



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL CASE NUMBER 24 OF 2014

NDUNGU MUMBIA MUHUHA

(Suing as the Legal Representative of the Estate of

SAMUEL NJUGUNANDUNGU(Deceased).....PLAINTIFF

VERSUS

KATANA NGUMBAO MWAYELE.....1ST DEFENDANT

P.N. MASHRU. LIMITED2ND DEFENDANT

JUDGMENT

1. The plaintiff is the Legal Representative of the **Estate of Samuel Njuguna Ndungu**, deceased having obtained Letters of Administration *Ad Litem* vide Nakuru **High Court Probate and Administration Cause No. 14 of 2014**.

On the 28th September 2013, the deceased was driving motor vehicle **Registration Number KBU 260H** along the Nakuru-Nairobi Highway when a collision occurred with motor vehicle **KAQ 854T ZB 8446**, the property of the second Defendant and being driven by the second Defendant as the 2nd defendants authorised driver.

On the 9th March, 2015, parties recorded a consent judgment and apportioned liability at 30:70 in favour of the plaintiff.

2. The court is left to assess general and special damages only.

The plaintiff filed a list and bundle of documents in support of his claim on the 11th April 2014 together with his statement as the father of the deceased.

At the hearing of the suit, the plaintiff adopted his statement as drawn and filed. The list and bundle of documents were also produced by the plaintiff by consent of both parties Advocates-who also opted to file written submissions on quantum of damages.

3. **Quantum of Damages**

In an attempt to assess damages the court is alive to the fact that money cannot renew a physical frame that has been shattered. All that Judges and courts can do is awards sums which must be regarded as giving reasonable compensation and endeavour to secure some uniformity in

the general approach to arrive at a considerable extend, conventional sums. Money will also not bring back a life that has been lost in an accident – See **H. West & Sons Ltd -vs- Shepherd (1984) Ac 326**.

The deceased, a thirty-two years old male and single was a truck driver employed by Shammal Cereals and Store based at Mombasa earning a salary of Kshs.28,500/= gross per month as confirmed by a letter dated 10th January 2014 from the said employer. The Death certificate shows that he was indeed thirty-two years old and died due to severe chest injury due to a road traffic accident.

The claim as seen in the plaint is brought under the **Law reform Act** and the **Fatal Accidents Act** for and on behalf of his Seventy-nine years old father and sixty-four years old mother who were the deceased's dependants.

4. **Claim under Law Reform Act**

It is stated that by his death the deceased's estate has suffered loss, and his life was considerably shortened. In his written submissions, the plaintiff's Advocates proposed a sum of Kshs.50,000/= for pain and suffering and Kshs.100,000/= for Loss of expectation of life under the **Law Reform Act**. In support, he relied on the following authorities, **Alice O. Alukwe -v-s- Akamba Public Bus Service (2013) KLR**, were such awards were made.

Both parties agree on the Sum of Ksh.50,000/= for pain and suffering. On loss of expectation of life, the plaintiff put forth Kshs.100,000/= while the defendant stated Kshs. 120,000/=. I will cut across and give an average of the two, being Kshs.110,000/= and Kshs.50,000/= damages for pain and suffering. The two awards are well supported by current authorities above quoted and many more.

5. **Claim under Fatal Accidents Act**

The principles to an assessment of damages under the **Fatal Accidents Act** are all too well clear. This was stated in **Thairu -vs- Hon. Ezekiel Bargetuny & Another in Nairobi HCCC No 1638 of 1988 (UR) by Ringera J**, (as the then was) that the court must in the first instance find out the value of the annual dependency. Such value is usually called the multiplicand.

On loss of dependancy, the defendants submission is that since there were no payslips produced, or payment vouchers, a sum of Kshs.15,000/= as per Government Gazette Notice should be adopted. On the length of working life the defendants submitted ten years, without any justification for their proposition, or authorities to buttress the submission.

I have considered the above submissions by both counsel. In the present case, the deceased's employer wrote a letter certifying the deceased's earnings of a gross sum of Kshs. 28,500/=. The defendant did not object to the production of the said Letter; and thus its contents are unchallenged. The defendants have proposed an income of Kshs.15,000/= as gazetted by the Government. No such gazette notice was produced. It therefore remains as mere statements not supported by any evidence. Being a gross salary, statutory deduction ought to be deducted.

6. In determining the same, the important figure is the **net earnings** of the deceased. The court shall then multiply the multiplicand by a reasonable figure representing years of purchase. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life of the deceased. The sum thus arrived at must then be discounted to allow the legitimate considerations such as the fact that the award is being received in a lumpsum and would if wisely invested yield returns of an income nature.

Where an income cannot be ascertained with precision the learned Judge, Ringera J (as he then was) in **Mwanzia -vs- Ngalali Mutua & KBS Ltd** and quoted by Koome J (as she then was)

in **Albert Odawa -vs- Gichumu Githengi NKU HCCA No. 15 of 2003 (2007) KLR**, expressed the view that a global sum ought to be awarded.

The employer did not show in its letter what deductions were being made. In the absence of such, I shall adopt a sum of Kshs.24,000/= as being a reasonable net income after deductions towards income tax and other statutory deductions.

7. The plaintiff proposed a multiplier of twenty-five years while the defendants urged twelve years. All things being equal, the deceased would have worked for twenty-eight years to reach the official retirement age of sixty which, being in the private or informal sector, would have worked beyond the sixty years age.

I have looked at several decided authorities on the issues. In **Rachael Irash Igunza -vs- Nyangeni Kamau and another HCCC No. 340 of 1993**, the deceased was thirty-one years. A multiplier of twenty-two years was adopted. In **HCA No. 8 of 2010, Siyaram Enterprises and Another -vs- Samuel Nyachani (2015) KLR**, the deceased was twenty-nine years and multiplier of sixteen years was confirmed on appeal.

This court being guided by the various authorities, and submissions by counsel, shall adopt twenty-two years as a reasonable multiplier in the circumstances.

The ratio of dependency of $\frac{1}{2}$ suggested by both parties shall be applied. Thus loss of dependency shall be worked out as follows:

$$24,000 \times 12 \times 22 \times \frac{1}{2} = \text{Kshs.3,168,000/=}$$

8. The deceased's dependents were shown to be the elderly parents only. In line with **Thairu -vs- Hon. Burgetuny case (Supra)**, the award on **Law Reform Act of Kshs.150,000/=** shall be deducted from this award as the beneficiaries are the same. That leaves the award on loss of dependency at Kshs.3,018,000/=.

As per the consent judgment on apportionment of liability, the above sum shall be reduced by 30%. 70% to the plaintiff shall be **Kshs.2,112,600/=**.

9. The plaintiff pleaded special damages of Kshs.81,150/=. There include mortuary fees, transport of the body for burial at Nyahururu legal fees for obtaining letters of Administration *Ad Litem* and other attendant expenses. I have seen the receipts in support. The defendants have not objected to any of the expenditure.

I find the sum of Kshs.81,150/= as reasonable expenditure towards funeral expenses.

10. In the result, there shall be judgment for the plaintiff against the defendants jointly and severally as follows:

1. Kshs.2,112,600/= general damages with interest at court rates from the date of the judgment.
2. Kshs.81,150/= special damages with interest from date of filing the suit until payment in full.
3. The plaintiff shall have costs of the suit.

Dated, signed and delivered in open court this 9th day of February 2016.

JANET MULWA

JUDGE