



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO 168 OF 1977

SERA AUMA JUMA.....PLAINTIFF

VERSUS

BAT (KENYA) LTD AND ANOTHER.....DEFENDANT

JUDGMENT

In this case liability is not in dispute. In fact paragraph 2 of the written statement of defence for both defendants reads as follows:

The defendants admit liability in principle for the accident and for the damages sustained thereby, as described in paragraph 4 of the plaint.

What is at issue is the degree of dependency and the quantum of damages the plaintiff ought to recover.

The facts are briefly that, on or about 12th December 1975, the plaintiff's husband, Bowers Joab Juma Awino, was lawfully walking on the pedestrian pavement along Lamu Road in Nairobi when a vehicle registration KQL 515, owned by the first defendant and driven by its agent and/or servant (the second defendant) knocked the deceased down causing him severe injuries from which he subsequently died on 12th December 1975. The deceased who at the time of his death was aged 29 years left surviving him a widow, who is the plaintiff, and three children, the third being born posthumously. The ages of the children are now four, three and one and a half years. The deceased is also survived by his father and mother who are aged fifty years and forty-two years, respectively.

The widow was, at the time of her husband's death, aged twenty-two years. She is now twenty-four years old.

In her testimony the widow told the Court that her husband used to send her Shs 300 each month, which she spent on buying sugar, clothing for herself and the children and cultivating the family's 1 1/2 acres where maize was grown. There was contradicting evidence to indicate that the deceased's health was anything other than good when he was killed. Mr Gitao for the plaintiff submitted that the deceased's working life should be estimated to last until the age of at least fifty-five years, giving it a span of twenty-six years. This proportion was not seriously disputed by Mr Noad for the defendants.

The widow was twenty-two years old at the time of the deceased's death. She has thirty-three years to live up to the age of fifty-five years, which is more than the remainder of her late husband's working life. I think Mr Gitao was very realistic when he said that the Court would not give the deceased the whole multiplier of twenty-six years, as the deceased might have died from other causes which are not

established. He, therefore, suggested a multiplier of twenty years as reasonable. He referred to a number of unreported cases of this Court: Civil Case 1465 of 1971, Civil Case 868 of 1967, and Civil Case 1290 of 1969; and the reported cases of *Jessie Nyokabu v Public Trustee* [1965] EA 530 and *Gulbanu Rajabali Kassam v Kampala Aerated Water Co Ltd* [1965] EA 587. Mr Noad correctly complained that he had not been given a list of the authorities cited and especially the unreported cases. I think it is not only fair to the other party and the Court, but procedure and courtesy require that when one party intends to rely on certain decided cases, whether reported or unreported, he should furnish the Court and the other party with a list of the cases in ample time for the other party to have an opportunity of considering the cases. Mr Gitao argued that a multiplier of nineteen or twenty years would yield £3500.

For the defence Mr Noad referred to *Simon v Carlo* [1970] EA 284 and argued that the maximum multiplier that should be used in this case is seventeen years. In the *Jessie Nyokabu* case the deceased was aged thirtyfour years, whereas the widow was twenty-four years old. The Court awarded damages of £2040. The multiplier used was seventeen, and Mr Gitao suggested that this was because the deceased was thirty-four years old; that is much older than the deceased in this case. This is a possibility as the age of the deceased is a relevant matter to be considered when assessing damages claimed by a deceased's dependants. In *Gulbano Kassam Rajabali v Kampala Water Co Ltd* [1965] EA 587 the deceased, who was killed in a motor accident, was aged between forty and fortyfive years. He was survived by four dependants. An award of Shs 70,000 was made. In the *Simon* case where the deceased was aged thirty years the Court awarded Shs 25,000 in damages.

In cases of this nature decided cases may be of some guide, but cannot be of much assistance as each case must be decided on its own peculiar facts. The dependency sum and the multiplier depend on the facts of the case and no general rule can be made as to how a dependency multiplier should be determined.

In the present case the deceased although earning only Shs 555 per month lived with his cousin friend rent free. His widow said the deceased went to his country home near Bondo in Siaya district each month and Mr Noad estimated the return fare between Bondo and Nairobi at Shs 85.

This is what it is now. There was no evidence as what the fare from Nairobi to Bondo was at the date of the death of the deceased. There was an estimate of Shs 30 per month and Shs 25 per month for the bus fare to work and cost of lunch; but again there was no strong evidence to support this. I do not exclude the possibility of the deceased travelling by bus to work on some occasions, even though evidence suggested that sometimes he brought home his employer's motor vehicle and at times he walked to work. We do not know whether he ate any midday meal, but it's not uncommon for low income earners, of whom the deceased was one, to take no lunch. We were told in evidence that the deceased did not drink, nor did he smoke; but Mr Noad, all the same suggested a sum of Shs 40 per month for personal use. The deceased's cousin friend said that the deceased spent Shs 150 on food per month. The agreed net earnings of the deceased was fixed at Shs 527.50. From that figure of Shs 527.50 I would deduct Shs 150 for food; Shs 75 representing travelling to Bondo and back to Nairobi and bus fare, if any, to work, and Shs 20 for personal and miscellaneous expenses. Thus, out of the monthly net earnings of Shs 527.50, a sum of Shs 245/- is deductible leaving Shs 282.50 as the widow's and children's dependency per month. There can be no doubt that this figure would have increased as time went by for a number of reasons, such as general increase in salary scales, improvement of the deceased's earning power and salary increments, let alone the deceased looking for greener pastures elsewhere as his experience widened. The widow told the Court that she has not intention to remarry and, in my view no deduction should be made in this case for prospects of remarriage.

Mr Noad referred me to *Kemp & Kemp: Quantum of Damages* (4th Edn) showing tables of multipliers and said that the highest multiplier awarded by English Courts seems to be seventeen. That may be so; but, in my opinion, the conditions of living and learning and the circumstances obtaining in England are so different from those of this country that English multipliers can hardly be of any assistance to the Courts of Kenya.

In all the circumstances of this case a reasonable multiplier is twenty and not lower. The value of dependency works out at Shs 67,800, that is £3390, total award of damages, which I would apportion as

follows:

Widow Shs 22,800

Each of the three children Shs 15,000 Shs 45,000

It was not established that the parents of the deceased depended on him to any degree. I, therefore, have not apportioned any sum to the father and mother of the deceased.

There will be judgment for the plaintiff in the sum of £3390 as set out above with costs and interest at Court rates.

Judgment for the plaintiff.

Dated and delivered at Nairobi this 8th day of March 1978.

Z.R CHESONI

JUDGE