



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUNGOMA.**

**CIVIL APPEAL CASE NO. 65 OF 2016.**

**BENARD CHUAGA ..... APPELLANT**

**VERSUS**

**PATRICK JUMA WEBO (Suing as the administrator & legal representative**

**of the estate of HENRY WANYONYI JUMA (Deceased)..... RESPONDENT**

**[An Appeal for Judgment and Decree in Original Bungoma CMC 110/2014 delivered on 8.6.2016 by C.L. YALWALA Senior Resident Magistrate].**

**JUDGMENT**

The Plaintiff/Respondent Patrick Juma Webo suing as administrator of the estate of Henry Wanyonyi Juma (deceased) filed a suit in the Magistrate's Court against the Appellant/Defendant Benard Chuaga seeking for Judgment for general damages, special damages of Kshs.81,500/= and costs of the suit under the Law Return Act and Fatal Accident Act arising from the death of the deceased in a road Traffic Accident involving Motor Vehicle Reg. No. KBB 979P owned by and driven by the defendant and/or his agent.

The parties recorded a consent on liability on 1.4.2016 where Judgment on liability was entered in favour of the Plaintiff as against the defendant at 80% to be borne by the Defendant/Respondent and 20% to be borne by the Plaintiff/Respondent. The court was to assessment quantum of damages.

By Judgment dated 8.6.2016 the learned trial magistrate rendered himself as follows.

**I find that a multiplier of 28 years is reasonable. Accordingly, I find that in the circumstances of this case the damages payable for loss Dependency by a multiplier of Kshs.15,000/= to a multiplier of 28 years and dependency ratio of 2/3 is reasonable. The same thus works out as hereunder;**

**Kshs.15,000 x 12 x 28 x 2/3 = Kshs.3,360,000. In this case, the deceased Dependant are also beneficiaries of the estate. They are thus the same one who shall benefit of the sum of Kshs.200,000/= awarded here about for loss of expectation of life. Accordingly, in order to avoid double compensation, I deduct Kshs.200,000/= from the award of loss of dependency above and award Kshs.3,160,000/= for loss of dependency.**

(d). Special damages/funeral expenses:

**The Plaintiff pleaded Kshs.81,500/= special damages. At the hearing of the case herein he produced receipts amounting to Kshs.51,000/= as hereunder;**

**Kshs.15,000/= for limited grant, Kshs.17,500/= for coffin, Kshs.18,000/= for transport, Kshs.500/= for copy of records. That is the amount the advocate submitted for in his written submissions. I find that the same has been proved as pleaded and allow and award the same i.e Kshs.51,000/= for special damages. In the upshot Judgment is hereby entered for the plaintiff against the Defendant at 80% liability was hereunder:**

- a). Pain and suffering                      Kshs.50,000/=
- b). Loss of expectation of life            Kshs.200,000/=
- c). Loss of dependency                    Kshs.3,160,000/=



The trial court noted that the deceased had a wife and 3 children who needed to be taken care of. However, there was no proof of income and court settled on a multiplier of Kshs.15,000/= as reasonable enough. In the case of Jacob Ayiga Mauja & Another -Vs- Simeon Obayo CA167/20092005] Eklr where the Court of Appeal rendered itself on the question of failure to adduce proof of income. It stated as follows:

*“We do not subscribe to the view that the only way to prove the profession of a person must be by the production of certificates and that the only way of proving earnings is equally the production of documents. That kind of stand would do a lot of injustice to very many Kenyans who are even illiterate, keep no records and yet earn their livelihood in various ways. If documentary evidence is available, that is well and good. But we reject any contention that only documentary evidence can prove these things. In this case, the evidence of the respondent and the widow coupled with the production of school reports was sufficient material to amount to strict proof for the damages claimed”.*

The appellants main issue is that the learned trial magistrate adopted a multiplier of Kshs.15,000/= as the deceased's earning without proof of earning. It is not disputed that deceased was at time of death working as a salesman and according to the Respondent earning Kshs.18,000/= per month, which the Respondents in their submissions urged the trial Magistrate to adopt as a multiplier. The appellant in their submission by M/s Korongo, Advocate filed in court on 11.5.2016 urged the applicant through court to adopt a sum of Kshs.10,000/= per month as earning. It is always desirable that a trial court should indicate the basis of the assessment of earnings where documentary evidence of earnings is not proved, I am persuaded that the sum of Kshs.15,000/= per annum as earning of a salesman is reasonable and not far beyond what the appellants had proposed.

In the result, I am not persuaded that the damages assessed by the trial magistrate was so high or so low as to represent an erroneous estimate or that he proceeded on wrong principles, I therefore find no merit in this appeal which is hereby dismissed with costs.

**Dated at Bungoma this 18<sup>th</sup> day of July, 2018.**

**S.N. RIECHI**

**JUDGE**