



IN THE COURT OF APPEAL

AT MOMBASA

(Coram: Kwach, Omolo and Tunoi JJ A)

CIVIL APPEAL NO 73 OF 1994

Between

SALVATORE DE LUCA.....APPELLANT

AND

ABDULLAHI HEMED KHALIL.....RESPONDENT

SALIM AL AMODY.....RESPONDENT

(Appeal from a judgement of the High Court of Kenya at Mombasa (Mr Justice E M Githinji) dated 21st May, 1990,

in

Civil Case No 778 of 1987)

JUDGMENT OF THE COURT

This is an appeal from a judgement and decree of the High Court of Kenya at Mombasa (Githinji, J) given on 21st May, 1990 awarding the appellant a total of Shs. 770,239.40 in general and special damages under the law Reform Act and the Fatal Accidents Act.

The appellant is an Italian citizen domiciled in Italy. He was the husband of Anna Deo Meo whilst on a tour of Kenya was tragically killed in a road accident along the busy Mombasa-Malindi road on March 27, 1986. The learned judge of the superior court assessed the damages pursuant to an interlocutory judgement entered against the respondents on February 26, 1988 following their failure to file a defence.

The appellant had appealed to this court on four grounds of appeal but at the commencement of the hearing, Mr. Kasmani, counsel for the appellant, argued on two grounds only. These were as follows;-

“1. The learned judge erred in law in converting the loss and damages in Italian Lira at the rate of Kshs 1.00, which was the conversion rate in 1986.

3. The learned judge erred in failing to award any damages for loss of love and consort by the plaintiff and for loss by his two sons at their tender age, of love, care and devotion of their

mother.”

There is considerable merit in the first ground of appeal since it is now well settled that where judgement involves payment in foreign currency the conversion date to be inserted in the claim or in the judgement of the court is the date of payment. However, Mr. Kasamani informed the court from the bar that the decretal sum was fully paid to the appellant “sometime in 1991” but he did not know the exact date of payment nor the prevailing rate of exchange at the date of payment he was, in fact, not sure of the most elementary details of the payment. Whilst we would agree that the learned judge erred in holding that proper date for conversion of damages in Italian Lira into Kenyan Shillings was in 1986 we will not upset his judgement in view of the confusion appertaining to the date of payment of the decretal sum. The first ground of appeal must therefore fail.

So far as consortium is concerned, there is evidence that the appellant loved his wife and so did their children. The appellant has not re-married. No doubt, he had lost his wife’s companionship. There is, moreover, an impairment in the social life of the appellant and his young children who, too, have lost love, care and devotion of their mother. The learned judge clearly erred, in our view, in failing to award any damages for loss of consortium and servitium. Bearing in mind the fact that each case should be judged on its own facts, we would think that an award of Shs. 40,000/= is a fair measure for this head of damages and we award the appellant this sum with interest from the date of judgement in the superior court until payment in full.

As the appeal has succeeded on one ground only we award the appellant one third of his taxed costs.

Dated and delivered at Mombasa this 27th day of January, 1994.

R.O. KWACH

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JUDGE OF APPEAL

R. S. C. OMOLO

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL