



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

HCCA NO. 30 OF 2016

M G (Suing as the Legal Representative of the estate of

K K J).....APPLICANT

- VERSUS -

MORRIS MUTUNGA KYAULA.....1ST RESPONDENT

MURITHI RINGERA.....2ND RESPONDENT

(An Appeal from the Judgment of Hon. A.G. Kibiru - Senior Principal Magistrate in Chuka CM.CC No. 97 of 2011 delivered on 20/7/2016)

J U D G M E N T

1.This is an appeal by **M G** (appellant herein who had sued as legal representative of the estate of **K K J**(deceased) against the decision of Hon. A.G. Kibiru in ***Chuka S.P.M's Court Civil Suit No.97 of 2011*** which case involved a road traffic accident where one **K K J** a child aged 16 years died as a result. The first respondent herein was sued in the said case for negligence as a driver of the ill fated motor vehicle Registration No.KBB 730K owned by the 2nd respondent herein. The respondents were found to be 100% liable for the accident by the trial court and the appellant being the father and legal representative of the deceased child was awarded compensation as follows:-

i. Pain and suffering	Kshs.25,000/-
ii. Loss of expectation of life	Ksh.100,000/-
iii. Loss of dependency	Kshs.400,000/-
iv. Special damages	Kshs. 38,110/-
Total	Kshs.562,100/-
Less deduction under Law Reform Act	Kshs.100,000/-
Total amount awarded	Kshs.462,110/-

2.The appellant felt aggrieved and dissatisfied with the quantum of damages awarded and preferred this appeal raising the following grounds namely:-

i. That the learned magistrate erred in law and fact in awarding excessively low damages for pain and suffering.

ii. That the learned magistrate erred in law and fact in failing to appreciate the current trends in awarding damages for loss of expectation of life and consequently awarded an extremely low award under that heading.

iii. That the learned magistrate erred in law and fact in awarding an extremely low amount for loss of dependency by misdirecting his mind on the dictates of the law.

(A) Pain and suffering:

3. In his written submissions on pain and suffering, the appellant has pointed out a decision in Bungoma HCC NO. 68 OF 2013 case of **GILBERT WANJALA TWAMBA -VS- MASHRUO** where the court awarded Kshs. 120,000/- for pain and suffering of a child of a similar age. The appellant in submissions has not given any indication on what figure he considers is fair and just under this heading. The respondents on their part have justified the amount awarded by the lower court contending that in the case of **ELIJAH OLE KOOL - VS- GEORGE IKONYA THUO [2001] eKLR** the court awarded KSHS.100,000/- for person who had been in pain for six months. I have considered the evidence at the trial in regard to this issue and noted that the appellant's evidence tendered only showed that the deceased was knocked down by a motor vehicle and rushed to hospital where he was pronounced dead on arrival. It was therefore unclear whether the said child died instantaneously on the spot after being knocked down or on the way as he was being rushed to hospital. The trial court in its judgment assumed that the deceased died upon arrival at the hospital. However I have found no evidence to show the period of time it took whoever carried the deceased child from the scene of the accident to Chogoria hospital because none was tendered. The appellant cannot in all fairness fault the learned trial magistrate for awarding Kshs.25,000/- for pain and suffering as a claim under (Law Reform Act Cap 26). That being the case this court finds no basis to interfere with the trial court's discretion in arriving at Kshs.250,000/- for pain and suffering. In any event, the appellant at the trial had prayed for Kshs.30,000/- under this head while the respondents had suggested a compensation of Kshs.50,000/- and relied on the decision in the case of **LUCY M. NJERI -VS- FREDRICK MBUTHIA & ANOTHER [2006] eKLR**. The trial court fairly weighed both submissions on this claim and in my view arrived at a just figure of Kshs.25,000/- taking into consideration the evidence tendered as observed above.

4.(B) Loss of expectation of Life:

On this head, the trial court awarded Ksh.100,000/-. The appellant had claimed that Kshs.150,000 would be a fair and just compensation, while the respondents had contended at the trial that an award of Kshs.70,000/- would have sufficed in the circumstances and relied on the decision in the case of **I. D.K.N -VS- JOHN MURITHI WAHOME & ANOR [2014] eKLR**. In this appeal the appellant has maintained that an award in the region of Kshs.150,000/- under this head have been fair and just. The respondents have contended that the reasons advanced by the appellant for his dissatisfaction are frivolous. I have considered the grounds advanced in this appeal in regard to the award made by the learned magistrate under the above head, I must say that the same are neither well taken nor well grounded. I am not persuaded that there is any basis to interfere with the trial court's award under this head.

4.(C) Loss of dependency:

This is a claim under Fatal Accident Act and I have expressed myself well enough in Chuka H.C CA No.31 of 2016, which is related to this because both arose out of the accident and claim. The difference of legal opinion by the appellant and the respondents on this claim is whether the trial court should have used a given multiplier in assessing damages under this head or give a global award. The appellant prefers the former while the respondents prefers the latter for obvious reasons. The trial court opted for a global sum or award of Kshs.400,000/- under this head and for reasons advanced in Civil Appeal No. 31 of 2016. I am inclined to also go for the latter option of a global figure. The appellant himself in his

submission before me was unsure on which multiplier was appropriate in the circumstances and urging me to use a multiplier of between 25 years and 40 years is a bit lame and unsound in view of the evidence tendered at the trial and the observations I have made in said related Civil Appeal. This court agrees with the respondents that the trial court had no basis to use the multiplier approach in assessing damages on lost years or loss of dependency. This court finds no basis to interfere with the global award of Kshs.400,000/- given by the trial court for loss of dependency.

In the premises, this court finds no merit in this appeal. It is dismissed. The appellant's counsel ought to have advised his client well on the decision made by the trial court in view of the evidence tendered. The respondents shall have costs of this appeal.

Dated and delivered at Chuka this 16th day of March, 2017.

R.K. LIMO

JUDGE

16/3/2017

Judgment signed, dated and delivered in the open court in the presence of I.C Mugo holding brief for Mbogo for the applicant and in the absence of the respondents and their counsels.

R. K. LIMO

JUDGE

16/3/2017