



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 333 OF 2014

PRISCILLA WAMBUI (Suing as the Legal**PLAINTIFF**

Representative of the Estate of **MAUREEN**

MUTHONI WAMBUI)

VERSUS

RICHARD KIMANI.....**1ST DEFENDANT**

ROSE MUGO.....**2ND DEFENDANT**

EXPRESS CONNECTIONS LIMITED.....**3RD DEFENDANT**

JUDGMENT

1. The Plaintiff instituted this suit as the Legal representative of the estate of Maureen Muthoni Wambui (deceased). The Plaintiff's claim is for damages arising out of a fatal road traffic accident stated to have occurred on 31st December, 2013 involving the deceased and motor vehicle registration KAZ 204G. The Plaintiff blamed the accident on the negligence of the Defendants.
2. The 1st Defendant was sued as the driver of the motor vehicle at the material time, the 2nd Defendant as the registered owner and the 3rd Defendant as the beneficial owner. The suit was struck out against the 4th Defendant, Family Bank, who had been sued as a registered joint owner of the motor vehicle.
3. The 1-3 Defendants denied the claim as per the joint statement of defence dated 19th January, 2015. In the alternative, it was contended that the deceased wholly or substantially contributed to the occurrence of the accident. The 1-3 Defendants further pleaded the defence of "*volenti non fit injuria*"
4. On the day the case proceeded to hearing, the Defendants were not present though served. The case proceeded *ex parte*.
5. Paul Gaturu Ng'ang'a (PW2), a friend to the deceased, testified and adopted his witness statement as his evidence. His evidence is that on the material day at about 9.00 p.m he was with the deceased crossing the road at Moi Avenue Service Lane at a designated Zebra crossing between Kencom and Ambassador Bus stops when the motor vehicle in question in an attempt to overtake another motor vehicle veered off the road onto the pavement/pedestrian walkway, lost control and reversed and in the process hit the deceased. That the deceased was rushed to Kenyatta National Hospital but passed away the same night at about 1.00 a.m. while undergoing treatment. PW2 who recorded a statement with the police blamed, the accident wholly on the manner the motor vehicle was being driven.
6. The police abstract produced as an exhibit by PW2 Priscilla Wambui the mother of the deceased reflects that the motor vehicle was being driven by Richard Kimani (1st Defendant) and that the accident is still pending under investigations. The mother further testified that the deceased was 20 years old and a student at Mount Kenya University pursuing a Diploma course in Banking. She further testified that the deceased was in good health and had a normal expectation of life.
7. A copy of Records from Kenya Revenue Authority was produced as an exhibit. The same reflects that the 2nd Defendant, Rose Mugo was the registered owner of the motor vehicle in question. A receipt for payment of Ksh.500/= to obtain the copy of Records was produced. Her further evidence was that the 3rd Defendant was the beneficial owner of the motor vehicle.

8. The uncontroverted evidence of PW1 and PW2 on a balance of probabilities has proved the negligence of the 1st Defendant as the driver and the 2nd & 3rd Defendants as vicariously liable for the accident. I find the 1st, 2nd and 3rd Defendants 100% liable for the accident

9. The Certificate of Death produced reflects that the deceased was 20 years old and died on 1st February, 2014, that is one day after the accident. The receipts for medical expenses from Kenyatta National Hospital for the total claimed amount of Ksh.17, 320/=; receipts for funeral expenses totaling Ksh.25,500/= ; a grant *ad litem* and documents from Mount Kenya University which reflect that the deceased was a student there were produced.

10. From the evidence of PW1, there is proof that the deceased died about four hours after the accident. I award Ksh.50,000/= for pain and suffering and Ksh.100,000/= for loss of expectation of life.

11. The evidence adduced has established that the deceased was 20 years old and a university student pursuing a Diploma course in Banking and Finance. The deceased could have worked for about 40 years. Considering the vagaries of life, a Multiplier of 30 years is reasonable. Although it was submitted that a banker earns about Ksh.70,000/= to Ksh.90,000/= there was no evidence adduced in support thereof. Under the Regulation of Wages (General) (Amendment) order for year 2013 the highest figure payable is approximately Ksh.20,000/=. I adopt the same. A dependency ratio of 1/3 is reasonable in the circumstances of this case. This works out as $Ksh.20,000 \times 12 \times 30 \times 1/3 = 2,400,000/=$

12. The special damages pleaded totaling Ksh.44,550/= have specifically been proved as per the receipts and documents produced in support of the same.

13. The total award is therefore as follows:

(a) Pain and suffering	Ksh.50,000/=
(b) Loss of expectation of life	Ksh.100,000/=
(c) Loss of dependency	Ksh. 2,400,000/=
(d) Special damages	<u>Ksh.44,550/=</u>
Total	<u>Ksh.2,594,550/=</u>

14. With the foregoing, I enter judgment in favour of the Plaintiff against the 1st, 2nd and 3rd Defendants jointly and severally for the sum of Ksh.2,594,550/=, interest and costs.

Dated, signed and delivered at Nairobi this 9th day of Oct., 2019

B. THURANIRA JADEN

JUDGE