REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

CIVIL APPEAL NO. E091 OF 2023

BETWEEN

MODERN COAST EXPRESS LIMITED…………………………………… APPELLANT

AND

JANE WAMBUI NDUNG'U

&

MWANZIA KINGOLA alias KINGOLE
(suing as the administrator of the estate of JOHNSTONE MUSYOKI KINGOLA alias KINGOLE-DECEASED) ……………………………………………… RESPONDENTS

(Being an appeal from the judgment and decree of the Makindu Senior Principal Magistrate's Court, SPMCC No. 62 of 2020, by Hon. J.D. Karani (Senior Resident Magistrate).

JUDGMENT

1. Modern Coast Express Limited, the appellant, was the defendant in Makindu Senior Principal Magistrate's SPMCC No.62 of 2020. They were sued for a claim of general and special damages following a road traffic accident involving their motor vehicle, with registration numbers KBY 239U, and motorcycle registration number KMDQ884R, on which the deceased was riding. As a result of the accident, the deceased sustained fatal injuries. The respondent was awarded Kshs. 3,689,545.00 in general damages.
2. The appellant was dissatisfied with the judgment and submitted this appeal through Mwangangi Nzisa & Associates Advocates. They raised the following grounds for appeal:
    a) The learned magistrate erred and misdirected himself in law, principle and facts when she misapprehended and misunderstood the applicable principles and the law in assessing quantum, thereby arriving at an award that is so manifestly and inordinately high as to constitute an entirely erroneous estimate of the damages in the circumstances of the case.

b) The learned magistrate erred in fact and in law in awarding the respondent Kshs. 3,689,545.20/= damages under the Fatal Accident Act, which award was too excessive in the circumstances.

c) The learned magistrate erred in law and in fact in relying on the maximum number of productive working years, which was 33 years in the circumstances, and failing to consider the vicissitudes of life when awarding damages under the Fatal Accidents Act.

d) The learned magistrate erred in law by failing to deduct the damages awarded under the Law Reform Act from the total award.

e) The learned magistrate erred in law and in fact in failing to accord due regard to the Appellant's missions and authorities on quantum on applicable principles for assessment of damages.

f) The learned trial magistrate court erred in law and fact by arriving at a decision that was not based on the evidence on record, descended into the arena of litigation and thus erroneously apportioned liability against the appellant.

3. The respondent opposed the appeals through Mutunga & Muindi Company Advocates. She argued that the appeal lacked merit.

4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of **Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123**, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.

5. This appeal is on the quantum of damages. The appellant argued that the learned magistrate made an error in awarding excessive general damages. Before an appellate court can intervene in an award of damages, it must be satisfied that a wrong principle of law was applied, irrelevant factors were considered, relevant factors were omitted, or the award is inordinately low or high. These principles were established by the Privy Council in **Nance vs British Columbia Electric Railways Co. Ltd. [1951] AC 601 on page 613,** where it stated:

   The principles applicable under this head are not in doubt. Whether the assessment of damages is made by a judge or jury, the appellate court is not justified in replacing the awarded figure with another simply because it would have provided a different amount

if it had initially tried the case. Even if the tribunal of first instance was a judge sitting alone, the appellate court must be satisfied that the judge, in determining the damages, applied an incorrect principle of law (such as considering irrelevant factors or omitting relevant ones); or, failing this, that the amount awarded is so inordinately low or high that it constitutes a wholly erroneous estimate of damages (Flint vs Lovell [1935] 1KB 354), as affirmed by the House of Lords in Davis vs Powell Duffryn Associated Collieries Ltd. [1941] AC 601.

6. Courts have routinely been awarding Kshs. 100,000.00 for pain and suffering. An award of Kshs.50,000.00 cannot be said to be excessive. The appeal on this head is dismissed.
7. The deceased died aged 27 years. There was no proof of earnings by the deceased. When a similar issue confronted Ringera J. (as he then was) opined, in **Mwanzia vs. Ngalali Mutua and cited D.M.M (Suing as The Administrator and Legal Representative of The Estate of L K M vs. Stephen Johana Njue & another [2016] eKLR** as follows:

    The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can and must be abandoned where facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as age of deceased, the amount of annual or monthly dependency, and the expected length of the dependency are known or are knowable without undue speculation, where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do.

8. In the instant case, the trial court ought to have used the global award approach. The award for loss of dependency, in my view, was high in the circumstances. The same is set aside and substituted with a global sum of Kshs. 1,500,000.00.
9. The appeal has succeeded with half the costs.

Delivered and signed at Makueni, this 5th day of November 2025

KIARIE WAWERU KIARIE

JUDGE