



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CIVIL APPLICATION NO. 141 OF 2006

LOCHAB BROTHERS LIMITED:..... 1ST APPELLANT

VICTOR SAVO GOMES:..... 2ND APPELLANT

VERSUS

ABRAHAM K. BETT:..... RESPONDENT

JUDGEMENT

The appeal before me relates to the quantum of the compensation which the trial court awarded to the plaintiff, ABRAHAM KIMURGOR BETT

The plaintiff was the father to EMMANUEL BETT, who died from injuries he sustained in an accident involving a vehicle belonging to the 1st Defendant, LOCHAB BROTHERS LIMITED. At the time of the accident, the deceased was working for the 1st Defendant, and he was aboard the vehicle in issue.

The door of the vehicle opened whilst the vehicle was in motion, culminating in the deceased falling off the vehicle and incurring fatal injuries.

At the time of the incident the deceased was 18 years old. He had obtained a C+ grade in his Kenya Certificate of Secondary Examinations (KCSE), and was due to join the Kenya Polytechnic for a course.

The trial court held that the deceased was 30% blameworthy for the fall from the vehicle. The basis for that finding was that he had not shut the door of the vehicle properly. As a result, when the vehicle was moving along the rough road, the door opened suddenly, causing the deceased to fall out.

The learned trial magistrate used a multiplier of 35. In arriving at that multiplier, the court noted that the plaintiff had asked for a multiplier of 47 whilst the defendants had suggested a multiplier of 32.

The plaintiff's contention had been that the deceased could have worked upto the age of 65, but the defendants contention was that the deceased could have worked until the age of 50.

On its part, the trial court settled on a multiplier of 35, considering the normal retirement age.

As regards the income which the deceased had been earning, the plaintiff had said that it was Kshs. 4,000/-. However, there was no documentary evidence to prove that income.

On the other hand, the defendants suggested a sum of Kshs. 3,000/-.

The trial court settled for a sum of Kshs. 2,700/- which was described as the minimum wage for general

labour in Kenya, pursuant to the Gazette Notice Number, 38 of 12th May, 2006.

In respect to the claim for Loss of Expectation of Life, the trial court awarded Kshs. 100,000/-. The plaintiff had asked for Kshs. 300,000/-, whilst the defendants had suggested the sum of Kshs. 70,000/-. The court awarded Kshs. 100,000/-.

In relation to Pain and Suffering, the plaintiff asked for Kshs. 50,000/-, whilst the defendants suggested Kshs. 5,000/-. On its part, the trial court awarded Kshs. 10,000/-.

In the final analysis the trial court granted the sum of Kshs. 882,300/- made up as follows:

(a) Loss of Dependency	750,000/-
(b) Loss of Expectation of life	100,000/-
(c) Special Damages	16,300/-
(d) Pain and Suffering	<u>10,000/-</u>
Total	<u>882,300/-</u>

After taking into account the 30% contributory negligence, the final figure came to Kshs. 617,610/-.

Mr. Kagunza, the learned advocate for the appellants faulted the trial court for using the multiplier of 35.

He submitted that the life expectancy for males has been statistically shown to be 45, whilst that for females was 50. Therefore, he believes that an appropriate multiplier should have been between 30 and 32.

On the other hand, Mr. Chepkwony, the learned advocate for the respondent, submitted that the multiplier ought to have actually been 37, considering that the retirement age in Kenya was 55. Therefore, the respondent reasoned that the trial court cannot be faulted for using the multiplier of 35.

On my part, I find no material before me, that can form the basis for the appellants' alleged statistical data on life expectancy. The appellants did not place before me or even before the trial court, any data to demonstrate that the life expectancy of males was 45 years of age. I therefore find no reason to rely on that contention.

This court takes Judicial Notice of the retirement age which was in place in Kenya, as at 2002: the same was 55.

I therefore find that the trial court was properly guided when it pegged the multiplier on the said retirement age.

As regards the income which the deceased was earning, the appellants had suggested to the trial court the figure of Kshs. 3,000/-.

The trial court then used the figure of Kshs. 2,700/-, which was said to be the minimum wage for general labour in Eldoret, at the material time.

Even during this appeal, the appellants reiterated the income of Kshs. 3,000/- per month.

In the circumstances, the use of the figure of Kshs. 2,700/-, by the trial court may have been prejudicial to the respondent. But as there is no cross-appeal, this court holds that there is no legal basis for changing that sum.

According to the appellants, the income would have been taxed at the rate of 45%. However, this Court takes Judicial Notice of the fact that even the highest taxed individual or entity in Kenya, pays 30% tax. There is nobody who pays 45% tax.

In any event, those who earn below a specified threshold are not subject to taxation on their income.

If the appellants were to demonstrate that the respondent was liable to pay tax, they should have proved the level of taxation that would be applicable. In this case, the appellants failed to lead any evidence to back the contention that the respondent's income would attract 45% tax.

Accordingly, I find no basis for imposing the said tax.

On the issues concerning Loss of Expectation of Life, and the Pain and Suffering, I find that the differences in the quantum awarded by the trial court and the sums suggested by the appellants are not significant. Therefore, even if a different court could have awarded slightly different figures under those heads, it would not be open to this appellate court to change the sums awarded. The trial court exercised its discretion in assessing the compensation under those 2 heads; and as an appellate court I could only interfere with the awards if it was demonstrated that the trial court had applied wrong principles or that that court's award was either so high or so low as to lead to the conclusion that the same must have been founded upon wrong principles.

In this case, I do not find that the trial court had applied wrong principles. I also do not find the sums awarded to be excessive, under those 2 heads.

In conclusion, the overall compensation is deemed to be fair and just, in the circumstances of this case.

I find no merit in the appeal. The same is therefore dismissed.

I uphold the award to the respondent

DATED, SIGNED AND DELIVERED AT ELDORET

THIS 1ST DAY OF APRIL, 2014

FRED. A. OCHIENG

JUDGE