



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
CIVIL CASE NO. 1720 OF 1995**

ROSE WAMBUI KIBUI & ANO PLAINTIFF

VERSUS

BENJAMIN MAINA & 2 OTHERS DEFENDANTS

JUDGMENT

The first and second plaintiffs are joint administrators to the Estate of the late Gilbert Kibui Kibaara.

They bring this suit for the benefit of the estate, the dependants and themselves, for the wrongful death caused by the defendants in a road accident.

Defendant No1 is the registered owner of KAC 347 E . The 2nd defendant was the driver whilst the 3rd defendant was a conductor in the said vehicle.

On the 6th of November 1992, the deceased, a lawful passenger in the said vehicle was run over by the vehicle at Kiahuga - Nyeri Muhuti Bus stage.

As a result of the 2nd and 3rd negligence the Plaintiff sustained fracture of the pelvis, abdominal pains abdominal distension, rupture of the bladder and retroperitoneal bleeding. The deceased died after being hospitalised for three months from the said injuries.

When the case came up for trial the parties agreed by consent that judgement be entered for the plaintiff against the Defendant at the ratio of 15% to 85% respectively.

They also agreed by consent that the plaintiffs salary is Ksh 2,300/- per month.

PW1, the plaintiff in this case and widow stated that her deceased husband provided for her. That he used to work as a carpenter on contract basis. She used to be given Ksh 3,000/-. She spent the moneys on the house. She had only one son who was aged 10 years at the time of the accident.

During the funeral she bought a coffin for Ksh. 6,500. She had spent Ksh 300/- on his hospital expenses.

She also produced a receipt for Ksh 7,000/- for the letters of administration being the advocates fees. This item was objected to by the advocate for the defendant. The grounds being that the letters of administration to be obtained any way whether there was a case or not.

The father to the deceased and PW2 in this case claimed his son supported him with Ksh. 600/- per

month.

The advocate for the plaintiff stated that an amount of Ksh. 200,000/- be given for pain suffering and loss of Amentities.

She further recorded that a multiplier of 25 years be taken.

For special Damages he proposed Ksh 13,000/- be awarded as proved out of Ksh. 46,100/- earlier pleaded.

The advocate for the defendant stated that an award for pain suffering and loss of Amenities be given at Ksh. 25,000/- only.

He recorded therefore that a multiplier of 8 be given.

Therefore under the Fatal Accident Act the salary of 2,500/- x 12 x 8 years x 1/3 = Ksh. 73,600/- should be reduced by 20%.

This should come to Kshs. 57,880/- that should be awarded to the plaintiff.

As to special Damages only Kshs. 6,500/- and 300/- was proved.

I find that the evidence before me that liability has been admitted by the defendants at 85%.

None of the parties mentioned whether the defendants No. 2 and 3 were prosecuted as stated in the plaint. The same will be taken as such considering the admissions made (The proceedings of the lower court was not put in as stated)

The deceased did sustain injuries as a result of the said accident. There was in fact no medical report of a doctor to ascertain the injuries during the three months. There was a brief note describing how the deceased died of his injuries by a medical officer of health in Nyeri.

The dependants of the estates are his widow, Rose Wambui Kuhu his sons Gerald Rutito Kubin now aged 16 years old and his father Antony Kibaara Wahome.

There is no mention of the deceased mother who is still alive.

The deceased father admitted he has other children who also support him.

The issue in this head of damage under the Fatal Accident Act is that of the multiplier. The deceased was aged 36 years old at the time of death. He was a freelance contractor. He would have probably worked up to the age of 50 years comfortably. There could be probability of illness and or sudden death as was in this case.

I believe that a multiplier of 14 years is reasonable. I do not agree with the multiplier of 25 years as recorded by the advocate for the plaintiff.

Thus $\text{Kshs. } 2,500/- \times 12 \times 14 \times 1/3 = \text{Ksh. } 140,000/-$

Apportionment amongst the dependants under the Fatal Accidents Act on loss of Dependant is

Rose Wahu Kihuni Widow Ksh 60,000/-

Gereald Ruthi Kihuni Son Ksh. 70,000/-

Antony Kihara Wahome father Ksh. 10,000/-

Kshs. 140,000/-

Under the Law Reform Act, I note that the deceased was hospitalised for 3 months. He was most certainly in pain and in a poor condition during all that period.

I award for the head of damages of pain, Suffering and Loss of Amenities at Kshs.100,000/-.

Special Damages I would agree that only Ksh.6,800/- was proved.

I hereby enter judgement for the plaintiff against the defendant on liability at the ratio of 15.85% as agreed by the parties.

I award in summary

General Damages

i) Pain, Suffering & Loss of Amenities Ksh.100,000/-

ii) Loss of dependency Ksh.140,000

(apportioned as above)

iii) Special Damages Ksh. 6,800/-

Total Ksh. 246,800/-

85% of 246,800 Ksh.204,000/-

i.e. Net Ksh.204,000/-

Special damages Net Ksh. 5,780/-

Net Total Ksh. 209,780/-

I award the cost of this suit and interest on General Damages from the date of this judgment. Interest on Special Damages from the date of filing suit.

Dated this 14th day of June 1999 at Nairobi.

M.A. ANG'AWA

JUDGE