



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO 365 OF 2011

1. CECILIA WANJA MAINA

2. PETER A.M. MAINA

(Suing as administrators of the Estate of

OBADIAH MAINA, Deceased)

3. CYRUS RUHENI KAMONDO.....PLAINTIFFS

VERSUS

1. REME K. LIMITED

2. MOKAM MOTORS LIMITED.....DEFENDANTS

JUDGMENT

The 1st and 2nd Plaintiffs are the administrators of the estate of **Obadiah Maina Munyu** (hereinafter called the **Deceased**) who died in a road accident on 29th August 2008. They claim damages for the estate for the dependants of the Deceased named in paragraph 8 of the plaint dated 26th August 2011 under the **Fatal Accidents Act, Cap 32**. Those dependants are the widow (1st Plaintiff) and three (3) children.

The 3rd Plaintiff also sought damages based the Defendants' negligence which led to him sustaining serious injuries in the same accident. The damages related to for pain and suffering, loss of amenities and special damages. The Defendants filed defence denying liability.

On 23rd January 2013 a partial consent was recorded in the following terms –

“1. By consent the Plaintiffs’ suit against the second Defendant be withdrawn with no order as to costs.

2) There be judgment for the Plaintiffs on liability against the 1st Defendant of 80%, Plaintiff to bear 20%

3)....”

On 17th December 2014, another consent was recorded as follows –

“BY CONSENT: Judgment be entered in favour of the 3rd Plaintiff against the 1st Defendant on quantum in the NET SUM of an all-inclusive figure of Kshs. 93,700/-.....”

This judgment therefore concerns only quantum with regard to the 1st and 2nd Plaintiffs.

During the hearing, Counsel for the parties by consent admitted in evidence the Plaintiffs’ witness statements, list and bundle of documents without the need to call any witnesses. The 1st Defendant did not lead or call any evidence. The 1st Plaintiff’s witness statement revealed that the Deceased was aged 56 years at the time of his death. He worked with **Royal Media Services**. They had three children, two who were still undertaking their studies.

The parties filed written submissions and cited some cases.

Under the Fatal Accidents Act, Cap 32

The Deceased’s widow (1st Plaintiff) and their three (3) children were all dependent on him according to the evidence adduced. It was expected that he could not have used on them less than two-thirds (²/₃) of his income. A **dependency ratio of two-thirds (²/₃)** in the circumstances is reasonable.

Regarding the multiplier, as already noted the Deceased was aged 56 years at his demise. He was employed by Royal media Services, a privately owned corporation. Generally the set retirement age in the private sector is 60-65 years. He was of good health and all things being equal he would probably have worked to retirement age. The Plaintiffs propose a multiplier of 12 years while the 1st Defendant proposes a multiplier of 5 years.

Nonetheless, the uncertainties of life must be taken into account. Having taken into account all that has been placed before the court, balancing this against that a multiplier of 6 years appears realistic.

As for income, the Deceased’s total earnings for the month of August 2008 was **Kshs. 155,189/-** being his basic pay. **Kshs. 120,000/-** exhibited by the letter dated **3rd August 2011** from his employer confirming his benefits over and above his monthly pay could not survive him and therefore cannot be distributed among his dependants. His statutory deductions were **NSSF (KShs 200/00)**, **NHIF (KShs 320/00)** and **PAYE (KShs 40,429/00)**. The total deductions were **KShs 40,949/00** leaving a net income of **KShs. 114,240/00**.

Damages under the Fatal Accidents Act therefore work out as hereunder -

KShs. 114,240/00 X 12 X 6 X 2÷ 3 = KShs 5,483,520/00

In the event, judgment for the Plaintiffs is entered against the 1st Defendant as follows –

Under the Fatal Accidents Act,KShs 5,483,520/00

Less 20%1,096,704/00

KShs 4,386,816/00

This sum shall attract interest at court rates from the date of this judgment until payment in full. The plaintiff shall also have the costs of the suit.

Orders accordingly.

Dated and delivered at Nairobi this 6th Day of May, 2015.

A.MBOGHOLI MSAGHA

JUDGE