



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO.1932 OF 1994

JOYCE KAVUKI (suing as next of Kin of

Timothy Kitoo Mathendu)..... PLAINTIFF

VERSUS

EASTERN EXPRESS BUS SERVICE & ANO. DEFENDANTS

JUDGMENT

This is a reconstituted file. As such, the advocate for the plaintiff informed this court that he sued, on behalf of his clients two defendants namely Eastern express Kitui Bus Service 1st defendant and H.H. Abdi & Sons Transporters Ltd.

The 2nd defendant failing to enter appearance and file defence had interlocutory judgement entered against him. The suit before me proceeded to hearing against he 1st defendant.

Brief, the facts of this case is that the deceased had boarded the 1st defendant bus. He was travelling to Nairobi. He had in his possession a set of keys for his brother (PW2) and his own. as the bus travelled it collided with the trailer lorry of the 2nd defendant. According to the 1st defendant's driver the said vehicle for the 2nd defendant was in the middle of the road. His bus went into the said vehicle, carrying petrol and it caught on flame. The bus burnt down.

The deceased was looked for amongst the survivors and those who were fatally wounded but was not found. PW2 went to the police station where the bus had been parked. The keys were recovered under the bus. another set of keys were identified by PW2. There was no sign of the deceased and it is believed that he burnt into ashes. The deceased at the time of his death was aged 48 years and worked at the Inter continental hotel as a driver earning about Ksh.12,000/-.

The agreed issues before the court is as follows:-

1) Whether the accident occurred on 23.12.91? Yes, the accident did occur on the 23.12.91 between motor vehicle reg. No.KAB C Izuzu bus and reg. vehicle KMV 456 Fuel Oil Tanker.

2) Whether the 1st and 2nd defendants were owners of the motor vehicle KAB 180C and KMV 465 respectively.

Yes, the defendants were owners of the said motor vehicles. The abstract report clearly indicates this and those who were involved.

I further find that the deceased was travelling in the bus. The evidence being that his wife saw him off at the hour and place of travel. That he never reached his destination. Though his body was never

recovered his brother PW2 was able to establish his brother was on the bus and had burnt to ashes. I find that the deceased died as a result of the accident.

The 2nd defendant's vehicle was stationary and the 1st defendant's vehicle was being driven. According to defence witness DW1 - the other said vehicle was in the middle of the road. He was unable to avoid colliding with it. It is most certain that the 2nd defendant's vehicles had been carelessly parked. The 1st defendant contributed to the accident in that he drove excessively and was unable to stop swerved or apply the breaks to avoid the accident.

I would find that both the defendants were negligent. I apportion their liability at 20% to 80% ratio. The 2nd defendant to take the major blame.

I find that the plaintiff was dependant on the deceased together with her children.

The advocate for the defendant stated that there was a discrepancy in the death certificate as to the time of death. The advocate for the plaintiff said this was an error that was not noticed until trial.

The defence prayed as to the awards that the wife of the deceased earned in profits Ksh.4,000/- from a shop she ran in her home area. The advocate thus reconceded there to be a multiplier of 5 years dependency amount of Ksh.650/- and ksh.10,000/- for pain suffering and loss of amenities.

The advocate for the plaintiff prayed that the multiplier be set at 6 years and the dependency income at Ksh.7,000/- as fair.

I find that the deceased must have died instantly. I would also note that the plaintiff rely on the Fatal Accidents Act to bring their claim for damages.

The deceased was employed and brought home after earning a salary of 12,000/- about Ksh.7,000/- the 1st defendant stated this should be 1,300/-.

From the pay slip the amount of 1,300/- as for one month. I shall take the net amount to be 1,000/- per month. That the annual multiplicand be 12,000/-. I shall accept 6 years as the multiplier. I arrive at the capital sum of Ksh.72,000/-. I would round this figure to that of Ksh.100,000/-. I make no award as to special damages as this was not proved.

I make no award to funeral expenses as no funeral was held.

I apportion the damages for loss of dependency totalling 100,000 as follows.

Widow - 50,000

Mother - 20,000/-

Children - 30,000/-

That Joyce Kariuki wife 50,000/-

Rebecca Mathendu son 20,000/-

Wathan Mulwa son 5,000/-

Gedion Kitonga son 5,000/-

Naami Kitoo son 5,000/-

Munde Kitoo son 5,000/-

Nzuki Kitoo son 5,000/-

Muendo Kitoo son 5,000/-

Ndanu Kitoo son 5,000/-

The amount for the minors be placed in a fixed deposit with HFCK in the joint of names of the registrar and the plaintiff until the minors attain 18 years of age.

I enter judgement against the two defendant for Ksh.100,000 duly apportioned. I award costs of this suit to the plaintiff.

Dated this 15th day of October, 1998 at Nairobi.

M.A. ANG'AWA

JUDGE