



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL APPEAL NO. 3 OF 2017**

**SWAN CARRIERS LTD.....APPELLANT**

**=VERSUS=**

**EUNICE WANJIRU KIARIE** (Suing as the legal representative to the estate of the late

**FRANCIS NGUGI GATHESHA.....RESPONDENT**

*(Being an appeal against the Judgment of Hon. M. Omido, Senior Resident Magistrate delivered on the 16<sup>th</sup> December, 2016 in Nakuru CMCC No.275 of 2015)*

**JUDGMENT**

**INTRODUCTION**

1. The respondent/plaintiff filed suit against the appellant/defendant seeking general and special damages for the death of **FRANCIS NGUGI GATHESHA** (deceased) while travelling as a passenger in motor vehicle registration number KBZ 076Q which collided with the respondent’s motor vehicle registration number KAN 140 V on 16<sup>th</sup> day of August 2014.
2. The trial court found the defendant/respondent 100% liable. Damages were assessed at total sum of kshs.2,720,000.
3. This appeal was consolidated with Nakuru HCCA No.1 of 2017. The proceedings are recorded in NKU HCCA NO.1 of 2017. I adopt the grounds and arguments by counsel and analysis of the said arguments in the lead file. I dismissed appeal on liability and do adopt the determination on liability in this appeal.
4. In assessment of damages, I do adopt my finding that the trial magistrate was right in assessing damages under Fatal Accidents Act and Law Reform Act separately.
5. In respect to multiplier, the deceased was 37 years as per death certificate. It is indicated in the death certificate that he was a motor vehicle conductor. There is no specific retirement age for a conductor. One can continue working as long as he remains healthy and strong. I find a multiplier of 13 years reasonable. On dependency ratio, I do not see reason to disturb reasoned in HCCA NO.1 of 2017
6. On monthly earnings, the letter of employment was challenged for having been issued 2 months prior to the accident. The plaintiff said the deceased earned kshs.25,000 and was relied on by her and their two children. I adopt my determination on monthly wage and replace with minimum wage in 2014 which was kshs.14,173.50. Assessment under Fatal Accidents Act will therefore be 14,173.50 x 13 x 12 x 2/3=1,474,044.00
7. Damages are therefore are as hereunder:-

- i. Pain and suffering .....20,000
- ii. Loss of expectation of life .....100,000
- iii. Under fatal Accidents Act.....1,474,044

**GRAND TOTAL.....1,594,044**

**FINAL ORDERS**

1. Appeal on liability is hereby dismissed.
2. Appeal on quantum succeed on monthly wage. Monthly wage of kshs.25,000 adopted by trial magistrate is set aside and re[placed by minimum wage of kshs.14,173.50.
3. I set aside judgment on quantum and enter judgment for kshs.1,594,044.
4. Each party to bear own costs of appeal.

**Judgment Dated, signed and delivered at Nakuru this 9<sup>th</sup> day of May, 2019.**

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**RACHEL NGETICH**

**JUDGE**

**IN THE PRESENCE OF:-**

Schola Court Assistant

Mburu Holding Brief for Mr. Murimi Counsel for Appellant

N/A Counsel for Respondent