

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 76 OF 2016

BETWEEN

MOMBASA MAIZE MILLERS LIMITED.....APPELLANT

VERSUS

GEORGE SYLVESTER J. KHASIANI (suing as representative

of the estate of OSCAR ANGOLIO KHASIANI, deceased).....1ST RESPONDENT

WESTERN CROSS EXPRESS CO. LIMITED.....2ND RESPONDENT

(Being an appeal arising from the judgment and decree of the Hon. S. Wahome Senior Principal Magistrate (SPM) in Kakamega CMCCC No. 218 of 2016 of 27th July 2016)

JUDGMENT

1. The appeal herein turns only on the question of general damages, the parties having resolved the issues of liability and special damages by consent.

2. The trial court awarded under the Law Reform Act, Cap 26 Laws of Kenya, Kshs 50, 000.00 for pain and suffering after holding that the deceased had died instantly in the absence of any other evidence, and Kshs 100, 000.00 for loss of expectation of life. Under the Fatal Accidents Act Cap 32, Laws of Kenya, the court awarded Kshs 4, 642, 097.60 for loss of dependency. It arrived at that figure having established that the deceased net pay was Kshs 41, 447.30, and adopted that as the multiplicand applicable. The deceased died at 27 years of age and was a procurement officer at Masinde Muliro University. The court adopted a multiplier of 28 after taking into account the retirement age of 60 years. At age 27 the deceased still had 33 years to go before retirement at 60. 33 would have been an ideal multiplier but the court reduced it to 28 to take care of any imponderables such as sickness, acts of God, terrorism, among others which could one way or the other have terminated the employment before he turned 60. The court picked a dependency ratio of 1/3.

3. The appeal generally raises the point that the awards made were on the higher side. I have considered the authorities placed before me by the parties. I am of the persuasion that the awards made, under both the Law Reform Act and the Fatal Accidents Act, fell within the range of what is reasonable in the circumstances. Indeed, it is my view that the awards under the Law Reform Act are on the lower side taking into account the depreciation of the shilling over the years. I see nothing to fault with regard to the award under the Fatal Accidents Act. The multiplicand adopted by the court was founded on the net income of the deceased from his employment with the Masinde Muliro University. The multiplier took into account his age, the date he would have retired and the imponderables. The dependency ratio of 1/3 was just right for a young unmarried man, it was just his mother and siblings who were dependent on him. Indeed, all the siblings were adults.

4. I shall accordingly disallow the appeal. The appeal shall accordingly be dismissed. The respondent shall have the costs thereof. Should any party be dissatisfied with the outcome of these proceedings, there is a right to appeal against the same at the Court of Appeal within twenty-eight (28) days.

DATED, SIGNED and DELIVERED at KAKAMEGA this 3RD DAY OF DECEMBER , 2018

W. MUSYOKA

JUDGE