



REPUBLIC OF KENYA

IN THE HIGH COURT OF KITALE

CIVIL APPEAL NO. 16 OF 2018

(Being an appeal arising from Judgment and Decree delivered by Hon. P.C Biwott SPM dated 31st May, 2018 in Kitale CMCC No. 394 of 2016)

PANAL FREIGHTERS LTD.....1ST APPELLANT

ABDI HASSAN NDABA.....2ND RESPONDENT

VERSES

PATRICK NYONGESA WATIEKELE.....RESPONDENT

J U D G M E N T

1. The late **MOSES MAIMA** was involved in a road traffic accident on the 10th day of November, 2015 along Kitale Endebbes road as he cycled along the said road. He was hit by the appellant's motor vehicle registration number KBE 935L RENAULT ZD 6805. He died two days later at Kitale District hospital while undergoing treatment.
2. The Respondent brought suit against the Appellant on behalf of the estate. The trial court after a full trial awarded him a sum of kshs. 1,025,600 being general and special damages. The appellant being dissatisfied with the said quantum has appealed against the same. The issue on liability is uncontested.
3. The appellant has argued that the award was excessive in the circumstances considering the age of the deceased and specifically that there was no prove of income. They argued that there was no prove that the deceased was trading on charcoal and thus he would earn such an amount. They urge the court to interfere with the award.
4. The Respondent on his part has agreed with the trials courts finding and that there was no departure from the established principles governing such claims. He argued that though they had prayed for the sum of Ksh.15,000, they were contended with the sum of Kshs. 10000 under the heading of loss of income. They also said that they did not appeal on the loss of consortium.
5. Having perused the record and the entire proceedings as well as the submission by the parties, it is trite law that the appellate court shall interfere with the decision of the trial court if the award was manifestly excessive or too low in the circumstances or if it considered extraneous matters. *See KEMFRO Africa Ltd & Another VS. Lubia & Another (No. 2) 1985 eKLR.*
6. The decision of D A. Onjancha J in *Nairobi HCC No. 2145 OF 2007, Grace Wairimu Kurara & 3 Others VS. Mater Hospital* relied on by the trial court as well as the Respondent in my view applied in all fours in this matter. In that matter the deceased was 65 years old and sickly before his death. He was given 10 years by the trial court whereas in the instant case the trial court awarded 8 years although the deceased was not ailing. He appeared strong as shown by the fact that he could still ride his bicycle.
7. In the cited authority the deceased was a livestock and maize farmer and had some land. After a lengthy discourse the court awarded him a global sum of kshs. 20,000 as there was no proof of income.
8. Taking cue from the said authority, although there was no direct prove if income, the deceased must have been sustaining himself despite his age. The fact that he was hid while pedal cycling in my considered view showed that this was a strong man capable of venturing for himself. There was no evidence that he relied on any other source for his survival.
9. In the premises, I do not think that the trial court can be faulted. An average income of Kshs. 10,000 monthly is reasonable in the circumstances. It is in fact mentioned that the deceased would be involved at times in the sale of chickens.
10. For the foregoing reasons, I do not find any merit in the appeal. The award was not excessive in the circumstances. The appeal is hereby dismissed with costs to the Respondent.

Dated, signed and delivered In open court at Kitale this 23rd day of July, 2019.

H. K. CHEMITEI

JUDGE

23/7/19

In the presence of:-

Barongo for Applicant

Wanyama holding brief for Onyancha for Respodnent

Court Assistant – Kirong

Judgment read in open court.