



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.523 OF 1983

CATHERINE CHEPKEMOI **TIRGE** PLAINTIFF

AND

WAINAINA MUIGAI DEFENDANT

JUDGMENT

The plaintiff brings this suit on her own behalf and on behalf of the dependants of one Christopher **Towett** who died in a road accident on the 8th June, 1980 as a result of dangerous driving on the part of the defendant **Wainaina Muigai**. As the defendant did not file a defence judgment was entered for shs13,310 with interest being special liquidated damages. This was done pursuant to order **IXA** Rules 3(2) and 5 of the Civil Procedure Rules.

The case was then placed before me for assessment of damages. The plaintiff Catherine **Chepkemoi Tirge** is the widow of the late Christopher Towett. They had been married for more than eight years when Towett met his death in a road accident - and it was a tragic death since many people died. The defendant was charged with five counts of causing death by dangerous driving contrary to section 46 of/ the Traffic Act (cap 403\cf1 aw3 of Kenya); among other counts under the Traffic Act. Hewas convicted on all counts in **Nyahururu** Resident Magistrate's court Traffic Case **No.4814** of 1980. (Exhibit 1).

The husband of the plaintiff was a driver employed at a salary of shs.900 per month. He used to send shs.600 to the plaintiff every month. He died at the age of 27 years and he was in good health.

In this case the defendant was convicted of causing death by dangerous driving. In his judgment the learned Resident Magistrate found the defendant to have been reckless. Hence the defendant must be taken as the author of this accident in which many people died. The husband of the plaintiff was only 27 years old when he died.He was earning *shs.900 per month and he was sending shs.600 every month to his wife and children*. He had young children and aged parents to look after. The plaintiff has given the figure of shs.600 as her monthly income which she used to receive from her deceased husband.

It is now well settled that damages are intended to put the person wronged (plaintiff in this case) in the same position in so far as money can do it as he (she) was before the wrong complained of (see **SjmbaClothins Factory Ltd and another**

v Virdee [1976] K L R 219. .

I agree with Mr **Gaturu** for the plaintiff that in the instant case the multiplier of 20 would be appropriate. I am even more confident in taking the multiplier of 20 in view of the decision of **Chesoni J** (as he then was) in the case of **Sera Auma Juma v B A T (Kenya) Ltd** and another [1978] Kenya L R 40 in which facts were similar to the facts of the instant case, using the figure of **SHS.600** per month and a

multiplier of 20 I arrive at a figure of shs144,000. In the plaint the dependants of the deceased are given as follows:-

- (a) Julius Kipkoech aged 9 years
- (b) Christina Chelagat aged 7 years
- (c) Kipkemoi Arap Towett aged 3 years
- (d) Deceased's father Kipkoske Arap Sitonik aged 69 years.
- (e) The deceased's mother Cheroni w/o Kipkoske aged 56 years.

All these depended on the deceased and hence they are entitled to a share out of Shs.144,000, I have considered the circumstances of the case and doing the best I can I would apportion as follows:-

- (i) widow (the plaintiff) shs.49,000
- (ii) each of the three children shs.25,000 – shs .75,000
- (iii) deceased's father shs.10,000
- (iv) deceased's mother shs.10,000

On top of shs.144,000 general damages we must add shs.13,310 special damages hence making a total of shs.1157,320. as special and general damages plus interest at court rates. Costs of this suit are awarded to the plaintiff. There will be liberty to apply for further orders if necessary. Order accordingly.

Delivered at Nairobi this 24th day of July 1984.

E O'KUBASU

JUDGE