



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 270 OF 2010

VERONICA WANJIKU MWANGI

(suing as the administrators of the Estate of the late

SAMUEL MWANGI NDERU.....PLAINTIFF

VERSUS

DOUGLAS MWAURA NGANGA.....DEFENDANT

JUDGMENT

The plaintiff is the wife and legal administrator of the estate of Samuel Mwangi Nderu who died as a result of a road traffic accident that took place on 9th December, 2009. The deceased was driving motor vehicle registration No. KAM 561B when it collided with motor vehicle registration No. KBH 966Z which was being driven by the defendant along Githunguri - Ikinu road.

After the accident the deceased was seriously injured and rushed to Githunguri Health Centre, and later transferred to Kiambu District Hospital where he was pronounced dead on arrival. The plaintiff brought this suit against the defendant under both the Law Reform Act and Fatal Accident Act for damages arising therefrom. She blamed the accident on the negligence of the defendant.

Judgment on liability was agreed by consent at 80% against the defendant and 20% contributory negligence on the part of the deceased. The suit was then listed for formal proof to address the subject of quantum of damages.

The plaintiff gave evidence and called one witness. She is a house keeper cum matron at Ndumberi Girls High School. After the accident she caused the motor vehicle to be assessed and also produced copies of receipts relating to special damages. She did not have the log book in the name of her late husband, but led evidence and produced a sale agreement signed on 14th August, 2009 showing that the deceased bought the vehicle from one Mr. Gilbert Gitau Njau who sold the vehicle to her husband.

The said Mr. Gibert Gitau Njau gave the deceased a copy of his identity card and pin certificate issued by the income tax department. There is a copy of the log book in the name of Mr. Gilbert Gitau Njau and a transfer of ownership Form C signed by the said Mr. Gilbert Gitau Njau. Copies of all these documents formed part of the plaintiff's evidence.

Although the motor vehicle had not been transferred in the name of the deceased, I am persuaded that as

at the time of the accident it belonged to him, having paid the agreed purchase price under the agreement of Kshs. 223,000/= and taken possession. Being the wife of the deceased, the plaintiff had the right to instruct the assessor P.W. 2 to inspect and assess the value of the said motor vehicle, which he did and produced the report thereto.

The plaintiff pleaded special damages of Kshs. 147,940/= and also the pre accident value of the motor vehicle, cost of the assessment report, and court attendance costs by P.W. 2.

P.W 2 Daniel Muturi Mbugua a motor loss assessor of 30 years' experience was called to give evidence on the loss of the motor vehicle. The plaintiff's evidence alongside the documents she produced and that of P.W. 2 established to the satisfaction of the court the special damages pleaded. The total thereof adds to Kshs. 467,940/=.

The deceased died soon after the accident but the transfer from Githunguri health Centre to Kiambu District Hospital was an attempt to save his life. He must have suffered pain before his said death. In this regard I make an award of Ksh. 40,000/=. On loss of expectation of life I make an award of Kshs. 100,000/= which however shall be taken into account in the final tally of damages payable.

The deceased died at the age of 36 years and was self-employed. He was a transporter and in fact on the day he died, he was going for some business at Ikinu. He was also a professional plumber and a certificate to confirm this is one of the documents produced by the plaintiff. It was issued by Muranga College of Technology in July 1996.

No documents have been produced to prove his earnings and to assist the court in arriving at the correct assessment of damages. However, there is no doubt that he earned his living from his self-employment. He was the father of two children born in June 2000 and December 2006 going by the copies of birth certificates produced in evidence. The plaintiff and the two children depended on him.

In the absence of any guide as to his earnings, the court is left with no alternative but to fall back on statutory guidance based on his certificate as a plumber. I agree that he qualified to be in the artisan grade 1 category whose salary in 2015 was Kshs. 24,719.50/= going by the schedule provided by the advocate for the plaintiff. He died in the year 2009 and therefore that salary cannot be the right guide today.

Considering his self-employment as a transporter and a plumber however, a modest earning of Kshs. 20,000/= per month is a good guide in the circumstances of this case. At the age of 36 years and being self-employed, the deceased could easily have worked up to 60 years and beyond. However, I consider the unforeseen circumstances in life just like the accident that claimed his life and I believe a multiplier of 20 years would be the most appropriate figure in this case.

He must have been using 2/3 (two thirds) of his earnings for the upkeep of his family. The plaintiff and her two children lost dependency to that extent.

Loss of dependency would therefore work out to $Ksh. 20,000 \times 12 \times 20 \times \frac{2}{3} = Kshs. 3,200,000/=$. In the end, total damages payable to the plaintiff work out as follows,

Pain and suffering	Kshs. 40,000/=
Loss of expectation of life	Kshs. 100,000/=
Loss of dependency	Kshs. 3,200,000/=
Special damages	Kshs. 467,940/=
Less	Kshs. 100,000/= (loss of expectation of life)

Total Ksh. 3,707,940/=

Less 20% = Kshs. 741,588

Grand Total Ksh. 2,966,352/=

Accordingly there shall be judgment for the plaintiff against the defendant in the total sum of Kshs. 2,966,352/= plus costs and interest at court rates. As there are minor children involved in the estate of the deceased the court is mandated to distribute the award made herein. The plaintiff who is the mother shall be entitled to 30% while the two children shall each have 35% of the award. Orders accordingly.

Dated, signed and delivered at Nairobi this 6th Day of April, 2017.

A. MBOGHOLI MSAGHA

JUDGE