeal 106 of 2019) [2024] KEHC 14810 (KLR) (4 October 2024) (Judgment)

Neutral citation: [2024] KEHC 14810 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CIVIL APPEAL 106 OF 2019

JRA WANANDA, J

OCTOBER 4, 2024

BETWEEN

EZEKIEL MURAYA WACHIRA ..... 1ST APPELLANT

WHITE SKY INVESTMENT LIMITED ..... 2ND APPELLANT

AND

NAOMI JEPKESIO CHIRCHIR ..... 1ST RESPONDENT

JULIUS KEMEI KIMELI MISO ..... 2ND RESPONDENT

SUING AS THE ADMINISTRATORS OF THE ESTATE OF SIMON VIDELIS OMWARO - DECEASED

JUDGMENT

1. This Appeal is against the quantum of damages awarded in Eldoret Principal Magistrates Civil Case No. 415 of 2017 as compensation for the death of a 32 years old adult female that occurred as a result of a fatal road accident. In the trial Court, the Appellants were the Defendants and the Respondents were the Plaintiffs. The Appellants now seek reduction of the amount of compensation awarded claiming that the same was manifestly excessive.

2. The background of the case is that by the Plaint filed on 27/04/2020 through Messrs Keter, Nyolei & Co. Advocates, the Respondents sued the Appellants seeking general damages under the *Fatal Accidents Act* and the *Law Reform Act*, special damages at Kshs 71,400, costs of the suit and interest.

3. The Appellants alleged that at all material times, the 2nd Appellant was the owner of the motor vehicle registration number KAX 033P while the 1st Defendant was the authorized driver thereof, that on 1/02/2017, along the Eldoret-Nakuru road, the 1st Appellant, while driving the said motor vehicle, so negligently drove and/or controlled the same causing it to lose control and hit the deceased, a pedestrian

off the road. It was pleaded that as a result, the deceased, then aged 32 years sustained severe injuries from which he died and that, consequently, his estate and dependents have suffered loss and damage. The dependents were then listed as the widow of the deceased, 2 daughters, a son and a brother.

4. The Defendant filed its Defence on 24/05/2017 through Messrs Kimaru Kiplagat & Co. Advocates denying the claim and the particulars alleged.

5. The matter then proceeded to trial and it was directed that the testimonies of some of the witnesses as given in Eldoret CMCC No. 412 of 2017, apparently a related suit in the same series of suits which arose from the same accident would be applied in the suit the subject hereof. The Respondents (as Plaintiffs) called 1 additional witness who testified as PW3. On their part, the Appellants did not call any witness.

6. After the trial, the Court delivered its Judgment on 09/07/2019 whereof it apportioned liability at 85% - 15% in favour of the Respondent and awarded damages and costs. There is indication that the said apportionment of liability was, in fact, by consent earlier recorded in the suit. The full Judgment was as follows:

Pain & suffering	Kshs 20,000.00
Loss of expectation of life	Kshs 150,000.00
Loss of dependency	Kshs 3,200,000.00
Loss of consortium	Kshs 500,000.00
Funeral expenses and Ad Litem	Kshs 71,400.00
Less 15% contribution	Kshs 591,250.50
Total	Kshs 3,350,190.50

7. The award for "loss of dependency" at Kshs 3,200,000/- (computed as Kshs 20,000/- for 12 months x 20 years x 2/3) was based on the following parameters:

Multiplicand (monthly earning)	Earning years (multiplier)	Dependency ratio
20,000/-	20	2/3

8. Aggrieved by the said decision, the Appellant filed a memorandum of Appeal comprising 7 grounds of Appeal as follows:

    i. That the Learned Magistrate erred in law and fact in awarding Kshs. 3,350,190/- as general damages an amount which was not consistent with the injuries sustained, submissions of the counsels for all parties and the legal precedents.

    ii. That the Learned Magistrate erred in law and fact in arriving at the said general damages a decision on amount not supported by the evidence on record.

iii. That the Learned Magistrate erred in law and fact in considering extraneous issues while arriving at the said general damages contrary to the evidence on record.

iv. That the Learned Magistrate erred in law and fact in awarding quantum of damages that is manifestly excessive in the circumstances.

v. That the Learned Magistrate erred in law and fact in failing to consider the evidence tendered by the Appellant.

vi. That the Learned Magistrate erred in law and fact in failing to consider the submissions tendered by the Appellant.

vii. That the Learned Magistrate erred in law and fact erred in law and in fact in applying the wrong principles of law on arriving at said damages.

Respondent's evidence before the trial Court

9. The testimony given by the other witnesses (PW1 and PW2) in the said Eldoret CMCC No. 412 of 2017 and which was adopted in the suit the subject hereof was recited by the trial Magistrate in her Judgment. However, the same having only touched on liability, which is not in issue herein, I will not recount it.

10. PW3 was the 1st Respondent herein, Naomi Jepkesio Chirchir, who described herself as the wife to the deceased. She testified that she obtained a Limited Grant of Letters of Administration and paid Kshs. 20,000/- for it, which she produced. She also produced a letter from the Chief as confirmation that she was the wife to the deceased, and the Certificate of Death for the deceased. She also produced Certificates of Birth indicating that the deceased was the father of her 4 children. She testified further that she paid Kshs 15,700/- for the post mortem and mortuary fees which she produced, together with a burial permit. She also stated that she incurred about Kshs 30,000/- as funeral costs and produced receipts amounting to Kshs 35,640/-. She further stated that the deceased was 32 years old and used to earn between Kshs 2,000/- and Kshs 2,500/- daily as a driver and that he used to spend the money to cater for the family. She also produced a demand letter and then adopted her Witness Statement. In cross examination, she testified that the deceased died on the spot, but conceded that she had nothing to show how much the deceased was earning.

Hearing of the Appeal

11. The Appeal was canvassed by way of written Submissions. Pursuant thereto, the Appellants filed their Submissions on 25/10/2023 while the Respondents filed theirs on 20/03/2023.

Appellant's Submissions

12. Counsel for the Appellants appreciated the limits and boundaries within which an Appellate called upon to review assessment of damages by a trial Court must operate. He cited the case of Southern Engineering Co. Ltd vs Musungi Mutia [1985] KLR 730.

13. Regarding "pain and suffering", Counsel cited the case of Mercy Muriuki & Another v Samuel Mwangi Nduati & Another (Suing as the Legal Administrator of the Estate of the late Robert Mwangi) [2019] eKLR, and also the case of Clement Ochieng v Ruth Atieno Ombogo (suing as the personal representative and Administrator of the estate of Nolise Otieno Mwalo - Deceased) Robert Gitahi [2020] eKLR. He then urged that in the present case, PW3 testified that the deceased died on the spot, that therefore, the deceased suffered less pain. According to him, the Learned Magistrate erred

by awarding Kshs 20,000/- which was excessive and that Kshs. 10,000/= would have been adequate compensation.

14. Under the head of "loss of expectation of life", Counsel urged that the Learned Magistrate failed to consider the stare decisis rule when she awarded Kshs 150,000/- yet Courts have settled that the conventional award for "loss of expectation of life" is Kshs 100,000/-. He cited the case of Mercy Muriuki (Supra), Hyder Nthenya Musili & Another v China Wu Yi Limited & Another [2017] eKLR. According to him, an award of Kshs. 100,000/- would have been adequate compensation.

15. Regarding "loss of dependency", he submitted that the wife to the deceased testified that the deceased was 32 years old at the time of the accident and used to earn between Kshs 2,500/- and Kshs 2,000/- daily, that however, in cross-examination, she conceded that she had nothing to prove the same, that no evidence was adduced to prove the earnings, or to show that the deceased was a driver. He submitted that the relevant wage Regulation Order was the one prevailing at the time the deceased died, that the Certificate of Death indicates that the deceased died on 01/02/2017 and that therefore, the applicable Order is "The Regulation of Wages (General) (Amendment) Order, 2017". He submitted that Citation 1 of the said Order states that wages for general labourer including cleaner, sweeper, gardener, children's ayah, house servant, day watchman, or a messenger in Nairobi, Mombasa, and Kisumu cities was Kshs 12,926.55/- per month, for Municipalities, Mavoko, Ruiru and Limuru Town was Kshs 11,926.40/- while in all other areas it was Kshs 6,896.15. He contended further that the Certificate of Death also indicates that the deceased hailed from a place known as "Lainguse", and that PW3 testified that she used to stay with the deceased in "Teldet, Lainguse sub-location" in "Burnt Forest". According to him, "Burnt Forest" is not a Municipality and therefore can be categorized as "other places". He urged that the trial Magistrate ought to have applied the said sum of Kshs 6,896.15/- as the multiplicand and not Kshs 20,000/-. According to him therefore, the award was erroneous as the trial Magistrate failed to consider or ignored a relevant factor.

16. Regarding the multiplier of 20 years adopted by the trial Court, Counsel agreed that the same was reasonable and therefore urged that the calculation of "loss of dependency" should have been quantified as follows:

    Kshs 6,896.15/- x 20 years x 12 months x 2/3 = Kshs 1,103,384/-

17. Regarding "loss of consortium", Counsel submitted that the deceased died on the spot, that Courts have held that there is no award for "loss of consortium" in fatal accidents except for the period between the injury and death of the spouse, that therefore, the Learned Magistrate erred when she awarded Kshs 500,000/- for the same. He cited the case of Acceler Global Logistics v Gladys Nasambu Waszva & another [2020] eKLR.

18. Counsel submitted further that it is now settled that awarding damages both under the *Law Reform Act* and the *Fatal Accidents Act* amounts to double compensation, and that damages awardable under the two legal regimes, though meant for different purposes, but in reality, it happens that the Administrators of the estate double up as heirs to the deceased. He urged that Courts have therefore over time developed a practice of awarding damages by putting the above into consideration. He cited the case of Civil Appeal No. 91 of 1997, South Nyanza Company Limited Vs James Martin Matoke and also the case of Civil Appeal No. 4 of 2013 David Kahuruka Gitau & another v Nancy Ann Wathithi Gitau & Another.

19. In conclusion, he proposed that Judgment should be entered as follows:

Liability at 85:15 in favour of the Respondents	
Pain & suffering	Kshs 10,000.00
Loss of expectation of life	Kshs 100,000.00
Loss of dependency	Kshs 1,103,384.00
Special damages	Kshs 71,400.00
Sub-Total	Kshs 1,284,784.00
Less 15% contribution	Kshs 192,717.60
Grand Total	Kshs 1,092,066.40

Respondent's Submissions

20. On his part, regarding the trial Court's awards of Kshs 20,000/- for "pain and suffering" and Kshs 150,000/- for "loss of expectation of life" Counsel for the Respondent submitted that the same were fair considering that death occurred on the spot and that the same are not so inordinately high. He cited the case of Malindi HCCA No. 39 of 2020 – FM (Suing through mother and next friend W vs JN & Another (2020) eKLR and urged that the deceased being 32 years old, had a whole life ahead of him but his legitimate expectations in his life were dashed.

21. On the award of Kshs 500,000/- for "loss of consortium", he submitted that Courts have recognised and do make awards for spouses and their loved ones left behind by the deceased, that the deceased herein left behind a young widow and 4 children who have lost love and affection from their life companion. He submitted that the widow testified that she had no intention to remarry as she had to stay and take care of the deceased's estate and their children. According to Counsel, the widow had lost all benefits associated with the marriage. He cited the case of Murang'a HCCA No. 21 of 2013 – Nicholas Njue Njuki v Eliud Mbugua Kahuro, where, he submitted, the Court awarded Kshs 600,000 for "loss of consortium" and maintained that the award herein was just and fair in the circumstances.

22. In respect to the award made under the head of "loss of dependency", Counsel contended that the deceased died at the age of 32 years and left behind a young family, that he was employed as a conductor and died in the line of duty, that evidence was adduced that he was in gainful employment and earned an average of Kshs 1,000/- daily, summing up to Kshs. 30,000/- per month. He observed that the dependency ratio is not disputed and submitted that the trial Court considered all these factors and therefore correctly applied that income as multiplicand. He submitted that at the age of 32 years, the deceased would have reasonably worked gainfully up to the age of 60 years and that the multiplier of 20 years adopted was fair. Regarding the Appellant's contention that the Court should have adopted the use of "minimum wage" as the multiplicand, he submitted that the "minimum wage" method is to be used only where the earnings of the deceased cannot be ascertained and averred that in this case, evidence was tendered with regard thereto.

23. Regarding the allegation of "double compensation" in giving awards under both the *Law Reform Act* and the *Fatal Accidents Act*, Counsel cited the case of Nakuru HCCA 96 of 2017, Crown Petroleum Co Ltd & Another vs James Kinyanjui Mwangi and the case of Hellen Wangu Waweru vs Kiarie Scores

Ltd [2015] eKLR and submitted that there is no requirement, nor is it mandatory for an award made under the *Law Reform Act* be deducted from the award under *Fatal Accidents Act*.

Determination

24. As reiterated in a plethora of cases, this being a first appellate Court, it has the duty to evaluate, re-assess and re-analyze the evidence before the trial Court and draw its own conclusion. For instance, in the case of Kenya Ports Authority vs Kuston (Kenya) Ltd. [2009] 2 EA 212, the said principle was highlighted as follows:

> " On a first Appeal from the High Court, the Court of Appeal should 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 allowance in that respect. Secondly, that the responsibility of the Court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence"

25. It is evident that the broad issues arising for determination in this Appeal are the following:

    i. Whether the trial Court erred in its award of damages for loss of dependency, loss of expectation of life and loss of consortium

    ii. Whether the award under the *Law Reform Act* and the *Fatal Accidents Act* amounts to double compensation

26. The principles guiding an appellate Court in determining whether to interfere with an award for damages were set out in the celebrated case of Butt v Khan [1981] KLR 470 as follows;

> " An appellate Court will not disturb an award for damages unless it is 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 arrived at a figure which was either inordinately high or low".

27. To therefore successfully persuade this Court to interfere with the award for damages made by the trial Court, the Appellant must satisfy this Court that the trial Court acted on wrong principles or that the award was manifestly excessive in the circumstances.

Pain & Suffering

28. On the award of "pain and suffering" at Kshs 20,000/-, I note that before the trial Court, the Respondents proposed a sum of Kshs 50,000/- while the Appellant proposed Kshs 5,000/-. It is not in dispute that the deceased died instantly. My review of awards for "pain and suffering" in instances where the deceased dies on the spot reveals that the majority of the awards given by the Courts range in the region of about Kshs 20,000/- to 50,000/-. This is in consideration of the fact that there would be no prolonged distress or torture on the part of such deceased before death. I do not therefore find the award of Kshs 20,000/- to be excessive or so inordinately high to merit a review by this Court. I therefore decline to interfere with the award made under this head.

Loss of expectation of life

29. It is not in dispute that the deceased was aged 32 years at the time of his death and therefore, he had a long life ahead of him. The trial Court awarded Kshs 150,000/- for "loss of expectation of life". F. Muchemi J, in the case of Mercy Muriuki & Another v Samuel Mwangi Nduati & Another (Suing as

the Legal Administrator of the Estate of the late Robert Mwangi) (2019) eKLR, 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."

30. There is considerable support to the above view that the conventional award for "loss of expectation of life" is 100,000/-. I note while the Appellants had, before the trial Court, proposed an award Kshs 70,000/-, the Respondents had proposed Kshs 200,000/-. From my own review of comparable and recent authorities, it is clear that the Courts have been awarding figures in the region of about Kshs 80,000/- to Kshs 150,000/-. The trial Magistrate having therefore awarded Kshs 150,000/-, that figure, although a bit higher than normal, is still within the margins ordinarily awarded. It cannot therefore be described as being so inordinately high so as to be deemed manifestly excessive. I do not therefore find any fault on the part of the Magistrate in awarding that amount.

Loss of dependency

31. Regarding "loss of dependency" in which the trial Court adopted a multiplicand of Kshs 20,000/- representing what the trial Magistrate found as an acceptable estimate of the monthly earnings that the deceased used to make, Counsel for the Appellant submitted that the wife to the deceased testified that the deceased used to earn between Kshs 2,500/- and Kshs 2,000/- daily, but that she however conceded that she had nothing to prove the same. He also urged that no evidence was adduced to prove such, or to show that the deceased was a driver as alleged. He submitted that the trial Court should have applied the "minimum wage" method and that the deceased having died on 01/02/2017, the provision that was applicable was the "Regulation of Wages (General) (Amendment) Order, 2017" whereof the wages for a "general labourer" in areas that are outside cities and Municipalities, which the deceased belonged to, was Kshs 6,896.15/-.

32. It is true that there was no proof of earnings made by the deceased or sufficient evidence of any career or occupation of the deceased and that therefore the adoption of the multiplicand of Kshs 20,000/- was not supported by sufficient evidence. To this extent, I agree that the trial Magistrate fell into an error of principle. I however note that in their Submissions before the trial Court, the Appellants proposed a multiplicand of Kshs 9,400/-. This is what their Counsel submitted:

> " In the absence of evidence on the deceased's income, it will be fair and just to approach this issue by assessing the deceased's income by applying the basic salary payable to unskilled labourer as per the minimum wage scale as at 1st February 2017. The same was pegged at Kshs 9,400.80 per month (see copy of the minimum wage gazxette 2017 annexed to the submissions)"

33. This being an Appeal which is basically a review of the trial Court proceedings, having made submissions along the aforesaid lines and having offered no explanation why they are now departing from that line of argument, I find it mischievous for the Appellants to now "shift goal-posts" and argue otherwise. The Appellants are bound by the said submissions and cannot unilaterally run away from it.

34. Applying the reasoning contained in the Appellants' own said Submissions therefore, I will pick the said figure of Kshs 9,400.80 and round it off to the sum of Kshs 10,000/- which I apply as the

multiplicand. Since the multiplier and the dependency ratio of 2/3 are not challenged in this Appeal, I will assess the award under the head of "loss of dependency as follows:

Kshs 10,000/- x 20 years x 12 months x 2/3 = Kshs 1,600,000/-

Loss of Consortium

35. Regarding "loss of consortium", Counsel for the Appellant submitted that the deceased died on the spot and that Courts have held that there is no award for "loss of consortium" in fatal accidents where death occurs on the spot and that the same can only be available where the period between the injury and death of the spouse. On this issue, a two-judge bench comprising of Mativo J (as he then was) and Nyakundi J, in the case of Acceler Global Logistics v Gladys Nasambu Waswa & another [2020] eKLR pronounced itself as follows:

> " 65. The law as I understand it is that when a spouse is injured to an extent that he cannot provide consortium to his spouse, either temporarily or permanently during the rest of his/her life, then the spouse of the injured person can sue and recover damages for loss of consortium. But this is not indefinite. In the event of death, then this claim is unavailable. This issue has been judicially considered several times in Alberta and by the Supreme Court of Canada. In O'Hara v. Belanger[71] the court ruled that there is no award for loss of consortium in fatal accident cases except for the period between the injury and death of spouse. In other words, the time when the injured spouse was or is indeed alive. There is, therefore no "future" loss of consortium that is compensable. To me this statement represents the correct position of the law. In this regard, the deceased died on the spot. Had he survived the acceded and succumbed after sometime, then the award under this head would be available to the first Respondent. It follows that the learned Magistrate misdirected himself in making an award under the claim for loss of consortium in the circumstances of this case."

36. Similarly, Githua J, in the case of Innocent Ketie Makaya Denge v Peter Kipkore Cheserek & Another [2015] eKLR, in which, as herein, death had occurred on the spot, stated that:

> " In my view, loss of consortium can only be subsumed in a claim for loss of amenities in an action instituted by a survivor of an accident in which it is claimed that owing to the injuries sustained in the accident in question, the plaintiff was incapable of enjoying consortium with his/her spouse and that his or her quality of life had as a result been diminished. Loss of consortium cannot thus be maintained as a claim on its own.
>
> In light of the foregoing, the award of damages for loss of consortium to the respondents portrays a serious misapprehension of the law by the trial magistrate. The award was obviously made contrary to the law and cannot be allowed to stand. It is consequently set aside."

37. I fully associate myself with the above pronouncements I am therefore in agreement with the Appellants that the Learned Magistrate erred when she awarded Kshs 500,000/- for "loss of consortium" in this case. Accordingly, I set aside that award.

Whether awarding damages under both the *Law Reform Act* and the *Fatal Accidents Act* amounted to double compensation

38. The issue of "double compensation" regarding awards made under the *Law Reform Act* and the *Fatal Accidents Act* has been discussed extensively. In my understanding however, the "confusion" was finally laid to rest by the Court of Appeal in the case of Hellen Waruguru Waweru (suing as the Legal Representative of Peter Waweru Mwenja (deceased) v Kiarie Shoe Stores Limited [2015] eKLR when it held as follows:

> " This Court has explained the concept of double compensation in several decisions and it is surprising that some Courts continue to get it wrong. The principle is logical enough; duplication occurs when the beneficiaries of the deceased's estate under the *Law Reform Act* and dependents under the *Fatal Accidents Act* are the same, and consequently the claim for lost years and dependency will go to the same persons. It does not mean that a claimant under the *Fatal Accidents Act* should be denied damages for pain and suffering and loss of expectation of life as these are only awarded under the *Law Reform Act*, hence the issue of duplication does not arise. The confusion appears to have arisen because of different reporting of the Kemfro case (supra) which was heavily relied on by Mr. Kiplagat. The version he relied on is from [1982-88] 1 KAR 727 which concentrates on the decision of Kneller JA in extracting the ratio decidendi. The same case, however, is more fully reported in [1987] KLR 30 as Kemfro Africa Ltd t/a Meru Express Services 1976 & Another -VS- Lubia & Another (No. 2) and the ratio decidendi is extracted from the unanimous decision of all three Judges. It was held, inter alia, that: -
>
> An award under the *Law Reform Act* is not one of the benefits excluded from being taken into account when assessing damages under the *Fatal Accidents Act*; it appears the legislation intended that it should be considered. The *Law Reform Act* (Cap 26) section 2 (5) provides that the rights conferred by or for the benefit for the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependents of the deceased persons by the *Fatal Accidents Act*. This therefore means that a party entitled to sue under the *Fatal Accidents Act* still has the right to sue under the *Law Reform Act* in respect of the same death. The words 'to be taken into account' and 'to be deducted' are two different things. The words in Section 4 (2) of the *Fatal Accidents Act* are 'taken into account'. The Section says what should be taken into account and not necessarily deducted. It is sufficient if the Judgment of the lower Court shows that in reaching the figure awarded under the *Fatal Accidents Act*, the trial judge bore in mind or considered what he had awarded under the *Law Reform Act* for the non-pecuniary loss. There is no requirement in law or otherwise for him to engage in a mathematical deduction." The deduction of the entire amounts made under the LRA in this case was erroneous and once again, we have to interfere with the final award of damages. We observe that the High Court reduced even further the figure of Sh. 100,000 awarded for Loss of life expectation to Sh. 70,000 despite confirmation in its Judgment that there was no dispute on the award. Mr. Kiplagat attempted to justify the reduction by the argument that it would be beneficial to Hellen because less amount would be deducted from the FAA award. With respect, that argument is misguided since there is no compulsion in law to make the deduction."

39. Mabeya J in the case of Peres Wambui Kinuthia & Anor vs S.S Mehta & Sons Ltd [2015] eKLR interpreted the holding in Kemfro Africa vs Meru Express Services & Anor vs Lubia & Anor (1976) No. 2 (1987) as follows;

> " Accordingly, what is required in order to avoid double compensation is for the Court to have in mind and therefore take into account the award under the *Law Reform Act* when making an award under the *Fatal Accidents Act*. In [his] view, this is the better way of construing Section 4 (2) of the *Fatal Accidents Act* & Section 2(5) of the *Law Reform Act*. Otherwise there [would] be no need of having to bring the suit under both statutes only for the award to be deducted from the award made in the other.

40. In light of the foregoing, although there is no indication that the trial Magistrate took the above issue "into account", I do not find that omission to amount to an error on principle on the part of the trial Court.

Final Orders

41. The upshot of my findings above is as follows:

i. This Appeal only partially succeeds, as only the awards given by the trial Court under the head of "loss of dependency" and under the head of "loss of consortium" have been interfered with herein. The rest of the heads of damages and also liability apportionment remain intact, as assessed by the trial Court.

ii. Consequently, the Judgment of the trial Court delivered in Eldoret Chief Magistrate's Court Case No. 415 of 2017 is hereby set aside and substituted with the following:

Pain & suffering	Kshs 20,000.00
Loss of expectation of life	Kshs 150,000.00
Loss of dependency	Kshs 1,600,000.00
Funeral expenses and Ad Litem	Kshs 71,400.00
Gross total	Kshs 1,841,400.00
Less 15% contribution	Kshs 276,210.0
Net total	Kshs 1,565,190.00

iii. Each party shall bear its own costs of this Appeal.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 4TH DAY OF OCTOBER 2024

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WANANDA J. ANURO

JUDGE

Delivered in the presence of:

Ms Orikodi for Ekisa for Appellant

Keter for Respondent

Court Assistant: Brian Kimathi