



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO 200 OF 2011

WILSON MWANGI KABIRO

(Suing as Administrator of the estate of

STEPHEN IRUNGU MWANGI, Deceased).....PLAINTIFF

VERSUS

CHARLES NYAMUMBO MAGETO.....DEFENDANT

JUDGMENT

The Plaintiff's claim is in negligence on account of the death of one **Stephen Irungu Mwangi** (the **Deceased**) in a road accident on 6th February 2010. The accident occurred along *Narok Mutoti Road* when motor vehicle registration number **KBF 010H** knocked down the Deceased as he was walking lawfully along the pedestrian path on that road. The Deceased sustained severe injuries to which he succumbed.

The Defendant was the driver and registered owner of the motor vehicle. It is the Plaintiff's case that the accident occurred solely due the Defendant's negligence. Particulars of negligence are pleaded at paragraph 4 of the plaint.

Damages are claimed under the **Fatal Accidents Act, Cap 32** and also under the **Law Reform Act, Cap 26**. The Plaintiff is the Deceased's father. He has claimed on his own behalf and on behalf of the Deceased's mother, **Catherine Wanjiku** as dependents of the Deceased.

The Defendant in his **statement of defence dated 4th June 2012** denied that he was the owner and or driver of the accident motor-vehicle; or that an accident occurred as pleaded, or that it was caused by his negligence, or that there was any loss or damage suffered by the Plaintiff as claimed, and put her to strict proof. He also pleaded that if an accident happened as pleaded, it was caused by the negligence of the Deceased, particulars of which were pleaded. The jurisdiction of the court was also denied.

In a **reply to defence dated 20th June 2012**, the Plaintiff joined issue with the Defendant and reiterated the contents of his plaint. He also prayed for judgment as prayed in the plaint.

When the matter came up for hearing on 17th December 2014, a consent was recorded in the following terms –

“By consent of both parties –

- a. **Defendant admits liability in the ration of 75%**
- b. **Plaintiff admits liability of 25%**
- c. **Parties to pursue quantum**
- d.”

This Judgment therefore only concerns quantum. The parties filed written submissions and cited some cases.

Under the Law Reform Act

The damages to be awarded under this statute are for pain and suffering and loss of expectation of life. There are also funeral expenses, which are usually claimed as special damages.

Pain and Suffering: This usually depends on how soon after the injuries death occurred. Was death instantaneous or was suffering prolonged? In this case, it seems the Deceased succumbed to his injuries immediately as it has not been demonstrated that he was taken to hospital. An award of **KShs 20,000/00** under this head is therefore reasonable.

Loss of expectation of life: The deceased was young and healthy and would have probably lived a long and happy life. Under this head, the Plaintiff sought a figure of Kshs. 200,000/=, the Defendant proposed Kshs. 100,000/=. An award of **Kshs. 150,000/00** as general damages under this head is fair.

Funeral Expenses: Funeral expenses ought ideally to be a claim under the Law Reform Act without the necessity of strict proof considering that funeral must involve some expense to the estate of the deceased. In this case, the amount incurred for the Deceased’s funeral is disputed supposedly because the receipts submitted in evidence are not electronically generated and neither has stamp duty been paid on them. Supposing funeral expenses were to be treated as special damages, it would be denying justice to the Plaintiff who has acted innocently and incurred expenses when special damages are disallowed simply because the receiver of the money for services rendered has failed or neglected to comply with the provisions of the Stamp Duty Act. This is a technicality which cannot be relied upon to occasion injustice to a party who has acted innocently and who is not to blame for the failure to act as required.

Given the status of the Plaintiff, **KShs 56, 201/00** is not an unreasonable sum to spend on his son’s funeral. The sum is awarded under the Law Reform Act, not as special damages.

Under the Fatal Accidents Act

Damages under this statute must be for the benefit only of the wife, husband, parent and child of the deceased person. See **section 4(1)** of the Act. The Deceased was survived by the Plaintiff and his mother. In order to assess damages under the Fatal Accidents Act, the Deceased’s **income**, the extent of his dependants’ **dependency** and the **multiplier** to be used must be determined.

The Deceased was aged 24 years and of good health when he died. He was a hardworking young man as demonstrated by the fact that he used to distribute cakes in **Narok** town to make a living. He was obviously contributing towards his parent’s welfare. A dependency ratio of one-third (1/3) was suggested by both parties. That is acceptable as a young man would most likely spend more money on himself than on his parents.

As for multiplicand, there is no documentary evidence of the Deceased’s employment. The witness statements however are clear that he was working as a cake distributor for a confectionary in Narok Town. The Plaintiff’s testimony further states that he was earning Kshs. 10,000/- per month. But without documentary proof of this, it is only just to award the statutory minimum wage of a general labourer as proposed by the Defendant in the sum of Kshs. 5,218/00. Minimum wage is not usually taxed.

As for the multiplier, the Deceased was aged 24 years at the time of death. He was working in the private sector which has no general mandatory retirement age. Still, the uncertainties and vicissitudes of life have to be taken into account. The Plaintiff's counsel has suggested a multiplier of 30 years while the Defendant's Counsel has suggested 20 years. Balancing this against that, a multiplier of 25 years would be appropriate.

Damages under the Fatal Accidents Act will work out as follows –

$1/3 \times 5,218/00 \times 12 \times 25 = \text{Kshs. } 521,800/00$

Special Damages

Kshs. 56,201/00 has already been awarded under the Law Reform Act as provided for in paragraph 6 of the plaint relating to the funeral of the Deceased.

Summary

In the event, judgment is entered for the Plaintiff against the Defendant as follows –

- (i) Pain and sufferingKShs 20,000/00
- (ii) Loss of Expectation of Life.....150,000/00
- (iii) Under the Fatal Accidents Act.....521,000/00
- (iv) Funeral Expenses.....56,500/00

Less 25%

Contributory negligence.....186,875/00

Total

Kshs. 560,625/00

The general damages will carry interest at court rates from the date of judgment until payment in full. The Plaintiff will have costs of the suit and interest thereon at court rates. Those will be the orders of the court.

Dated, signed and delivered at Nairobi this 15th day of July, 2015

A. MBOGHOLI MSAGHA

JUDGE