

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL APPEAL NO. E041 OF 2024

KENYA SEED COMPANY LIMITED.....1ST

RESPONDENT

PHILEMON KIBICHI TOO.....2ND

RESPONDENT

VERSUS

**HARRIED NASIBUONDI WABOMBA (Suing as the personal
representative of the estate of YONAH JUMA WEKESA-Deceased)**

.....RESPONDENT

**(Being an appeal from the Judgment and Decree of Hon.S.N. Makila (PM) in
Kitale CMCC No. 104 of 2021 delivered on 17th July, 2024)**

JUDGMENT

Background of the Appeal

1. By a plaint dated 11th February 2021, the respondent instituted a suit against the appellants seeking general damages for pain and suffering, loss of amenities, and loss of consortium, together with general damages under both the Fatal Accidents Act and the Law Reform Act. She further sought special damages in the sum of Kshs. 125,620/=, as well as costs of the suit and interest thereon.

2. The respondent's case was that on or about 10th June 2020, at around 6:30 a.m., the deceased was lawfully and carefully driving motor vehicle registration number KAM 315N (Toyota Saloon) from Maili Saba towards Kitale. Upon reaching the Kwa Mwaura area along the Kitale-Eldoret road, motor vehicle registration number KCD 166G (Toyota Prado), owned and/or driven by the appellants or their agent, was allegedly being driven negligently. It was pleaded that in the course of attempting to overtake a pedal cyclist, the said vehicle veered off its lane and collided head-on with motor vehicle KAM 315N, resulting in the deceased sustaining fatal injuries.
3. The respondent further pleaded and sought to rely on the doctrine of *res ipsa loquitur*.
4. In their statement of defense dated 15th July 2021, the appellants denied ownership, possession, or control of motor vehicle registration number KCD 166G at the material time and denied all allegations of negligence. They further averred that if any accident did occur, it was caused or substantially contributed to by the negligence of the deceased driver. The appellants also denied, in totality, the respondent's allegations that: the deceased sustained fatal injuries; he was in good health prior to his death; he was engaged in gainful employment earning approximately Kshs 30,000/= per month; he had dependents; he died at Kitale County

Referral Hospital fifty-four (54) days after the accident; and that the deceased's estate incurred Kshs 50,000/= in funeral expenses.

5. The appellants equally challenged the applicability of the doctrine of *res ipsa loquitur*.
6. In a judgment delivered on 17th July 2024, the learned trial magistrate found both motor vehicles KCD 166G, driven by the 2nd respondent, and KAM 315N, driven by the deceased, were equally to blame for the accident and accordingly apportioned liability between them at a ratio of 50:50. The court awarded damages under various heads, that is; Kshs 150,000/= for loss of expectation of life, Kshs. 1,700,000/= for loss of dependency, Kshs 150,000/= for pain and suffering, Kshs. 123,000/= as special damages, and Kshs. 50,000/= for funeral expenses, bringing the total award to Kshs. 2,173,000/=.
7. After deducting 50% for contributory negligence, the net award stood at Kshs. 1,086,500/=. The court further granted half the costs of the suit, together with interest at court rates from the date of judgment until payment in full.
- 8.** Aggrieved by the decision, the appellants filed the present appeal by a Memorandum of Appeal dated 14th August 2024, seeking to set aside the judgment and decree of the learned trial magistrate and to be awarded the costs of the appeal. The Memorandum of Appeal advances four grounds of appeal which however boils down to one; that the trial court erred in employing wrong principles in

assessment of damages by ignoring both evidence and submissions offered and thereby arrived an erroneous estimate of damages.

9. Even though the court directed that parties canvass the appeal by filling and exchanging submissions, as at the time of writing this decision, only the appellant's submissions were on record.

10. In their submissions, the appellants identify the sole issue for determination as; whether the general damages awarded by the trial court were inordinately high. It is contended that the learned trial magistrate failed to adhere to the principle of stare decisis in assessing general damages for loss of dependency, noting that the law requires courts to follow established precedents. The appellants argue that dependency is a matter of fact which must be proved by evidence, citing **Abdalla Rubeya Hemed v Kayuma Mvurya & another [2017] eKLR** in support of that position.

11. It is additionally, submitted that the number of dependents claimed by the respondent was not satisfactorily established, as the only evidence presented was a chief's letter. The respondent, they argue, failed to produce proof of marriage to the deceased or evidence of actual financial support. No receipts, M-Pesa statements, or financial records were produced to demonstrate the deceased's contribution to her upkeep. On this basis, they propose that a global sum of Kshs 700,000/= would be adequate compensation to the deceased's family, citing **Nyabongoye (suing as the legal**

representative of Teresia Bwari Nyaberi - Deceased) v Mobegi & 2 others (Civil Appeal No. E003 of 2022) [2023] KEHC 3458 (KLR).

12. Regarding the award for loss of expectation of life, the appellants submit that the deceased, aged 42 years at the time of death as per the death certificate, was neither in formal nor informal employment. Considering the vicissitudes and uncertainties of life, they propose a reduced award of Kshs. 50,000/=, relying on **Muthike Miciimi Nyaga (suing as administrator of the estate of James Githinji Muthike (Deceased)) v Dubai Super Hardware [2021] eKLR.**

13. On the head of pain and suffering, the appellants note that the deceased succumbed 24 days after the accident, which indicates prolonged pain. They therefore suggest an award of Kshs. 30,000/=, drawing guidance from **Mercy Muriuki & another v Samuel Mwangi Nduati [2019] eKLR.**

14. As for special damages, the appellants contend that the respondent only pleaded and proved a total of Kshs 123,000/=. With respect to funeral expenses, they argue that although no receipts were tendered in support of the claim, a sum of Kshs 30,000/= would be reasonable under that head.

Issue, Analysis and Determination

15. This appeal turns on the question of whether the quantum of damages assessed and awarded by the trial court was inordinately high to merit intervention by the court on appeal. The appellants take issue with the assessment, contending that the learned trial magistrate misapprehended the applicable principles in arriving at the impugned award.

16. As a general rule, an appellate court will not interfere with an award of damages unless it is shown that the trial court applied the wrong principles of law, or that the award was so inordinately high or low as to represent an erroneous estimate. **(See Butt v Khan [1977] 1 KAR).**

17. The appellants have specifically challenged the awards under the heads of loss of dependency, loss of expectation of life, pain and suffering, and funeral expenses.

18. the court proposes to address each of these in turn, bearing in mind that assessment of damages lies within the discretion of the trial court, guided by the principle that comparable injuries should attract comparable awards.

Loss of Dependency

19. The appellants submit that the award of Kshs. 1,700,000/= for loss of dependency was manifestly excessive. A claim for loss of dependency arises under the Fatal Accidents Act, Cap 32, Laws of

Kenya. Section 4(1) of the Act provides that such a claim may be brought by the wife, husband, parent, or child of the deceased.

20. According to paragraph 12 of the plaint, the persons claiming dependency were Harried Nasibuondi Wabomba, described as the deceased's wife, and Shadrack Wekesa Juma, Risper Nanjala Juma, Grace Nakhumicha Juma, and Delmax Juma, described as the deceased's children.
21. The appellants argue that Harried Nasibuondi Wabomba failed to prove that she was married to the deceased. However, she produced a letter from the area chief listing her as the deceased's wife and a birth certificate for Shadrack Wekesa Juma showing her and the deceased as the child's parents. The court finds and holds that the evidence sufficiently established the relationship between the deceased and the disclosed dependents for purposes of the claim.
22. The appellants proposed a reduced award of Kshs 700,000/= but gave no concrete justification for the reduction. The trial magistrate, in assessing damages, noted that the deceased, aged 42 years, was engaged in the informal sector as a driver, a form of employment without a retirement age, and awarded a global sum of Kshs 1,700,000 for loss of dependency.
23. In **Frankline Kimathi Maariu & another v Philip Akungu Mitu Mborothi (suing as administrator and personal**

representative of Antony Mwiti Gakungu-Deceased) [2020] eKLR, the court emphasized that in the absence of proof of income, courts should adopt either the global sum or minimum wage approach, guided by the peculiar circumstances of each case.

24. The trial court relied on **Limo (Suing as the Legal Administrator of the Estate of Martin Kiplagat Limo - Deceased) & 2 others v Ngoyai & 2 others (Civil Appeal E045 & E046 of 2021 (Consolidated)) [2022] KEHC 17127 (KLR)**, where a sum of Kshs. 2,000,000/= was awarded for loss of dependency to a 29-year-old deceased who had no formal employment.

25. Considering these authorities and the circumstances of the deceased, I find no reason to interfere with the trial magistrate's exercise of discretion. The award under this head was within reasonable limits and supported by precedent.

Pain and Suffering

26. The trial court awarded Kshs 50,000/= for pain and suffering, while the appellants proposed a reduction to Kshs. 30,000/= stating that the deceased died 24 days after the accident. The record, however, reveals that the deceased succumbed almost two months after the accident, having sustained injuries on 10th June 2020 and passed away on 3rd August 2020. This period demonstrates that the

deceased endured prolonged and excruciating pain before his demise.

27. In **Sukari Industries Limited v Clyde Machimbo Juma Homa Bay HCCA No. 68 of 2015 [2016] eKLR**, Majanja J. held that:

“It is natural that any person who suffers injury as a result of an accident will experience some pain. The pain may be brief or prolonged, but it is compensable. Nominal damages are appropriate for death occurring immediately, while higher damages are justified where pain and suffering are prolonged.”

28. In light of this authority and the facts before me, the court finds no justification to disturb the trial court’s award of Kshs 50,000/= under this head noting that the courts have in the past awarded up to kshs 100,000 under the same heading.

Loss of Expectation of Life

29. The appellants sought to have the award of Kshs. 150,000/= for loss of expectation of life reduced to Kshs. 50,000/=. The deceased, aged 42 years at the time of death, died of severe head injuries resulting from the accident. The evidence on record indicates that he was in good health prior to the incident.
30. Courts have generally awarded between Kshs. 150,000/= and Kshs. 200,000/= under this head. In **Moses Akumba & another v**

Hellen Karisa Thoya [2017] eKLR, the court upheld an award of Kshs. 200,000 for a deceased fisherman. Similarly, in **Patrick Kariuki Muiruri & 3 others v Attorney General [2018] eKLR** and **Vincent Kipkorir Tanui v Mogogosiek Tea Factory Co. Ltd & another [2018] eKLR**, comparable awards were made.

31. Given this jurisprudence, the trial court's award of Kshs. 150,000/= was well within range and cannot be said to be excessive or based on wrong principles.

Funeral Expenses

32. Funeral expenses fall under special damages, which must be specifically pleaded and strictly proved. At paragraph 14 of the plaint, the respondent pleaded funeral expenses for tents, chairs, milk, rice, beans, sugar, meat, and other food items, but indicated that receipts were unavailable.
33. Although no receipts were tendered, the court is persuaded by the decision in **Sanita Investments Limited v Kyabaki & another (Civil Appeal E006 of 2025) [2025] KEHC 14462 (KLR)**, where the court held that:

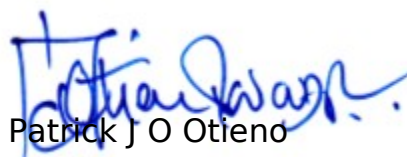
“An award for funeral expenses may be made even in the absence of receipts, as such expenses are inherently incurred upon death. The court may make a reasonable estimation based on common sense and the circumstances of the case.”

34. In a binding decision in **Jacob Ayiga Maruja & another v Simeon Obayo [2005] eKLR**, the Court of Appeal upheld an award of Kshs. 60,000/=, just like in **Mahindi & another v Idama (Suing as the Legal Representative of the Estate of Sera Ondiso Adogo-Deceased) (Civil Appeal E034 of 2023) [2025] KEHC 7478 (KLR)**, the High court upheld an award of Kshs. 50,000/=.

35. In view of these authorities, the court again finds no reason to interfere with the trial court's finding under this head.

36. For the foregoing reasons, the court finds that the appeal lacks merit because the trial magistrate properly exercised its discretion in assessing damages and applied correct principles of law. The appeal is accordingly dismissed with costs to the Respondent.

Dated, signed and delivered, Virtually, at Lodwar, this 7th day of October 2025.



Patrick J O Otieno

Judge