

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CIVIL APPEAL NO. E007 OF 2024

ESTERLAND CONSTRUCTION LTD

APPELLANT

VERSUS

**WESLEY CHERUIYOT BETT & KIBET ARAP SIONGOK (suing
as the Legal Representatives of the estate of Dominic Bett
(Deceased).....**

RESPONDENTS

*(Being an Appeal from the Judgment of Chief Magistrate, Boke E.
at the Chief Magistrate's Court at Bomet, Civil Suit Number E172
of 2022)*

JUDGEMENT

1. The Respondents (then Plaintiffs) as the Legal Representative of the deceased Dominic Bett, sued the Appellant (then Defendant) for general and special damages that arose from a road traffic accident on 2nd July 2022 along Bomet - Narok Road.
2. The trial court conducted a hearing where the Respondents called three witnesses before closing their case while the Appellant closed its case without calling a witness.
3. On 3rd October 2023, the parties recorded a Consent on liability. The liability was apportioned in the ratio of 80:20 in favour of the Respondents.
4. In its Judgement delivered on 5th March 2024, the trial court awarded the Respondents Kshs 100,000/= for pain and suffering, Kshs 150,000/= for loss of expectation of life, Kshs 3,600,000/= for loss of dependency and Kshs 20,000/= for special damages.

5. Being aggrieved with the Judgment of the trial court, the Appellants filed their Memorandum of Appeal dated 3rd April 2024 appealing against quantum.
6. My duty as the 1st appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify.
7. I hereby proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.

The Plaintiffs'/Respondents' case.

8. Through their Plaint dated 3rd November 2022, the Respondents stated that the deceased Dominic Bett was involved in a road traffic accident on 2nd July 2022. That the deceased was aboard motor cycle registration number KMEV

112Z when he was hit by motor vehicle registration number KDE 097V.

9. It was the Respondents' case that the Appellant was negligent in causing the accident. The particulars of the negligence were stated in paragraph 5 of the Plaint. That as a result of the accident, Dominic Bett suffered fatal injuries.

10. The Respondents prayed for special and general damages against the Appellant under the Fatal Accidents Act and the Law Reform Act.

11. Through their written submissions dated 30th October 2025, the Respondents submitted that the award of Kshs 100,000/- as pain and suffering, Kshs 150,000/= as loss of expectation of life and Kshs 3,600,000/= was just and fair. They relied on **Jacob Ayiga vs Simon Obayo (2005) eKLR, section 4 of the Fatal Accidents Act, Crown Bus Services Limited & 2 others vs Jamilla Nyongesa and Amida Nyongesa (Legal Representatives of Alvin Nanjala (Deceased))**

(2020) eKLR et.al. The Respondents further submitted that they produced receipts in regards to special damages and the trial court did not err when it awarded them Kshs 20,000/= as special damages.

The Appellant's/Defendant's case.

12. Through its statement of defence dated 26th January 2023, the Appellant denied the occurrence of the accident on 2nd July 2022 and further denied being the beneficial and registered owner of motor vehicle registration number KDE 097V.

13. It was the Appellant's case that if the accident occurred then it was caused by the negligence and carelessness of the rider of the motorcycle. The particulars of negligence were contained in paragraph 7 of its Defence.

14. Through its written submissions dated 4th August 2025, the Appellant submitted that the Respondents did not show that the deceased suffered any pain before his death and that the

trial court should have awarded Kshs 10,000/= for pain and suffering and Kshs 100,000/= for loss of expectation of life. The Appellant further submitted that the award on special damages ought to be subject to a contribution of 20%.

15. In regards to loss of expectation of life, the Appellant submitted that there was no evidence adduced to show that the deceased earned Kshs 15,000/= at the time of his death. That the trial court should have used a reasonable sum of Kshs 8,000/= as per the **Regulation of Wages (General) (Amendment) Order 2022**. It was the Appellant's further submission that the trial court's use of 30 years as the multiplier was fair. That the award on loss of dependency should have been Kshs 960,000/=.

16. I have gone through and carefully considered the Record of Appeal, the Supplementary Record of Appeal, the Appellant's written submissions dated 4th August 2025 and the Respondents' written submissions dated 30th October 2025.

The only issue that I have sieved for my determination was whether the trial court erred in its findings on quantum.

Quantum

17. In regard to the pain and suffering and loss of expectation of life, I will refer to the oft-cited case of Mercy **Muriuki & another v Samuel Mwangi Nduati & Anor (Suing as the Legal Administrators of the Estate of the late Robert Mwangi)** [2019] KEHC 9014 (KLR), stated: -

“The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs 100,000 while for pain and suffering the awards range from Kshs 10,000 to Kshs 100,000 with higher damages being awarded if the pain and suffering was prolonged before death”.

18. Wesley Cheruiyot Bett (PW3) produced the Post-Mortem Report and Death Certificate of the deceased as **P. Exh 3** and **5** respectively. I have looked at the two exhibits and they indicate that the deceased died on the material day being 2nd July 2022. This meant that the deceased died on the same day and he did not suffer prolonged pain. It is my finding therefore that the award of Kshs 100,000/= for pain and suffering was excessive. I hereby vacate the award and substitute it with an award of Kshs 50,000/=. In regards to the award of Kshs 150,000/= as loss of expectation of life, I find the trial court's award under this head as just and fair and I therefore uphold the same.

19. Under the head of loss of dependency, **Section 4 of the Fatal Accidents Act** provides as follows: -

Every action brought by virtue of the provisions of this act shall be for the benefit of the wife, husband, parents and the child if the person, whose death so

caused and shall , subject to the provisions of section 7, be brought by and in the name of the executor or administrator of the person deceased, and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought, and the amount so recovered, after deducting the cost not recovered from the defendant shall be divided amongst those persons in such shares as the court by its judgment shall find and direct.

20. The trial court awarded the Respondents Kshs 3,600,000/= by using a monthly wage of Kshs 15,000/=, a multiplier of 30 years and a dependency ratio of 2/3.

21. Wesley Cheruiyot Bett (PW3) that the deceased used to earn Kshs 15,000/=. It was pleaded in the Plaint that the

deceased was a boda boda rider and used to earn Kshs 15,000/= per month.

22.I have gone through the record and I have noted that there was no proof of income from the exhibits that the Respondents produced in court. With respect to the trial court, I find that the safest way to make an award under this head where there is no ascertainable proof of income would be to go the global sum way. In **Karuku v Mwai & another (Suing as Personal Representatives and Administrators of John Muriuki Muceke - Deceased) [2023] KEHC 24803 (KLR)**, the court held: -

“.....In the instant case, there is surely no proof of earnings of the deceased and so the court has no choice but to abandon the use of the multiplier-multiplicand method. This means that the most appropriate method to use is to apply a global sum.....”

23. In determining an award under this head, I have considered the parties' proposals under this head, the fact that the deceased died aged 22 years old and the fact that the deceased was survived by his parents and sibling. Having considered the above, it is my finding that the award of Kshs 3,600,000/= was excessive. I will therefore be guided by the global award approach and make an award of Kshs 1,500,000/=.

24. With regard to special damages, the Respondents pleaded Kshs 20,000/= for acquiring Limited Grant of Letters of Administration. The Respondents produced a receipt as **P. Exh 7** in support of the claim. I find that the prayer for special damages has been proved and I uphold the trial court's award of Kshs 20,000/= as special damages.

25. In the final analysis, it is my finding that there is a reason for this court to interfere with the trial court's award on general damages. This then translated the final award as: -

Pain and suffering	Kshs 50,000/=
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Loss of expectation of life	Kshs 150,000/=
Loss of dependency	Kshs 1,500,000/=
Add special damages	Kshs 20,000/=
	Kshs 1,720,000/=
Less 20% contribution	Kshs 344,000/=
Total	Kshs 1,376,000/=

26. In the end, the Appeal dated 3rd April 2024 is allowed. Each party shall bear their costs in the Appeal.

Judgement delivered, dated and signed at Bomet this 17th day of December, 2025.

.....
HON. J.K.NG'ARNG'AR

JUDGE

Judgement delivered in the presence of;

Siele and Susan (Court Assistants).

O.M. Otieno for the Appellant

Ngeno for the Respondent

ORIGINAL