



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL CASE NO. 1068 OF 1994

SELINA WACHUKA KARANJA PLAINTIFF

VERSUS

LEONARD NJUGUNA & ANO..... DEFENDANT

JUDGMENT

The Plaintiff, through her advocate has withdrawn the prayers in this case that falls under the Law Reform Act. She instead sues the defendant for the wrongful death of her deceased husband under the Fatal Accident Act, that was caused due to a motor vehicle accident.

On the 10th October, 1992 PW2 - a daughter to the deceased had accompanied her father to town. They were on their way to see the plaintiff who had come to visit from up country. As they were crossing the road at Moi Avenue near the Ibrahim Supermarket a matatu vehicle registration No. KXY 183 Nissan collided and knocked the deceased whilst at the edge of the road. The deceased was placed in another vehicle and was taken to the Kenyatta National Hospital. There was an inordinate delay in admitting the deceased to hospital. The accident occurred in the morning hours soon after 8.00 a.m. Whilst the deceased was not attended to until almost 12.30 p.m. He finally died at 4.30 p.m. on being admitted to hospital.

The plaintiff filed this suit against the defendant on the 17.3.94 for negligence stating that the said defendant drove too fast, without due care, failing to keep a proper look out. He hit the deceased in the middle of the street and further failed to give a warning by hooting.

The defence, filed their statement of defence on 16.8.94 and stated that they denied driving the motor vehicle negligently. That the accident was contributed by the accused.

The defendants pleaded the particular of damages stating that it was the deceased who staggered onto the path of the vehicle.

It is with surprise that the defendant again goes to state that the deceased “crossed the road”. without ascertaining if it was safe. That the deceased “Darted across the road” without first ascertaining it to be safe. That the deceased “[walked] haphazardly without due care”. That the deceased “failed to stop, - move back” That an accident was caused.”

Although the above negligence was pleaded by the defence there was no witness from the defence who came to give evidence of this negligence. The plaintiffs on the other had filed no reply to the defence.

The main contention of this case was the age factor of the deceased which has brought an interesting point to this case.

The deceased at the time of death was aged 79 years old. He was being employed by Inter State Business Guards and Investigating Agents Limited, as a security personnel having a wage of Ksh2,500/=.

The advocate for the defendant stated that the deceased was fit for retirement and could not possibly support the plaintiff (who was the only dependant) with Kshs.2,000/- per month as she claims. The deceased required such moneys for himself.

He was of the opinion that a wage of 700/- be taken into consideration. Thus $700/- \times 12 \times 2$ years (being the multiplicand) $\times 1/2 =$ Kshs.5,600/-.

He stated that no award be made for Special Damages.

The advocate for the Plaintiff on the other hand prayed that a multiplier of 10 years be taken. This would mean the deceased would have retired at the age of 89 years old. A salary of Ksh.2,000/- would be reasonable.

This $2,000 \times 10 \times 12 =$ Ksh.240,000/-. He prayed to this court that although no Special Damages had been proved the court do take "Judicial notice" that in fact some money for the funeral had been incurred.

I find that there are ample authorities that state Special Damages must be pleaded and proven strictly. In this situation no evidence of the Special Damages has been shown.

I hereby reject this heard of damages and make no award. On the issue of negligence I find that the deceased contributed to this action.

One crosses a road with due care. I nonetheless find that the defendant's negligence was high as the speed that the vehicle travelled showed no due regard to the pedestrian on the street. I believe there was no zebra crossing on the road, for quite some distance.

I would compute liability at the ratio of 10% against the plaintiff to 90% against the Defendant.

I am satisfied that the deceased was working as a watchman. He was previously a businessman. He stayed with his brother and paid no rents where he resided in Nairobi.

I would agree that the deceased would not have worked for another two years. I would compute a multiplier of 2 years as recommended by the advocate for the defendant. His salary is said to have been Ksh.2,500/- per month. The best evidence would have been, if the employer had to testify in court.

This $\text{Kshs.}2,500 \times 12 \times 2 \times 1/3 =$ Ksh.30,000/- apportioned to the plaintiff only as only dependants.

In summary:

I enter judgement for the plaintiff against the defendant on liability at 10% to 90% ratio respectively.

I award General Damages for Loss of Dependency at Ksh.30,000/- less 10% = Ksh.3,000/- = Ksh27,000/-.

I make no award for Special Damages as this was not proved.

I award costs to the plaintiff together with interest and costs from the date of this judgement.

Dated this 14th day of May, 1999 at Nairobi.

M..A. ANG'AWA

JUDGE

