



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO 828 OF 2003

MARION NJERI KAGO.....PLAINTIFF

VERSUS

KENYA RAILWAYS CORPORATION.....DEFENDANT

J U D G E M E N T

1. The Plaintiff's claim is in negligence on account of the death of one **Charles M Kago** (the **Deceased**) in a road accident on 13th August 2002 involving motor vehicle KAP 258 D (in which the Deceased was a passenger), motor vehicle KAG 902 F and motor vehicle KUV 506.

2. Many claims arose out of the accident. The present suit was selected as a **test suit**. In a **judgment dated 5th February 2007** (Ang'awa, J) the issue of liability was settled. The court found the Defendant 100% liable.

3. The present judgment therefore concerns only quantum of damages in the present suit. Damages are sought under the **Law Reform Act, Cap 26**, and the **Fatal Accidents Act, Cap 32**. Special damages are also sought.

4. Only the Plaintiff testified. She adopted her **witness statement dated 14th December 2012** as her evidence-in-chief. She produced in evidence her **bundle of documents filed in court on 23rd September 2011** as **Exhibit P1**. There was no appearance for the Defendant at the hearing despite service of hearing notice.

5. It was the Plaintiff's testimony that the Deceased (who was her husband) was a school teacher and was aged 53 years at the time of his death. They had three (3) children; all were adults at the time of the Deceased's death but the last-born was in college and still his dependant. The two older children were already working.

6. The Plaintiff filed written submissions which I have considered, including the cases cited.

Under the Law Reform Act

Pain and Suffering

7. The Deceased succumbed to his injuries while undergoing treatment in hospital the day of the accident. There is no indication that he was unconscious, so he must have suffered a lot. I will award

KShs 177,120/00

18. The Plaintiff will have costs of the suit and interest thereon at court rates from the date of filing suit.

19. There will be judgment accordingly.

DATED, SIGNED AND PRONOUNCED IN OPEN COURT THIS

10TH DAY OF MARCH 2014

H. P. G. WAWERU

JUDGE