



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CIVIL APPEAL NO.15 OF 2017

BETWEEN

SUKARI INDUSTRIES LIMITEDAPPELLANT

VERSUS

MONICA ADHIAMBO (suing as a Personal Representative

of the estate of MICHEAL ONGODO – DECEASED)RESPONDENT

(An appeal from the Judgment and decree of the senior Principal Magistrate's Court, Ndhwa in SRMCC No.30 of 2015 delivered on the 05/10/2016 – HON. MARY A. ACHIENG, SRM)

JUDGMENT

[1] This appeal arises from the decision of the Senior Resident Magistrate at Ndhwa in Civil Case No.30 of 2015, in which the appellant, **SUKARI INDUSTRIES LIMITED**, was sued by the respondent, **MONICAH ADHIAMBO**, suing as legal representative of the estate of **MICHEAL ONGONDO** (deceased), for loss and damages arising from a road accident which occurred on 25th July 2014 along Riat-Uriri Marram road at Riat bridge involving the appellant's tractor Registration No.KTCB 2204 and the respondent's late husband who was lawfully walking on the road at the bridge when he was knocked down by the tractor and suffered fatal injuries.

[2] The respondent blamed the appellant for the accident in that its driver, agent/servant or employee controlled and/or managed the tractor in a manner which was so careless and reckless such that it lost control and hit the deceased.

The appellant denied all allegations of negligence made against itself and contended that if the accident occurred, then it was solely or partly contributed to by the negligence of the deceased.

[3] While the respondent prayed for general damages under the Law Reform and Fatal accidents Acts, the appellant prayed for dismissal of the suit.

After trial, the trial court concluded that the appellant was 90% liable for the accident while the deceased was 10% liable.

Consequently, the respondent was awarded a sum of Kshs.10,000/= for pain and suffering, a sum of Kshs.150,000/= for loss of expectation of

life and a sum of Kshs.820,352/= for loss of dependency.

In total, the award was Kshs.980,352/= less 10%k contributory negligence i.e. Kshs.882,316/80cts.

[4] Being dissatisfied with the conclusions of the trial court, the appellant preferred nine (9) grounds of appeal specified in the memorandum of appeal dated 1st March 2017. These grounds have been given due consideration by this court in the light of the rival submissions filed herein by the appellant through the firm of **L.G. MENEZES & COMPANY ADVOCATES** and the respondent through the firm of **KUKE & COMPANY ADVOCATES**.

[5] The duty of this court was to re-visit the evidence and draw its own conclusions having in mind that the trial court had the advantage of seeing and hearing the witnesses (see, **SELLE –VS- ASSOCIATED MOTOR BOAT COMPANY [1968] EA 123**).

In that regard, the evidence by the respondent (**PW2**) indicated that she did not witness the accident and could not tell how it occurred. However,

the evidence by the appellant through **ALLOYS OCHIENG ONYANGO (DW1)** raised no substantial dispute with regard to the occurrence of the accident and the appellant's ownership of the tractor. In any event, the evidence by **FREDRICK OLUOCH (PW1)**, in Civil Case No.32 of 2014) proved that the deceased was knocked down by the appellant's tractor which was at the time being driven in a careless and reckless manner.

[6] It was thus established on a balance of probabilities that the appellant's driver was greatly responsible for the accident. His degree of blame was placed at 90% by the trial court. The remaining 10% was placed on the deceased for his failure to regard his own safety while walking on the road in the dark. This apportionment of liability by the trial court was proper and does not call for an interference by this court.

[7] On quantum of damages, the respondent was entitled to general damages against the appellant under both the Law Reform Act and the Fatal Accidents Act.

The award of Kshs.10,000/= for pain and suffering and Kshs.150,000/= for loss of expectation of life were made under the Law Reform Act and were reasonable and adequate compensation under these heads.

[8] For loss of dependency under the Fatal accidents act, the evidence availed in court justified the application of a multiplicand of Kshs.6,032/= and a multiplier of 17 years on a dependency ration of $\frac{2}{3}$. Therefore the award of Kshs.820,352/= under that head was proper and reasonable.

In sum, this appeal is not merited and is hereby dismissed in its entirety. It is accordingly ordered.

J.R. KARANJAH

JUDGE

04.10.2018

[Delivered and signed this **4th** day of **October, 2018**]