



REPUBLIC OF KENYA
HIGH COURT AT NAIROBI (NAIROBI LAW COURTS)

CIVIL SUIT NO.116 OF 1993

JOHN MUREITHI KARIUKI.....PLAINTIFF

V E R S U S

GEORGE MWANGI.....DEFENDANT

J U D G M E N T

1. The Plaintiff's suit is for damages arising out of a road accident on or about 25th December 1989 along the Nyahururu–Nakuru road in which the Deceased in this suit, **GABRIEL MACHARIA**, died. The Deceased was a fare-paying passenger in motor vehicle registration number KTT 168. The vehicle left the road and overturned thereby occasioning the Deceased fatal injuries.
2. The Plaintiff has brought the suit as the administrator of the estate of the Deceased. Damages are claimed under the **Law Reform Act, Cap 26** and also under **the Fatal Accidents Act, Cap 32**. The suit is brought for the benefit of the estate of the Deceased as well as for the benefit of the Deceased's dependents named in paragraph 6(a) of the plaint dated 30th November 1992. Special damages of KShs 15,100/00 are claimed.
3. It is the Plaintiff's case as pleaded that the accident motor vehicle was owned by the Defendant and that the accident was caused solely by the negligence of the Defendant or his servant or agent driving the motor vehicle.
4. The Defendant was duly served with summons to enter appearance and copy of the plaint. He entered appearance through counsel but did not file defence within the stipulated time or at all. Interlocutory judgment was subsequently entered against him on 14th June 2006.
5. At the hearing of the suit there was no appearance for the Defendant despite service. Only the Plaintiff testified.
6. The Plaintiffs uncontroverted testimony was that he is the holder of a grant of letters of administration intestate duly granted to him by a court of law in respect to the Deceased's estate (**Exhibit P1**). He testified that the Deceased was a fare-paying passenger in the accident vehicle owned by the Defendant whom he knew well as his neighbour. He further testified that the motor vehicle was being driven by the Defendant's servant or agent, one PATRICK GATARA WANJOHI, whom he also knew as a neighbour.
7. PW1 produced a copy of the police abstract on the accident (**Exhibit P2**) dated 18th January 1990. That abstract shows that the Deceased was a passenger in the motor vehicle, and that he sustained fatal injuries in the accident from which he died the same day while undergoing treatment at hospital. PW1 produced the Deceased's death certificate (**Exhibit P3**).

8. The Deceased was aged about 26 years at the time of his death. He was not married and did not have any children. He was survived by the persons listed in paragraph 6(a) of the aforesaid plaint. The dependents were his parents and his siblings. PW1 testified that amongst the named dependents, DAVID KARIUKI, the deceased's father, has since died. He further testified that all the Deceased's siblings were working for themselves and did not get any assistance from him. That means that the only legitimate dependents of the Deceased at the time of his death were his father and mother. As the father has since died, that leaves only the mother, SARAH WANJIKU KARIUKI.

9. It was PW1's further testimony that the Deceased was employed as a farm manager at the time of his death. He produced a letter to that effect from the Deceased's employer (**Exhibit P4**). His salary at the time of death was KShs 3,000/00 plus a house allowance of KShs 500/00. But at the time of death he was being housed by the employer.

10. Upon that uncontroverted testimony of PW1, including the documentary evidence produced, I am satisfied that the Deceased was a fare-paying passenger in the accident motor vehicle. I am also satisfied that the accident motor vehicle was owned by the Defendant and was driven by his servant or agent. Further, I am satisfied that the accident occurred as a result of the negligence of the said driver of the motor vehicle.

11. The Deceased sustained fatal injuries in the accident which caused his death the same day as he underwent treatment at the hospital. The Defendant is vicariously liable for the tort committed by his servant or agent. In respect to liability therefore I find for the Plaintiff at 100%.

12. I will now assess damages. In this regard I have considered the written submissions filed on behalf of the Plaintiff, including the one case cited. Under the Law Reform Act the damages that may be awarded are for pain and suffering, and loss of expectation of life. I have considered that the Deceased died on the same of the accident. He must have suffered considerable pain while undergoing treatment. I will award KShs 10,000/00 for pain and suffering.

13. As to loss of expectation of life, the Deceased died at the age of 26 years. The Plaintiff's learned counsel has suggested KShs 70,000/00 under this head. I see no reason not to award it, and I hereby award the same.

14. Under the Fatal Accidents Act damages will be awarded for loss of dependency. To assess the same I must first determine the multiplicand, the multiplier and the ratio of dependency.

15. As the multiplicand, I accept that the Deceased's income was KShs 3,000/00 per month. I will use that sum as the multiplicand. Regarding the multiplier, I have already noted that the Deceased died aged 26 years. All things being equal, he had a long working life ahead of him. But things are never equal. The uncertainties and vicissitudes of life must be taken into account. I consider that a multiplier of 22 years will do justice in this case.

16. As to dependency, the Deceased's income was fairly meager. But I expect that he spent a considerable portion of his income on his parents who were already advanced in age. But I would expect also that the parents got assistance from the other children who were working. I will adopt one-third as the dependency ratio.

17. General damages under the Fatal Accidents Act will therefore be KShs 264, 000/00 made up as follows;

KShs 3,000/00 x 12 x 22 x 1/ 3 = KShs 264, 000/00

18. I will enter judgment for the Plaintiff against the Defendant as follows -

(i) Under the Fatal Accidents Act KShs 264,000/00

(ii) Pain and suffering KShs 10,000/00

(iii) Loss of expectation of life KShs 70,000/00

Total KShs 344,00/00

There will be interest on that sum at court rates from the date of judgment until payment in full.

19. The sum of KShs 264,000/00 awarded under the Fatal Accidents Act will go to the Deceased's sole surviving dependent, his mother Sarah Wanjiku Kariuki.

20. The Plaintiff shall have costs of the suit plus interest thereon at court rates from the date of filing suit. Those shall be the orders of the court.

22. Delay in preparation of this judgment (and the attendant distress to the parties) is deeply regretted. It was caused by my poor state of health the last few years. But thank God I have now fully recovered my health.

DATED, SIGNED AND PRONOUNCED IN OPEN COURT THIS 9TH DAY OF OCTOBER, 2012

H. P. G. WAWERU
JUDGE