REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

CIVIL APPEAL NO. 12C OF 2017

(Formerly Machakos Hcca No. 60 Of 2010)

HASSAN FARID .....1ST APPELLANT

HUSSEIN SHARRIF ABDALLA ..... 2ND APPELLANT

-VERSUS-

SINGIYIAN ENE LEEPA .....1ST RESPONDENT

JT (minor suing through father & next friend **TB ..... 2ND RESPONDENT**

NL (minor suing through father & next friend **LOL....3RD RESPONDENT**

NAMUNYAK LEPARAKUO.....4TH RESPONDENT

DANIEL LEKERIO KAAKA (legal representative of the estate of

PAULINE DANIEL KAAKA.....5TH RESPONDENT

KAKURO OLE LEMASIKA (legal representative of the estate of

NOSORUM KAKURO .....6TH RESPONDENT

KORAT BAXSON.....7TH RESPONDENT

SEELYIAN ENE LEMUNCHU.....8TH RESPONDENT

MELAU OLE LOOLAITOYOK (legal representative of the estate of

EDUESTER PAAMPAA ..... 9TH RESPONDENT

LUCY LENGO LEPO (legal representative of the estate of **KASAINE**

SITONIK..... 10TH RESPONDENT

[Being Appeals from the Judgments of Senior Principle Magistrate Hon. F. M Nyakundi delivered on 31st March 2010 in Makueni Civil Cases Nos. 110, 111, 112, 113, 115,117, 118, 119, 122 & 123 of 2007 (all consolidated in file No 110 of 2007)]

JUDGEMENT

INTRODUCTION

1. The Appellants were the defendants in the lower court and the Respondents were the Plaintiffs.

2. The suits against the Appellants were for payment of General and Special Damages resulting from injuries and fatalities occasioned by a

road traffic accident on 14/11/2006 along the Mombasa-Nairobi highway.

3. A consent on liability was entered in the ratio of 80:20 in favour of the Respondents. This appeal is purely on quantum.

4. After assessment of damages, the learned trial magistrate made the following awards *(after contribution)*;

a. CC 110 of 2007: Kshs. 384,000/=

b. CC 111 of 2007: Kshs. 160,000/=

c. CC 112 of 2007: Kshs. 160,000/=

d. CC 113 of 2007: Kshs. 384,160/=

e. CC 115 of 2007: Kshs. 608,844/=

f. CC 117 of 2007: Kshs. 544,000/=

g. CC 118 of 2007: Kshs. 280,000/=

h. CC 119 of 2007: Kshs. 160,000/=

i. CC 122 of 2007: Kshs. 352,844/=

j. CC 123 of 2007: Kshs. 505,760/=

THE APPEAL

5. Aggrieved by the said awards, the Appellants filed the appeals and raised various grounds which I will enumerate while dealing with the specific suits.

6. The appeal was canvassed by way of written submissions. The parties complied and filed their respective submissions.

DUTY OF COURT

7. It is now settled that the duty of a first Appellate Court is to analyze and re-evaluate the evidence on record in order to reach it's own conclusions bearing in mind that it did not have the benefit of seeing or hearing the witnesses.

8. Basically, the Appellants are asking this Court to interfere with the award of damages made by the Trial Court. The circumstances that would lead to such interference have been reiterated in numerous authorities across the jurisdictions resulting in uniformity of the general principles.

9. In **Dumez (Nig) Ltd –Vs- Ogboli{1972} 3 S.C. Page 196** the Court of Appeal of Nigeria stated as follows;

> **"It is settled law that ''An Appellate Court will not interfere with an award of general damages by a trial Court unless:- (a) where the trial Court acted under a mistake of law; or (b) where the trial Court acted in disregard of principles; or (c) where the trial Court took into account irrelevant matters or failed to take into account relevant matters: or (d) where the trial Court acted under a misapprehension of facts; or (e) where injustice would result if the Appellate Court does not interfere; or (f) where the amount awarded is either ridiculously low or ridiculously high that it must have been erroneous estimate of the damage."**

10. I will collectively deal with suits which raise similar grounds of appeal.

CC 111, 112, & 119 OF 2007

11. The ground of appeal is that the learned magistrate erred in fact and law by awarding general damages of Kshs. 200,000/= in CC 111, 112, 119 for essentially what were minor injuries, awards that were so manifestly high as to amount to a totally wrong estimate.

12. From the evidence on record, it is evident that the Respondents sustained soft tissue injuries.

13. In fact, the Respondent in CC 119, the mother to the Respondent in CC 112, testified that; ***"My injuries and for the child were not very serious."*** I am inclined to agree with the Appellants that the injuries sustained were indeed minor.

14. I have taken into account other decided cases on soft tissue injuries and particularly the Court of Appeal decision in **Maore -Vs- Mwenda (2004) eKLR** where the learned judges held that an award of 300,000/= for soft tissue injuries was inordinately high and reduced it to 100,000/=.

15. It is therefore my considered view that the awards of Kshs. 200,000/= made in CC 111, 112 & 119 of 2007 were inordinately high and amounted to an erroneous estimate. An award of Kshs. 100,000/= was sufficient in the circumstances. The awards should be subjected to 20% contribution to give net awards of Kshs. 80,000/=.

CC 110 &113 OF 2007

16. The grounds of appeal are that the trial magistrate erred by;

a. Entering judgment without satisfying herself that a previously filed suit had been determined.

b. Making an award of Kshs. 400,000/= that was too high bearing in mind the nature of injuries suffered by the Respondents.

c. Awarding Kshs. 80,000/= as future medical expenses without satisfactory proof of the necessity of quantum thereof.

17. With regard to ground (a), the Appellants submit that there was Machakos CMCC No. 307/2007 which was previously filed by the Respondents and for which no evidence was produced to show that it was ever withdrawn. That it was not enough for the Respondents Advocate to orally submit that the suit had been withdrawn.

18. In response, the Respondents submit that the duty of proving pendency of such suit was on the Appellants. That the Appellants Counsel had raised the issue as a preliminary point before the trial Court after which the Respondent's Counsel indicated that the suit had been withdrawn. That the Appellants' Counsel conceded and as such, this ground was an afterthought.

19. I have looked at the proceedings before the Trial Court and it is clear that when the issue of the suits was raised before the trial Court, the Learned Trial Magistrate gave a ruling staying the matters to enable the Respondents move the Court appropriately. On 09/11/2009, the Respondent's Counsel indicated that the Machakos matters had been withdrawn and the Appellants' Counsel consented.

20. I am at a loss as to why Counsel for the Appellant would want this Court to expend precious judicial time on an issue which was ably dealt with by the trial Court with his full participation. This ground of appeal is frivolous and should be dismissed.

21. With regard to ground (b), the Respondent in CC 110/2007 sustained the following injuries;

a. Extensive cut wound right parietal occipital region.

b. Cut wound on the right forehead.

c. Cut wound lower inner lip.

d. Blunt injury to the right shoulder.

e. Blunt injury to the upper back inter scapular region.

f. Fracture of right tibia and fibula.

g. Multiple cut wounds n right leg and thigh literally.

22. The Appellants relied on **Rosemary Waithera Mburu –Vs- Virginia Muthoni & Anor (2015) eKLR** and **Harun Munyoma Boge – Vs- Dr. Daniel Agulo (2015) eKLR** where awards of Kshs. 300,000/= were given for fractures of tibia and fibula in 2015.

23. On the other hand, the Respondents submit that the injuries amounted to grievous harm and the award was reasonable.

24. I have considered the injuries sustained and the submissions of the parties.

25. I have also looked at other decided authorities e.g. **Zacharia Mwangi Njeru –Vs- Joseph Wachira Kanoga (2014) eKLR** where a Plaintiff who suffered a fracture of tibia/tibula was awarded Kshs.400,000/= in general damages. My considered view is that the award of Kshs. 400,000/= was within an acceptable range and reasonable. It should not be disturbed.

26. In **CC 113** of **2007**, the Respondent sustained the following injuries;

a. Fracture of the left femur.

b. Blunt injury to both shoulders.

c. Blunt injury to upper arm and forearm.

d. Blunt injury to the neck.

27. The Appellants rely on **Kenyatta University –Vs- Isaac Karumba Nyuthe (2014) eKLR** where an award of Kshs. 700,000/= for a fracture of the left femur was reduced to Kshs. 350,000/=.

28. On the other hand, the Respondent submits that she suffered grievous harm and was even inserted with metal plate. She took issue with the argument by the Appellant that the Doctor who produced the medical report was a general practitioner as opposed to an orthopedic surgeon. She submits that there is no law requiring that a medical report with fractures should be done by an orthopedic surgeon.

29. That a medical report does not amount to treatment but is a summary of the injuries after physical examination and evaluation of the medical documents.

30. I have considered the injuries sustained and the submissions of the parties. The authority relied upon by the Appellants is relevant and actually shows that the award of Kshs. 400,000/= was within an acceptable range and cannot be said to be inordinately high. I find no reason to disturb it.

31. With regard to ground (c), the medical reports for both Respondents show that they were fixed with metal plates which required to be removed in future at a cost of Kshs. 80,000/=.

32. From the materials before Court, there is no evidence to contradict the fact that metal plates were fixed. In any case, the Appellants were at liberty to refer the Respondents for a second medical examination. It is therefore my considered view that the expert opinion on the cost of removing the metal plates was sufficient proof and the Learned Trial Magistrate did not err.

CC 115 OF 2007

33. The grounds of appeal are that the trial magistrate erred by;

a. Using a chief's letter to fix an age of the deceased at 30 years which was not a competent document to indicate the age of any person.

b. Using shaky evidence as proof of age of the deceased which would not suffice to prove the fact to the standard required by law.

c. Awarding special damages of kshs 20,945/= without strict proof thereof as required by law.

d. Using a minimum wage of kshs 5,000/= which was higher than the minimum wage provided by labor regulations that were cited to her.

e. Using a multiplier of 20 years that was too high in the circumstances.

f. Failing to appropriately reduce the award under the principle of accelerated payment.

g. Failing to address the dependency ratio.

34. The Appellants introduced the issue of capacity in the submissions yet it was not a ground of appeal. Ordinarily, I would have ignored it but because capacity is a question which goes to the root of the case, I have satisfied myself from the original record that indeed, the Respondent obtained a grant *ad litem* in Machakos High Court P&A 120 of 2007 and had the requisite capacity to bring suit on behalf of the deceased.

35. The confusion alluded to by the Appellants was a result of their own disorganized and incomplete record of appeal. Whether it was intentional or inadvertent, I can only speculate.

36. I will deal with grounds (a) and (b) together. The Appellants submit that the death certificate merely indicated that the deceased was an adult and that it is the chief's letter which indicated that the deceased was 30 years old. According to the Appellant, the Court was not entitled to take it as proof of age.

37. The Respondent submits that the deceased's husband who was also the personal representative testified that the deceased was 30 years at the time of death.

38. I have looked at the evidence on record and on cross examination of the deceased's husband (PW1), he stated as follows;

"The chief would know how old my wife was by being told or production of a birth certificate. I did not have a birth certificate in this case. P Exhibit 1-it identifies my wife as an adult without specifying the age. My late wife lost her documents during the accident and I am the one who gave those preparing the document the information on it, but they were attending to many people and once you told them she was married, they would indicate adult. We trace age by events."

39. Lord Denning J. in **Miller –Vs- Minister of Pensions (1947) 2 ALL ER 372,** discussing that burden of proof had this to say-

"That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: 'We think it more probable than not', the burden is discharged, but, if

the probabilities are equal, it is not.

Thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties' explanations are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained."

40. My view is that a spouse would ordinarily be expected to be aware of his/her partner's age. In light of the burden of proof in civil cases, I am satisfied that the deceased's age was proved on a balance of probabilities. This ground of appeal therefore fails.

41. With regard to ground (c), a receipt of Kshs. 1,055/= was produced as exhibit 6. Strict proof was therefore achieved. For burial expenses, the Respondents had pleaded Kshs. 100,000/= but in the absence of proof, the learned trial magistrate took judicial notice, and rightly so, that the body of the deceased must have been interred and some expenses incurred. She awarded Kshs. 20,000/=. The award for special damages is reasonable and will not be disturbed.

42. On ground (d), the death certificate shows that the deceased was a farmer. PW1 testified that the deceased was working and had a cumulative income of Kshs. 12,000/= but had nothing to prove the same. The Trial Magistrate was right in adopting a minimum wage to calculate the claim under the Fatal Accidents Act.

43. However, from the applicable labor regulations *vide* **Legal Notice No. 38 of 2006**, the deceased would be categorized under *'general labourer'* with a monthly minimum wage of Kshs. 2,771/=. The multiplicand of Kshs. 5,000/= used by the trial magistrate was therefore without basis and erroneous.

44. On ground (e), the trial Court adopted a multiplier of 20 years. In **David Kimathi Kaburu –Vs –Gerald Mwobobia Murungi (2014) eKLR**, a multiplier of 30 was adopted for a 28 year old deceased.

45. In **Hyder Nthenya Mwili –Vs- China Wu Yi Ltd & Anor (2017),** a multiplier of 25 was adopted for a 32 year old deceased.

46. Having looked at the judicial trends and in light of the fact that no retirement age is prescribed for general laborers, I am of the considered view that a multiplier of 20 years was reasonable.

47. On ground (f), none of the parties submitted on the issue. My research has not established any binding precedent or legal principle that justifies such a discount. I am therefore not persuaded that the learned trial magistrate erred by not discounting any amount from the total award.

48. On the other hand, the Respondents submit that deduction of the award under Law Reform Act from the award of loss of dependency is the wrong position. However, I have noted that there was no cross-appeal and will therefore not embark on analyzing the same.

49. On ground (g), the Appellants submit that a dependency ratio of $^1/_3$ would have been appropriate. That from the evidence of PW1, he remarried after the demise of the deceased and therefore replaced the labor which he had lost.

50. On the other hand, the Respondent submits that the deceased left behind a husband and children and that the issue of remarriage is an irrelevant factor in law.

51. PW1 testified that the deceased was survived by him *(husband)* and 3 minors. The evidence was not challenged on cross examination. The heading of section 4(1) of the Fatal Accidents Act, Cap 32 is 'Action to be brought for the benefit of family of deceased'.

52. The section goes on to specify that the benefit shall be for the wife, husband, parent and child of the deceased. Sub section (2) gives factors which the Court should not take into account *(emphasis mine)* in assessing damages under sub section (1).

53. Now, my view is that, if the drafters of the legislation intended that re-marriage should be a factor, nothing would have been easier than to expressly state so. In the absence of that, re-marriage remains an irrelevant factor as submitted by the Respondent.

54. The Learned Trial Magistrate did not give reasons for adopting a dependency ratio of $^2/_3$ but in the circumstances, I am convinced that it is reasonable and will not disturb it.

55. The workings should therefore be as follows;

Under Law Reform Act	
Pain & suffering	10,000
Loss of expectation of life	50,000
Total	60,000

Under Fatal Accidents Act	
Special damages	20,945
Loss of dependency: 2/3 x2,771x12x20	443,360
	464,305
Less award under Law Reform Act	60,000
	404,305
Less 20% contribution	80,861
Total	**323,444**

CC 117 OF 2007

56. The grounds of appeal are that the trial magistrate erred by;

a. Awarding special damages which were not strictly proved.

b. Using a multiplicand that was too high and not based on law.

c. Using a multiplier and dependency ratio that were too high bearing in mind the age and occupation of the deceased. The award made therefore was too high as to amount to a wrong estimate.

57. On ground (a), the only special damages that were allowed were for burial expenses. The Respondents had pleaded Kshs. 101,385/= but in the absence of proof, the learned trial magistrate took judicial notice, and rightly so, that the body of the deceased must have been interred and some expenses incurred. She awarded Kshs. 20,000/=. The award for special damages is reasonable and will not be disturbed.

58. On ground (b), the learned trial magistrate correctly determined that the deceased was in the informal sector however, from the applicable labor regulations *vide* **Legal Notice No. 38 of 2006**, the deceased would be categorized under *'general labourer'* with a monthly minimum wage of Kshs. 2,771/=. The multiplicand of Kshs. 5,000/= used by the Trial Magistrate was therefore without basis and erroneous.

59. On ground (c), the death certificate does not indicate the age of the deceased but the chief's letter indicates that the deceased was 36 years old. PW1, the deceased's husband testified that he married the deceased in 1987 and she was aged about 25 years.

60. I am inclined to agree with the Appellants that by simple calculations, it is more probable that the deceased was 45 years at the time of her death in 2007. This is the age which, in my view, the Learned Trial Magistrate should have used to determine the multiplier.

61. The Appellants submit that the multiplier should not have exceeded 10 years. In **RMM & Anor –Vs- FKM (2013) eKLR** a multiplier of 15 was adopted for a 40 year old deceased and in **Rchard Macharia Nderitu –Vs- Philemon Rotich Langas (2013) eKLR** a multiplier of 10 was adopted for a 47 year old deceased.

62. Having looked at the judicial trends, I agree with the Appellants that a multiplier of 18 years was on the higher side and should be substituted with 10. As for the dependency ratio, the chief's letter indicates that she was survived by 7 children and the husband (PW1) who testified that the first born was in form 2. In my view, the dependency ratio of $^{2}/_{3}$ was reasonable in the circumstances.

63. The workings should therefore be as follows;

Under Law Reform Act	
Pain & suffering	10,000

Loss of expectation of life	50,000
Total	60,000
Under Fatal Accidents Act	
Special damages	20,000
Loss of dependency: 2/3 x2,771x12x10	221,680
	241,680
Less award under Law Reform Act	60,000
	181,680
Less 20% contribution	36,336
Total	**145,344**

CC 118 OF 2007

64. The ground of appeal is that the learned magistrate erred in fact and law in the way she weighed the nature of injuries suffered by the Respondent and misdirected herself in awarding Kshs. 350,000/= for what were basically soft tissue injuries, an award that amounted to a totally wrong estimate.

65. The medical report shows that the Respondent sustained the following injuries;

a. Fracture of the left clavicle (shoulder).

b. Cut wound on the right forehead.

c. Cut wound on the left leg.

d. Cut wound left foot.

e. Blunt injury to the lower back.

f. Blunt injury to the hips.

g. Blunt injury to both legs.

66. In the trial Court, the Appellants relied on; **Mombasa HCCC No. 467 of 1991; Nginwo Kavolanza Manyi –Vs- Mochu Gacheche** where Kshs. 80,000/= was awarded for fracture of the clavicle, chest injury and contusion of the right hand & Knee.

67. They also relied on **Mombasa HCCC No. 949 of 1991; Remus Ngoma –Vs- Nasser** where Kshs. 110,000/= was awarded for fracture of the clavicle and head concussion resulting to unconsciousness. In my view, these authorities are too old to be comparable. In their submissions before this Court, they rely on **Noah Asiego & Anor –Vs- Jepkemboi (2011) eKLR** in which an award of Kshs. 350,000/= for fracture of clavicle was reduced to Kshs. 250,000/=.

68. The Respondent submits that she suffered grievous harm and was admitted for 10 days and as such, the award of Kshs. 350,000/= was fair.

69. In the **Asiego case *(supra),*** the trial magistrate was mistaken on the admission period of the Respondent. He had indicated 23 days

instead of one day. This may have caused him to be mistaken about the severity of the injuries as well. In our case, the medical report says that the Respondent was admitted for 10 days but on cross examination, she agreed not having a discharge summary to show her admission.

70. Having looked at the **Asiego case (supra)** and in line with the principle that comparable injuries should attract comparable awards, an award of Kshs. 250,000/= was sufficient in the circumstances.

CC 122 OF 2007

71. The grounds of appeal are that the trial magistrate erred by;

a. Awarding special damages of Kshs. 21,055/= without strict proof thereof as required by law.

b. Using a minimum wage of Kshs. 5,000/= which was higher than the minimum wage provided by labor regulations that were cited to her.

c. Using a multiplier of 20 years that was too high in the circumstances.

d. Failing to appropriately reduce the award under the principle of accelerated payment.

e. Failing to address the dependency ratio.

72. With regard to ground (a), a receipt of Kshs. 1,055/= was produced as exhibit 7. Strict proof was therefore achieved. For burial expenses, the Learned Trial Magistrate took judicial notice, and rightly so, that the body of the deceased must have been interred and some expenses incurred. She awarded Kshs. 20,000/=. The award for special damages is reasonable and will not be disturbed.

73. On ground (b), PW1, the deceased's husband testified that she was a farmer and the Learned Trial Magistrate adopted a multiplicand of Kshs. 3,000/= without laying a basis.

74. From the applicable labor regulations *vide* **Legal Notice No. 38 of 2006**, the deceased would be categorized under *'general labourer'* with a monthly minimum wage of Kshs. 2,771/=. The multiplicand of Kshs. 3,000/= was therefore erroneous.

75. On ground (c), the Trial Court adopted a multiplier of 20 years. There is no dispute that the deceased was 32 years at the time of death. According to the Appellants, the deceased used to lead a nomadic lifestyle and a multiplier of 20 was too high in the circumstances of such lifestyle.

76. In the trial Court, they relied on **Nairobi HCCC No. 4520 of 1987; Christine Shoi & Anor –Vs –East African Cement Co. Ltd & Anor** where a multiplier of 12 was used for a 32 year old deceased

77. I took the liberty of looking at more recent authorities and In **David Kimathi Kaburu –Vs- Gerald Mwobobia Murungi (2014) eKLR**; a multiplier of 30 was adopted for a 28 year old deceased.

78. In **Hyder Nthenya Mwili –Vs- China Wu Yi Ltd & Anor (2017),** a multiplier of 25 was adopted for a 32 year old deceased.

79. Having looked at the judicial trends and in light of the fact that no retirement age is prescribed for general laborers, I am of the considered view that a multiplier of 20 years was reasonable.

80. On ground (d), none of the parties submitted on the issue. My research has not established any binding precedent or legal principle that justifies such a discount. I am therefore not persuaded that the learned trial magistrate erred by not discounting any amount from the total award.

81. On ground (e), the Appellants submit that a dependency ratio of $^1/_3$ would have been appropriate. The evidence on record is that the deceased was survived by PW1 and 5 children. PW1 testified that 2 children were in school and 2 had finished school but were at home due to lack of school fees. The Learned Trial Magistrate did not give reasons for adopting a dependency ratio of $^2/_3$ but in the circumstances, I am convinced that it is reasonable and will not disturb it.

82. The workings should therefore be as follows;

Under Law Reform Act	
Pain & suffering	10,000
Loss of expectation of life	50,000
Total	60,000

Under Fatal Accidents Act	
Special damages	20,945
Loss of dependency: 2/3 x2,771x12x20	443,360
	464,305
Less award under Law Reform Act	60,000
	404,305
Less 20% contribution	80,861
Total	**323,444**

CC 123 OF 2007

83. The grounds of appeal are that the trial magistrate erred by;

a. Awarding special damages of Kshs. 20,200/= without strict proof thereof as required by law.

b. Using a multiplier of 14 years that was too high in the circumstances.

c. Failing to appropriately reduce the award under the principle of accelerated payment.

d. Failing to address the dependency ratio.

84. With regard to ground (a), a receipt of Kshs. 200/= was produced thus achieving strict proof. For burial expenses, the Respondents had pleaded Kshs. 103,885/= but in the absence of proof, the Learned Trial Magistrate took judicial notice, and rightly so, that the body of the deceased must have been interred and some expenses incurred. She awarded Kshs. 20,000/=. The award for special damages is reasonable and will not be disturbed.

85. On ground (b), the trial Court adopted a multiplier of 14 years which was too high according to the Appellants. In the trial Court, they relied on **Nairobi HCCC No. 3403 of 1989; Mary Kaloki Mutunga –Vs- Michael Munyao & Anor** where a multiplier of 10 was used for a 42 year old deceased.

86. It is not in dispute that the deceased was employed and had a salary of Kshs. 7,760/= which was correctly discounted to a net of Kshs. 6,000/=. In light of the fact that retirement age is 60 years, it is probable that he could have worked for 16 more years. However taking into account the vagaries of life, a multiplier of 14 is reasonable in my view.

87. On ground (c), none of the parties submitted on the issue. My research has not established any binding precedent or legal principle that justifies such a discount. I am therefore not persuaded that the Learned Trial Magistrate erred by not discounting any amount from the total award.

88. On ground (e), there is evidence that the deceased was married with children. I agree with the trial magistrate that he must have been using at least $^2/_3$ of his salary on his dependants.

89. The upshot is that all the grounds of appeal have failed but the award has been disturbed due to some arithmetical errors. The workings are therefore as follows;

Under Law Reform Act	
Pain & suffering	10,000

Loss of expectation of life	50,000
Total	60,000
Under Fatal Accidents Act	
Special damages	20,200
Loss of dependency: 2/3 x6,000x12x14	672,000
	692,000
Less award under Law Reform Act	60,000
	632,000
Less 20% contribution	126,400
Total	**505,600**

CONCLUSION

90. The appeal succeeds partially with the court making the following orders;

1. **For avoidance of doubt, the awards are thus as follows;**

    a) **CC 110 of 2007: Kshs. 400,000/=**

    b) **CC 111 of 2007: Kshs. 80,000/=**

    c) **CC 112 of 2007: Kshs. 80,000/=**

    d) **CC 113 of 2007: Kshs. 400,000/=**

    e) **CC 115 of 2007: Kshs. 323,444/=**

    f) **CC 117 of 2007: Kshs. 145,344/=**

    g) **CC 118 of 2007: Kshs. 250,000/=**

    h) **CC 119 of 2007: Kshs. 80,000/=**

    i) **CC 122 of 2007: Kshs. 323,444/=**

    j) **CC 123 of 2007: Kshs. 505,600/=**

2. **Interest from the date of judgement in the lower court.**

3. **Parties to bear their own costs.**

SIGNED, DATED AND DELIVERED THIS 17TH DAY OF OCTOBER 2018, IN OPEN COURT.

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C.KARIUKI

JUDGE