

REPUBLIC OF KENYA

Bakari v Hassan

High Court, at Mombasa

April 9, 1992

Wambilyanga J

Civil Case No. 233 of 1989

April 9, 1992, **Wambilyanga J** delivered the following Judgment.

This is an action which arises out of a road traffic accident which occurred on 26th April 1988 at 7.30 a.m. when the plaintiff's husband was fatally struck and knocked by the 1st defendant's vehicle which at all material times was being driven by the 2nd defendant. The plaintiff's husband who was 35 years at the time succumbed to those injuries. This claim is both under the Law Reform Act and under the Fatal Accident Act. There are altogether 14 minor children.

With regard to the plaintiff's husband there are 2 documents emanating from his former employer to the effect that at the time of his death his salary was Shs.1,907/= per month. He had been recruited into the organisation (i.e. Coffee Marketing Board Uganda) as a sweeper. But his diligence and discipline had enable him to rise to the post of a store keeper in April 1987; and that is the post he was holding at the time he met with his death. A second letter from the same organisation computes the salary he would be earning if he was alive. It is worked out at Kshs.2,562/= per month. In his written submission Mr. Kiambo wonders why there was no payslip in regard to the salary earned before death. I find the 2 letters attached to Mr. Pandya's written submission to be authentic and cogent and I have no valid reason for doubting them.

The plaintiff must have been a mere housewife who attended to the needs of their 13 minor children whom the husband left behind. Mr. Pandya argues that most of the husband's salary must have gone towards the maintenance of the huge family. That is possibly true. But the husband would quite likely have spent some money on himself, his friends or his other extended family members. So that I have no sufficient basis for holding that he would spend 7/8 and not the traditionally accepted fraction of 2/3 on his family. I opt for the latter fraction. Otherwise the other points raised by Mr. Pandya in his submission are sound and can not be validly objected to.

In my view the lost dependency during the year 1988 to 1992 is as follows:-

1988 at 2/3 of Shs.1,907/= for 8 months

works out to Shs.10,168/=

In 1989 at 2/3 of Shs.2,018/= per month

For 12 months works out to Kshs.15,680/=

In 1990 at 2/3 of Shs.2,249/= per month

Works out to Shs.15,782/= for 12 months to

Be Shs.18,000/=

In 1991 at 2/3 of 2,562/= works out to Shs.1,708/=

Per month for 12 months to be Shs.20,496/=

In 1992 at 2/3 of 2,562/= per month for 12 months works out to Shs.20,496/=.

It is reasonable that I give a multiplier of 12 years to (2/3 of Shs.2,562/=) per month. The result is Shs.245,952/=. In the end the lost dependency is Shs.350,792/=. It is true as submitted by Mr. Pandya that there is no dispute on Shs.5,100/= claimed as special damages. The plaintiff is also entitled to Shs.60,000/= for loss of expectation of life under Law Reform Act as claimed in the plaint.

Accordingly judgment is entered for the plaintiff for Shs.414,892/= with costs and interest against the defendants jointly and severally.