



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CIVIL APPEAL NO. 140 OF 2018**

**MUMIAS SUGAR COMPANY LIMITED.....APPELLANT**

**VERSUS**

**RWM (suing as Administrator**

**and Personal Representative in the estate of**

**CAW(DCD).....RESPONDENT**

*(An appeal arising from the judgment and decree of the Hon. F Makoyo, Senior Resident Magistrate (SRM), in Butere SPMCCC No. 13 of 2017 of 26<sup>th</sup> October 2018)*

**JUDGMENT**

1. The suit at the trial court was initiated by the respondent herein against the appellant for general and special damages arising from a motor traffic accident involving his late son and a motor vehicle owned and controlled by the appellant. He sought general and special damages. The appellant entered appearance and filed defence, essentially comprising of denials and an averment that the deceased solely caused or contributed to the occurrence of the accident the subject of the suit. There was also the averment that the accident was outside the scope of the appellant's control.

2. The matter proceeded to full trial. The respondent, the father of the deceased, testified. he called an eyewitness, Enock Akhwali, who testified that he saw the appellant's vehicle hit the deceased child. The appellant called one witness, a police officer, who stated that after investigations, it was recommended that the matter be subjected to an inquest. In the end the court ruled, on liability, that the appellant's driver was 100% to blame for the accident. On damages, the court awarded Kshs. 30, 000.00, for pain and suffering, Kshs. 100, 000.00 for loss of expectation of life, Kshs. 1, 200, 000.00 for loss of dependency and Kshs. 177, 599.00 special damages, making a total of Kshs. 1, 507, 599.00.

3. The appellant was aggrieved by the award of damages and lodged this appeal, principally against the quantum. The appellant's main contentions are that the assessment was superficial, the principles for award of damages for minors were not observed, the sum awarded was inordinately high, among others.

4. Directions were taken on 28<sup>th</sup> November 2019, for disposal by way of written submissions. Both sides complied by filing their respective summons. I have read through both sets of written submissions and noted the arguments made in both.

5. The appellant's only argument is that the trial court ought to have taken into account the age of the minor, 8 years, and adopted the global sum approach instead of the multiplier approach. *Chen Wembo & 2 others vs. IKK & another (suing as the legal representatives and administrators of the estate of CRK (Deceased))* [2017] eKLR, was cited, where the court had noted that the prospects of a child, in that case of 12 years, was uncertain, and that in the circumstances the best approach would be to adopt a global award approach rather than the multiplier approach.

6. I agree with court in *Chen Wembo & 2 others vs. IKK & another (suing as the legal representatives and administrators of eth estate of CRK (Deceased))* (supra), that there is no golden rule in the assessment of damages in respect of a deceased minor. I agree that there is no uniform principle on how damages for a deceased minor are to be tabulated, as the courts have adopted different approaches to the matter. Some award damages under the separate heads of pain and suffering and loss of dependency, others adopt the award of a global sum approach, while others adopt a mixed approach combining both. However, I am persuaded by and agree with the decisions in *Charles Ouma Otieno & another vs. Benard Odhiambo Ogecha (suing as brother and legal representative and administrator of the estate of the late Oscar Onyango Ogecha (deceased))* [2014] eKLR , *Kenya Wildlife Services vs. Geoffrey Gichur Mwaura* [2018] eKLR and *Chen Wembo & 2 others vs. IKK & another (suing as the legal representatives and administrators of eth estate of CRK (Deceased))*, that where the minor is fairly young and in the early stages of his education, and there is unclear evidence on his future prospects, what is variously referred to as the uncertainties or imponderables or vicissitudes of life, it would be more prudent to adopt the global sum award approach.

7. In the end, I find that sum awarded for loss of dependency was inordinately high, and I would award a global sum of Kshs. 700, 000.00. That appears to me to be the only issue raised by the appellant in its written submissions. As a consequence of the above, the appeal succeeds to the extent that the award of Kshs. 1,200, 000.00 for loss of dependency is set aside, and substituted with an award of Kshs. 800, 000.00. The rest of the awards remain undisturbed. Each party shall bear their own costs.

**DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 8<sup>TH</sup> DAY OF MAY, 2020**

**W. MUSYOKA**

JUDGE