



REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL NO. 10 OF 2015
(FORMERLY KISII HCCA NO. 12 OF 2013)

BETWEEN

**SUSAN BONDO & ZEDEKIAH BONDO (SUING AS THE
ADMINISTRATORS AND DEPENDANTS OF WALTER
BONDO OBETO (DECEASED)) APPELLANT**

AND

ZACHARIA NYAMBANE MWITA RESPONDENT

***(Being an appeal from the Judgment and Decree of Hon. Z. Nyakundi, SRM at the Principal's
Magistrates Court in Rongo in Civil Case No. 114 of 2011 dated 8th January 2011)***

JUDGMENT

1. On the 25th January 2010, the deceased was walking along the Kisii-Migori Road when he was hit by the respondent's motor vehicle causing him to sustain fatal injuries. His dependants filed a suit in the subordinate court to recover damages for negligence. The issue of damages was settled by consent with the respondent bearing 80% liability.
2. The appellants were awarded damages for loss of dependency under the ***Fatal Accidents Act (Chapter 32 of the Laws of Kenya)***. In assessing the award, the learned magistrate applied a multiplicand of Kshs. 12,000/- being the monthly salary he was earning as a pastor, a multiplier of 5 years and a dependency ratio of 2/3 based on the fact that the deceased was a 78 year old pastor supporting his wife. The total award was therefore Kshs. 480,000/- .
3. At the hearing of this appeal Mr Kanyangi, learned counsel for the appellant, informed the court that he was only contesting the multiplier adopted. He submitted that the court ought to have adopted a multiplier of 10 as opposed to 5 years applied as the deceased's wife and sons were dependent on him. He argued that even taking into account the vicissitudes of life, 10 years would still be ideal bearing in mind the deceased was a robust man of good health earning a living as a pastor. Mr Abisai, counsel for the respondent, submitted that the judgment was fair in the circumstances as the deceased was 78 years old and the multiplier was within the range applicable for a man of such an age.
4. It is well established that the assessment of damages is a discretionary exercise. The discretion

will only be disturbed by an appellate court if the trial court took into account an irrelevant factor or failed to take into account a relevant factor or that the award is so inordinately low or so inordinately high as to amount to a wholly erroneous estimate of damages (see *Kemfro Africa t/a Meru Express & Another v. A. M. Lubia & Another* [1982 – 88] 1 KAR 72 and *Mariga v Musila* [1984] KLR 257).

5. As regards the multiplier, the Court of Appeal in *Board of Governors of Kangubiri Girls High School & Another v Jane Wanjiku & Another* NYR CA Civil Appeal No. 35 of 2014 [2014]eKLR stated that, “*The choice of a multiplier is a matter of the courts discretion which discretion has to be exercised judiciously with a reason.*”
6. The deceased was a preacher aged 78 years. It is possible that he would have worked for 10 years but taking into account the vicissitudes of life and other imponderables, I do not think a multiplier of 5 years was unreasonable in the circumstances. I therefore decline to interfere with the award.
7. In the written submissions, counsel for the respondent argued that there was no basis for the court to grant the appellant any damages. As the respondent did not cross-appeal against the judgment it must stand.
8. The appeal is dismissed with costs to the respondent.

DATED and DELIVERED at MIGORI this 8th day of May 2015.

D.S. MAJANJA

JUDGE

Mr Kanyangi instructed by Kanyangi and Company Advocates for the appellant.

Mr Abisai instructed by E. M. Juma and Company Advocates for the respondent.