

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CIVIL APPEAL NO. 2 OF 2017

GLADYS KEMUNTO MOTURI & JOHN MOTURI MOTANYA

[Suing as the Legal Representatives of the Estate of

DEPORAH MOTURI - Deceased.....APPELLANT

VERSUS

KABURI MARUCHA & ANOTHER.....RESPONDENT

{Being an Appeal against the Judgement of Hon. N. Kahara – RM dated and delivered on the 15th day of February 2017 in the original Keroka PMCC No. 236 of 2014}

JUDGEMENT

The appeal herein is on the quantum of damages awarded to the appellant under the Fatal Accidents Act. The finding of the trial court on the ratio of contribution is not contested. The appellant contends that the award is manifestly and inordinately low hence is an error in principle considering the nature of the case and the age of the deceased. The appellant prays that the award of Kshs. 388,560/= be set aside and substituted with an award of Kshs. 2,160,000/= which is based on a multiplier approach. The appeal is vehemently opposed and this court is urged not to interfere with the award.

In *Kemfro Africa Limited t/a “Meru Express Services [1976]” & Another Vs. Lubia & Another (No 2) (Kneller, Nyarangi JJA & Chesoni Ag JA) [1987] KLR* the Court of Appeal held: -

“1. The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held to be that; it must be satisfied that either that judge in assessing the damages took into account an irrelevant factor or left out of account a relevant one, or that short of this the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

It is my finding that the award in this case was not inordinately low as to warrant this court to interfere. Neither did the trial Magistrate take into account an irrelevant factor or leave out a relevant factor. The deceased in this case was a child aged four (4) years old and the principle in such cases is to award global amounts rather than the multiplier approach. This was the approach followed in *Oyugi Judith & Another Vs. Fredrick Odhiambo Ongongo & 3 Others [2009] eKLR* where the court noted: -

“Quite unlike in this case the future prospects of the deceased were not known nor was there any basis to speculate that he would have been an engineer. Even if he was the plaintiff did not proffer any evidence to show the level of expected earnings or his prospects in future. In the circumstances a multiplier approach was wholly inappropriate as the basis of assessment of damages. A global sum to recognise the loss of his estate would be preferred.”

Similarly, in *H. Young & Company EA Ltd & Another Vs. James Gichana Orangi Kisii HCCA 207 of 2009* the court stated: -

“It is therefore settled that a court ought to award a lump sum amount in claims involving a minor who passed on in a road traffic accident and not under the various heads contemplated under the Law Reform Act and the Fatal Accidents Act.”

In *Muchoki Vs. Attorney General [2004] 2 KLR 518* Visram J, as he then was, awarded a conventional sum of Kshs. 200,000/= for a child who was four years old and who died while in the care of a hospital. In *Kenya Breweries Ltd Vs. Saro [1991] KLR 408* the Court of Appeal upheld the superior court’s conventional award of Kshs. 100,000/= for a child who was six years old. Here the trial Magistrate guided by the above precedents awarded a global sum of Kshs. 400,000/=.

It is my finding that she did not err and that this court would therefore not be justified in disturbing the award. I find no merit in this appeal and the same is dismissed with costs to the respondent. It is so ordered.

Signed, dated and delivered in Nyamira this 4th day of July 2019.

E. N. MAINA

JUDGE