



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL CASE NO. 121 OF 2011

JAMES MALUU KIILU

(suing on his own behalf and on behalf of the estate of

FREDINA MUSEVEKI MALUU (deceased).....PLAINTIFF

VERSUS

LAWRENCE GITHINJI.....1ST DEFENDANT

R I TAKERS COMPANY LIMITED.....2ND DEFENDANT

JUDGMENT

1. The Plaintiff, James Maluu Kiilu brought this suit as the personal representative of the deceased, Fredina Museveki Maluu. The deceased was involved in a fatal road traffic accident on 11th June 2000 while she was travelling as a fare paying passenger in motor vehicle KBB 886T. The 1st Defendant, Lawrence Githinji was sued as the driver of the motor vehicle and the 2nd Defendant, R I Takers Company Limited, as the registered owner of the motor vehicle at the material time. The Plaintiff blamed the accident on the alleged negligent manner in which the motor vehicle was driven at the material time.
2. The Defendants did not enter appearance or file any defence. Interlocutory judgment was entered and the case proceeded to formal proof.
3. The Plaintiff gave oral evidence in court and also relied on his witness statement filed herein. The Plaintiff's evidence is that the deceased was his wife. That they were blessed with four children. That the deceased was a hardworking farmer and business lady, who the family relied on for financial support. He further testified that the deceased was the owner of three heavy commercial motor vehicles and four passenger motor vehicles which she used in her business. He gave the deceased's earnings as 150,000/= per month. It was the plaintiff's evidence that the deceased was 54 years old at the time of the accident.
4. The Plaintiff's counsel submitted for an award of Ksh 50,000/= for pain and suffering, Kshs 150,000/= for loss of expectation of life, Ksh 24,000,000/= for loss of dependency and Kshs 70,250/= special damages.

5. The Plaintiff's evidence was that the accident occurred at about 1.30 p.m. and the deceased passed away at 7.30 p.m. the same day while in hospital. The deceased did not die instantaneously. I award a sum of Ksh 20,000/= on this head.

6. The deceased was 54 years of age. Taking into account the authorities cited by the Plaintiff's counsel and other authorities for similar injuries, I award a conventional sum of Kshs 100,000/= for loss of expectation of life. I will take this amount into account when assessing damages for loss of expectation of dependency.

7. The deceased was married and had children. I will adopt a dependency ratio of $\frac{2}{3}$. Taking into account the age of the deceased and the preponderancies of life, I will adopt a multiplier of ten years.

8. Turning to the issue of earnings, the only documentary evidence produced is the bank statements for the deceased. The same are as follows:

(a) NATIONAL BANK (K) A/C NO. [particulars withheld] (*Savers-Individual*) for the months of January to May 2006.

(b) NBK A/C NO. [particulars withheld] (*ASSET FINANCING*) for the months of July to September 2007.

(c) NBK A/C NO. [particulars withheld] (*Current A/c – Individuals*) for the month of March and April 2008.

9. The average deposits for the five months reflected in the year 2006 savings account statement aforesaid is Ksh 179,873. The two credits for the year 2007 aforesaid asset financing account statement appears to be a standing amount of Ksh 47,003,35. The average deposits for the two months current account aforesaid statement for year 2008 is Ksh 89,713.

As can be discerned from the above statements, no pattern has been established that can be relied on to reflect what the earnings of the deceased were. None of the bank statements produced as exhibits reflect a full year of earnings so that the court can be able to see the average income per month. To compound the problem further, there is no evidence to show whether the said bank statements reflect the total turnover or the profits. No documents e.g. logbook for the motor vehicles, daily collection records, books of account, income tax returns or any documents appertaining to the deceased's transport business have been produced as exhibits.

10. Without any cogent evidence on the deceased's earnings, I follow the path followed by my colleagues in similar circumstances and turn to the minimum labour wages provided for by the law. (See for example **DAVID KAJOGI M'MUGAA VS. FRANCIS MUTHOMI (2012) eKLR** and **JOSEPH MWANGI MACHERU IRUNGU & ANOR VS WAHOME GITHINJI & ANOR (2015) eKLR**).

11. According to the Regulations of Wages and Conditions of Employment Act (Cap. 229) the minimum labour wages in Kitui town where the deceased operated her business in the year 2008 was Ksh 4,792/=. I will round up this figure to Ksh. 5,000/=.

From the foregoing the dependency therefore works out as $\text{Ksh } 5,000 \times 12 \times 10 \times \frac{2}{3} = 400,000/=$

12. The special damages pleaded and proved are Kshs 14,900/= for mortuary expenses and Kshs 200/= for obtaining the police abstract as per the receipts produced. This comes to a total of Ksh 15,100/=.

The total award is therefore as follows:

(a)	Loss of life	-	Ksh 100,000/=
(b)	Pain and Suffering	-	Ksh 20,000/=
(c)	Loss of dependency	-	Ksh 400,000/=
(d)	Special damages	-	Ksh <u>15,100/=</u>
	Total		Ksh <u>535,100/=</u>

13. Consequently I enter judgment for the Plaintiff against the Defendants jointly and severally for Ksh 535,100/=.

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B. THURANIRA JADEN

Dated and delivered at Machakos this 6th day of May, 2015

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B. THURANIRA JADEN

JUDGE