



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL CASE NO. 1698 OF 1994

LOISE WANJIRA MUHIA PLAINTIFF

VERSUS

ALEXANDER MURIUKI NDWIGA DEFENDANT

JUDGMENT

James Ndungu Muhia was, on the 4th of February, 1996 at about 7.00 p.m. crossing the Thika-Muranga road near the Mackenzie trading centre. The said road is a dual carriage way road. He had walked almost half-way or three quarters of the way on the said road when the defendants vehicle knocked him on the extreme lane - the right side lane of the dual carriage side of the road. The defendant was driving a motor vehicle registration number KUM 100. The impact of the accident threw the deceased up in the air. He came down with force and died on the spot on hitting the ground. The defendants vehicle stopped a few distance away from the impact of the accident.

The eye witness to the said accident (PW2) stated that he and others were at a bus stop which is fairly a flat area. The area prior or before the bus stop had an incline and a vehicle coming from that incline would not possibly see the persons before he reached the bus stop.

On that material evening, it was dark by 7.00 p.m. The deceased, he said, had crossed the road when the defendant vehicle came at a very high speed and knocked the deceased. There was no break skid or hooting that he heard from the defendants vehicle prior to the accident. The defendant did not swerve on try to avoid the accident.

Photographs of the vehicle were shown to PW2 which he recognised as the accident vehicle and the extent of damage.

The mother of the deceased and plaintiff in this case obtained letters of administration and filed this suit on behalf of the estate of the deceased and on her own behalf and her children. She prayed for General Damages, Special Damages costs and interest of this suit.

In the Defence the defendant attributed negligence to the plaintiff. That the plaintiff ran into the road causing the said accident.

The defendant did not attend the trial to give evidence. His advocate stated that he was not contacted and had moved from his place of work. This information was given to the court at the close of the plaintiffs case and quite late in the day. The hearing proceeded as the advocate should have ensured the defendant was in court.

I have looked at the agreed issues and find that there is sufficient proof that the deceased was hit and killed by the motor vehicle registration number KUM 100 belonging to the defendant. I find that the contributory negligence has been established. Namely that it was 7.00 p.m. and dark. The deceased had a duty to take care whilst crossing. PW2 stated he saw him pause and look down the road before he crossed. The defendant on the other hand knew he was approaching a trading centre and as such ought to have slowed down tremendously, especially as he neared the bus stage. I would put the liability to a ratio of 10% to 90% for the plaintiff and the defendant respectively. I do not agree with the ratio of 50%:50%. This is only used and given when the court is who of the two is to blame for the accident - especially so in a motor collision usually two vehicles. In this case I am sure from the evidence that the defendant bore a substantive part of the blame.

On the issue of Quantum, the plaintiff called PW3 a brother in law who participated in the funeral arrangement and said he contributed Ksh.15,000/-. PW4 a work mate at the time of the accident, had been sent by their employer to contribute ksh.7,000/- towards the funeral. He also told the court that the deceased was like their supervisor.

PW4 was employed as "Screen Printer" although he was not sure how much the deceased earned he thought it would be Ksh.5,000/-. The witness herself said he earned ksh.3,500/- and had worked for the company 5 to 6 years. The deceased had worked longer than he did.

P.W3 stated that the company that he and the deceased had been employed at has since been wound up and no longer exists.

In his submission the advocate for the plaintiff recommended that the court applied a multiplier of 18 years for the deceased whom at his death was aged 38 years. The income be Ksh.2,000/- as having been lost by the plaintiff and mother to the deceased as dependency.

Thus $Kshs.2,000/- \times 18 \times 12 = Ksh.432,000/-$.

The deceased was unmarried, he had a girlfriend but no children. The mother is the only one entitled to the said head of damages.

The advocate for the defendant is correct to state that his sister being adults could not claim on this head of damages.

On the aspect of pain, Suffering and Loss of Amenities Ksh.10,000/- was recommended by the advocate for the Plaintiff and kshs.100,000/- for loss of expectation of life.

The plaintiff still claimed ksh.30,000/- for funeral expenses.

The advocate for the defendant rightly stated that there was no proof for the funeral expenses except for a sum of ksh.2,270/-. That there was no loss of dependency that had been made. The salary he would agree to be used in calculating loss of dependency is ksh.500/- the same being so after deduction. Under the heading he saw 5 years as being a reasonable multiplier. Thus $500/= \times 12 \times 5 = Ksh.30,000/-$.

I find in this case that the deceased died instantly on the road. The accident was violent and he was thrown up into the air before entering the ground. I would agree to award for pain, Suffering and Loss of Amenities at Ksh.10,000/-. I would agree that a sum of Ksh.100,000/- be given as the Loss of expectation of Life.

As to Special Damages I would award ksh.2,270/- as duly proved.

On the limb under the Fatal accidents Act, I would agree that a salary of 2,000/- after deduction is acceptable. I would also agree to the plaintiffs recommendation of a multiplier of 18 years. I would award under this heading Ksh.432,000/- (made up of Ksh.2,000/- $\times 18 \times 12$).

