



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL CASE NO. 456 OF 2009

AVTAR SINGH BHABRA.....1ST PLAINTIFF

GURJIT KAUR BHBRA.....2ND PLAINTIFF

(Suing as Administrators and legal representatives of the
Estate of the late Parminder Singh Bhabra)

VERSUS

GEOFREY NDAMBUKI.....DEFENDANT

JUDGMENT

PW1 the deceased father and the co administrator of the Estate stated in his evidence that the deceased was his son and worked at Dominion Engineering works limited as an engineer and General Manager. He was earning a net pay of Kshs 128,389 per month .That at the time of his death he was living with his wife and daughter aged 17years at the time of the accident. He provided for his family's maintenance and upkeep as he was the sole bread winner. The deceased died at the age of 52 according to the death certificate exhibited in court.

It is PW1's evidence that the deceased was knocked down by the defendant as he was walking on a pavement and was rushed to MP Shah Hospital where he was pronounced dead upon arrival. This evidence has not been controverted. The motor vehicle KBB 527 K was according to the police abstract No 0034083 dated 16th September 2008 belonged to Mr Geoffrey Ndambuki of PO Box 13097-00100 Nairobi and was insured by Co-operative Insurance Co. Ltd under policy No P/No.012/070/1/049726/2008/03.It is the evidence of the plaintiff that the motor vehicle was sold to the defendant by Eurocollections Limited and showed a sale agreement but the log book exhibited in court showed that the Eurocollections had not transferred the same to the defendant. There is interlocutory judgment entered against the defendant on the 21st September 2010. This settles the issue of liability. I have read the plaintiff's submissions. The plaintiff cited two cases; *Radhakrishen Mrs. Khemaney –vs- Mrs Lachaba Murlidhar [1958] E.A.* and *Mrs. P. F. Hayes and Others -vs- C. J. Patel and Another Civil Case no. 176 of 1956.*

The issue for determination is that of assessment of damages and the heads of damages are under:-

1. The Law Reform Act Cap 26,Laws of Kenya

- a. General damages
 - b. Pain and Suffering
2. Fatal Accidents Act Cap 32 Laws of Kenya
- a. Loss of dependency
3. Special damages

Pain and Suffering

Under the Law Reform Act it is PW1’s evidence that the deceased was pronounced dead on arrival at the hospital .An award of Kshs 100,000 was made for pain and suffering by the plaintiff under this head. The deceased died on the same day as the accident occurred and most probably within an hour. This court will award a sum of Kshs 50,000 on this head.

Loss of expectation of life

In assessing loss of expectation of life are damages that would be awarded under the principle that the deceased has been deprived his normal expectation of life considering that the deceased was in good health as at the time of the accident .In the case of **Mushtaq Hassan** after considering this case the court finds a figure of Ksh 100,000 reasonable in the circumstances.

Loss of dependency

The task of the court is to find the age ,wages and consider the expectations of the deceased and the properties of the net income the deceased would have made available for his dependants .Section 4 of the Act outlines who benefits from the estate and states that, “*Every action brought by notice of the provision of this Act shall be for the benefit of the wife ,husband ,parent and child of the person whose death was so caused*” In assessing loss of dependency under the fatal Accidents Act the principles on which damages should be assessed is set out in the case of **Radhakrishen M Khemaney –vs- Mrs Lachaba Murlindar [1958]EA 268** where the Court of Appeal held that, “*in considering the award of damages under the fatal accidents Act the court should ascertain the age, expectation of working life ,wages and expectations of the deceased and what proportion of his net income the deceased would have made available for his dependants from which the annual value of the dependency would be calculated ,the annual sum should then be capitalised by multiplying it by a sum representing so many years ,purchase, having regard to the expectation of earning life of the deceased and the expectation of life and dependency of the widow and children*”

The deceased’s family totally depended on him therefore the dependency ratio would be 2/3.The deceased died at the age of 52 years .The official retirement period for the government is 65 years .The court will therefore give a multiplicand of 13 years in accessing damages to be paid under the Fatal Accidents Act. This would be Kshs 128,389 x12 x13x 2/3= Kshs 13,352,456

This court hereby enters judgment for the plaintiffs accordingly as follows:-

- 1. Liability 100%
- 2. Quantum on Law Reform
 - a. Pain and suffering..... Kshs.50,000/-
 - b. Loss of expectation of life.....Kshs 100,000/-
- 3. Quantum on Fatal Accident Act
 - a. Loss of dependencyKshs 13,352,456/-

4. Special damages

a. Police Abstract.....Kshs100/-

TOTAL.....Kshs 13,502,556/-

The said amount under the Fatal Accident Act is apportioned to the father, widow and child in the ratio of 10:30:60. Costs and interest to the plaintiff at court rates till payment is made in full.

Orders accordingly.

Dated, signed and delivered this **5TH** day of **March** 2014.

R. E. OUGO

JUDGE

In the presence of:-

.....For the Plaintiff

.....For the Defendant

.....Court Clerk