**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**CIVIL APPEAL NO. E0150 OF 2023**

**FRANCIS MWANGI KARANJA ……...1ST APPELLANT**
**ROADSTAR LIMITED……...2ND APPELLANT**

**VERSUS**

**PANCRAS PYEKO SIWOTOI**
**(Suing as The Administrator and Legal Representative of the Estate of the Late SIWOTOI POWON AMOS……..1ST RESPONDENT**

**ASTRO TRANSPORTERS COMPANY LTD ……...2ND RESPONDENT**

**JUDGMENT**

***(Appeal from the Judgment dated 19/7/2023 delivered in Eldoret Chief Magistrates Court Civil Case No. 149 of 2017 by Hon. D. Mikoyan-CM)***

**1.** This Appeal arises from the Judgment delivered in the said Magistrate's Court suit in which the 1st Respondent (as the Plaintiff) instituted a claim on behalf of the estate of his deceased brother, a 21 years old Moi University Bachelor of Laws 2nd year student, against the Appellants and the 2nd Respondents (as Defendants) for compensation for the death of the deceased, which occurred as a result of a fatal road accident. Judgment was entered in favour of the 1st Respondent and the Appeal is stated to be against the trial Court's decision on quantum.

**2.** After the hearing, the trial Court delivered the Judgment in favour of the 1st Respondent, adopting the agreed liability apportionment at 80% against the Appellants, and awarded damages (plus costs and interest). The breakdown of the Judgment was therefore in the following terms:

| | | |
|---|---|---|
| a) | Liability at 80:20 in favour of the 1st Respondent | |
| b) | Pain and suffering | Kshs 50,000/- |
| c) | Loss of expectation of life | Kshs 100,000/- |
| d) | Loss of dependency | Kshs 6,000,000/- |
| e) | **Sub-total** | **Kshs 6,100,000/-** |
| f) | Less 20% contributory negligence | Kshs 1,230,000/- |
| g) | Sub-total | Kshs 4,920,000/- |
| h) | Special damages | Kshs 74,000/- |

| | | |
|---|---|---|
| | **Net total** | **Kshs 4,994,750/-** |
| i) | Plus costs and interest | |

**3.** The background of the matter was the Plaint dated 15/02/2017 filed through **Messrs J.C. Chumba & Co. Advocates**, and which was subsequently amended on 30/03/2020. In the Plaint, the 1st Respondent pleaded that the deceased was travelling aboard a minibus owned by the 2nd Respondent as a passenger along the Eldoret-Nakuru road on 17/04/2014 when a Prime Mover truck owned by the 2nd Appellant and driven by the 1st Appellant, was so negligently driven that it caused an accident that occasioned the deceased fatal injuries. Special damages was also particularized at the sum of Kshs 74,750/-.

**4.** In the joint Statement of Defence dated 14/09/2021, and filed through **Messrs Onyinkwa & Co. Advocates**, the Appellants generally denied the allegations made in the Plaint, and in the alternative, blamed both the deceased and the 2nd Respondent for the accident.

**5.** The matter then proceeded for trial in which the 1st Respondent (as Plaintiff) called 3 witnesses, while the Appellants did not call any. However, in the course of the trial, the parties recorded the said consent on liability at the ratio of 80:20 in favour of the 1st Respondent as against the Appellants, as aforesaid. The Court was therefore only left to assess quantum.

**6.** Dissatisfied with the Judgment referred to above, the Appellant filed this appeal by way of the Memorandum dated 25/07/2024, premised on the following grounds:

**i) That the Learned Magistrate erred in law and in fact in failing to take into account the totality of the evidence on record and the submissions by the Appellant hence arriving an erroneous decision on quantum.**

**ii) The Learned Magistrate erred in law and in fact in adopting the wrong principles in assessment of damages payable to the Respondent both under the Fatal Accidents Act.**

**iii) The Learned Magistrate erred in law and fact in awarding damages which were excessive in the circumstances in view of the evidence on record.**

**iv) That the learned trial Magistrate erred in law and fact by awarding Ksh.6,000,000/= as a global sum which was manifestly excessive.**

**v) That the learned trial Magistrate erred in law and in fact in awarding Kshs.74.750/= in funeral expenses in view of the evidence on record.**

**7.** As aforesaid therefore, it is clear that the Appeal is only in respect to quantum. I will now recount the witness testimonies but only as relates to the issue of quantum.

**8.** **PW1 (1st Respondent)**, **Pangras Pyeko Siwotoi**, produced a copy of the Certificate of Death relating to the deceased, Post-Mortem Report, receipts for college fees paid on behalf of the deceased, and documents from an Advocate indicating comparable market salary scales. In cross-examination, he stated that the deceased was 21 years at the time of the accident, that parents of the deceased paid his fees with the expectation that he would assist them in future, and that they raised money as a family for the burial.

**9.** **PW2**, **Dennis Kipchirchir**, was an employee at the Moi University working as a Records Clerk. He produced copies of the deceased's National Identity Card, Provisional result slips and college fees receipt. In cross-examination, he stated that the deceased was admitted as a student at the University on 28/08/2022, he was a 2nd year student at the time of his death, and that his examination transcripts indicate that he was performing well.

**10.** **PW3** was **Philip Ndolo**, who stated that he was then a newly admitted Advocate of the High Court of Kenya earning a monthly salary of Kshs 50,000/-. He produced a copy of a newspaper advertisement for the position of a State Counsel at the Office of the Director Public Prosecutor (**ODPP**). He then stated that he earned a gross of Kshs 150,000/-, and produced a copy of his November salary pay-slip. He, too, stated that the deceased was a 2nd year Bachelors of Laws student. In cross-examination, he stated that the starting monthly salary range for a newly admitted Advocate is Kshs 50,000/- to Kshs 90,000/-, and that he started at Kshs 70,000/- gross monthly salary.

**11.** The Appeal was then canvassed by way of written Submissions. The Appellant's Submissions is dated 4/10/2024, while the 1st Respondent's is dated 13/10/2025.

**Appellant's Submissions**

**12.** Counsel for the Appellant faulted the trial Court for awarding the sum of Kshs 50,000/- in "***special damages***" insofar as, in his view, the trial Magistrate did not consider the Appellant's submissions and awarded the same merely because the amount was pleaded. He urged that the evidence indicates that the deceased died on the spot, a fact corroborated by the post mortem form and certificate of death, which indicates that the deceased died on the same date as the accident. He also submitted that it is a generally

accepted principle that very nominal damages is awarded for pain and suffering where death followed immediately after the accident. He cited the case of **Hyder Nthenya Musili & Another v China Wu Yi Limited & Another {2017} eKLR**. Counsel urged that the Appellant's Submissions brought out these matters, which the trial Magistrate however ignored and/or disregarded. He urged that an award of Kshs 10,000/- should have been sufficient.

**13.** Counsel further faulted the trial Magistrate for awarding damages for "***loss of dependency***" contrary to **Section 4** of the **Fatal Accidents Act,** submitting that the 1st Respondent brought listed 6 dependants who are all siblings of the deceased, and who are therefore not entitled to benefit from the estate of the deceased under the said provision, which has no mention of brothers or sisters as being dependants. He cited the case of **Mohamed Hirbo Shande & another v George Mwenda Mwiti (Legal Representative of the Estate of Miriam Makena) [2021] eKLR**. He also submitted that dependency is a question of fact which must be proved, and cited the case of **Chania Shuttle vs Mary Mumbi (Suing on behalf of the estate of Francis Mungai Karania (deceased) (2017) eKLR**. Regarding the documents produced in support of the claim for "***loss of dependency***", and meant to demonstrate that the deceased, being a 2nd year university law student, would, after completing his studies, be admitted as an Advocate and would earn a starting salary of about Kshs 50,000/- in private practice, or Kshs 69,394/- as a Prosecution Counsel, he submitted that the trial Magistrate was right to hold that the documents were speculative.

**14.** He further submitted that the deceased was not yet an Advocate, as he was still a 2nd year law student at the time of his death, that studying law until one becomes an Advocate of the High Court of Kenya and start earning is quite a process, and that the deceased still had a long way to. He cited the case of **Robert Uri Dabaly vs Kenya School of Law &. Another f2020/ eKLR**, and observed further that the deceased was yet to complete his undergraduate studies, graduate and join the Advocates training programme, which upon completing, and passing the exams, the deceased would still be required to petition for admission as an Advocate, and only, if successful, would he sign the Roll of Advocates, and finally become an Advocate. According to Counsel, there is no guarantee that the deceased would have successfully gone through all the above processes and satisfied all the requirements. He argued that the deceased, still being a 2nd year student, could have opted for a different career. He submitted that a "***global award***" of between Kshs 1,500,000/- to Kshs 2,000,000/- would be sufficient in the circumstances. He cited the case of **Yh Wholesalers Ltd & another v Joseph**

**Kimani Kamiui & another 120171 eKLR.** In respect to special damages, Counsel faulted the trial Magistrate for not determining whether the 1st Respondent proved the pleaded special damages, and observed that the 1st Respondent did not produce any receipts to prove the special damages pleaded. According to him, the trial Magistrate awarded special damages simply because they were pleaded yet the same was not strictly proved.

**1st Respondent's Submissions**

**15.** Counsel for the 1st Respondent (Plaintiff) observed that the trial Magistrate, in assessing the loss of dependency at the sum of Kshs 6,000,000/-, applied the "***global approach***" as opposed to the "***multiplier approach***", She also observed that the 1st Respondent had urged the trial Court to apply the "***multiplier approach***" based on the pay-slip of an Advocate earning a comparable monthly salary of Kshs 100,000/- and the said advertisement from the ODPP. She submitted further that the deceased hailed from the marginalized areas of West Pokot County where it is a known fact that there are few professionals, and which demonstrates the sacrifice the family of the deceased made in ensuring that he was in school.

**16.** On the applicability of the "***multiplier approach***", she cited the case of **Rosemary Mwasya v Steve Tito Mwasya & another [2018] KECA 822 (KLR)**. She also urged that the legal profession is awash with great employment opportunities which command superb salaries and/or fees, and that from the pay-slip and advertisement from the ODPP for the position of Prosecution Counsel II, the applicable salary is about Kshs 150,000/-, which should be adopted as the multiplicand. She also observed that in the said case of **Rosemary Mwasya (supra**), the Court of Appeal subjected the multiplicand to the element of taxation and other compulsory deductions, and also reiterated that the trial Court opined that the evidence was speculative and thus opted for the "***global approach***". Counsel then submitted that the issue of "***general damages***" and '***loss of dependency***" is a discretionary exercise, that the trial Court considered the deceased's line of education, potential income based on the current job market and his age, and that that the deceased was 21 years at the time of his death, and in robust health.

**17.** Counsel urged that the Appellants have not demonstrated how the trial Court erred in applying the aforementioned factors. She cited the case of **Muchiri & another vs. Richu & another (Suing as the legal representatives of the Estate of Nicholas Ng'ang'a Giatu-Deceased) Civil Appeal No. E081 of 2023) [2024] KEHC 12221 (KLR)**. Regarding special damages, Counsel submitted that the 1st Respondent pleaded the sum of Ksh 74,750/-

and urged that with hardships and difficulties of the deceased's family, the funeral expenses of Kshs 50,000/- allowed by the trial Court was reasonable. She cited the Court of Appeal case of **Jacob Ayiga Maruja & Another vs. Simeon Obayo [2005] eKLR**, and also the case of **Premier Dairy Limited vs Amrit Singh Sago and Another, CA No. 312/2009**. She also contended that the 1st Respondent produced receipts totaling the sum of Kshs 74,750/- which the Court awarded as proved by way of receipts and/or documentation.

**Determination**

**18.** As reiterated in a plethora of cases, this being a first appellate Court, it has the duty to evaluate, re-assess and re-analyze the evidence before the trial Court, and draw its own conclusion (see for instance, the case of **Kenya Ports Authority vs Kuston (Kenya) Ltd [2009] 2 EA 212**.

**19.** Before I delve further in this matter, I note that strangely, both the Plaint and the Amended Plaint do not bear a prayers section. It may be therefore be argued that there were no express prayers made by the 1st Respondent. However, as the parties entered into a consent on liability, which by extension, seems to have "cured" this apparent defect, and since the Appellants did not raise any challenge thereon, I will say no more about it, and treat it as a non-issue.

**20.** Counsel for the Appellant also faulted the trial Magistrate for awarding damages for "***loss of dependency***" allegedly contrary to **Section 4** of the **Fatal Accidents Act**. He urged that the 6 persons listed in the Plaint as "dependants" are all siblings of the deceased, yet siblings are not entitles meant to benefit from the estate of the deceased under the said **Section 4**. This contention, too, has been brought too late in the day since the parties had, as aforesaid, already entered into a consent on liability before the trial Court.

**21.** In the circumstances, the broad issue remaining for determination in this Appeal is evidently ***"whether the trial Court's awards under the heads of "pain and suffering", "loss of dependency" and "special damages" were excessive or based on improper principles"***.

**22.** In respect to the principles applicable when an appellate Court is called upon to interfere with a trial Court's assessment of damages, the Court of Appeal of Eastern African (**Law J.A**.), in the case of **Butt v. Khan Civil Appeal No. 40 of 1997**, held that:

> **"An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be**

**shown that the judge proceeded on wrong principles or that he misapprehended the evidence in some material respect, and so arrive at a figure which was either inordinately high or low."** See also **Kemfro Africa Ltd and Another vs A.M. Lubia & Another (1982-1988)**

**23.** The above principle was reiterated by **Kneller J.A.** in the case of **Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini v AM. Lubia and Olive Lubia {1982-88} 1 KAR 727**, and again, by the Court of Appeal, in the subsequent case of **Gitobu Imanyara & 2 Others vs. Attorney General [2016] eKLR**.

**24.** From the foregoing, it is clear that this Court can only interfere with assessment by the trial Court in instances where it is satisfied that the trial Court took into account an irrelevant factor, or left out a relevant factor, or the award was either inordinately high or low as to amount to an erroneous estimate of the damage, or that the assessment was not based on evidence.

**25.** Regarding the challenge on the amount of Kshs 50,000/- awarded in "***pain and suffering***", it is settled law that an award for "***pain and suffering***" is usually nominal, particularly, where death followed immediately after the accident, but each case must be determined on its own merits. It has also been reiterated in many cases that the conventional award for "***pain and suffering***" ranges from about Ksh 10,000/- to Ksh. 100,000/- with higher damages awarded where, needless to state, the pain and suffering was prolonged before death. In this case, there is no serious dispute that the deceased died almost instantly. It has not therefore been shown that the award of Kshs 50,000/- was excessive or based on wrong principles.

**26.** On "***loss of dependency***", the Appellants fault the trial Magistrate for making an award under that heading at the "***global***" sum of Kshs 6,000,000/- on the basis of an Advocate's payslip allegedly indicating prevailing market salary ranges, when the same was not proved.

**27.** It is basically not in dispute that the deceased was aged 21 years old, and was a 2nd year Law student at the Moi University, and that he was unmarried, and did not leave behind any child. His parents were however alleged to be alive. There is therefore no dispute that the deceased was not yet employed as he was still a student, and he therefore had no income as yet, upon which the trial Court could form a basis for computing a figure under that head.

**28.** Regarding the choice of the method to adopt in computing "***loss of dependency***", **Mabeya J** in the case of **Frankline Kimathi Maariu & another v Philip Akungu Mitu Mborothi**

**(suing as administrator and personal representative of Antony Mwiti Gakungu deceased [2020] eKLR**, stated as follows:

> **"[23] In the present case, there was no satisfactory proof of the monthly income. Where there is no salary proved or employment, the Court should be wary into subscribing to a figure so as to come up with a probable sum to be used as a multiplicand. In such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency.**
>
> **[24] The global sum would be an estimate informed by the special circumstances of each case. It will differ from case to case but should not be arbitrary. It should be seen to be a suitable replacement that correctly fits the gap."**

**29.** Similarly, **Nambuye J** (**as she then was**), in the case of **Mary Khayesi Awalo & Another v Mwilu Mulungi & Another [1999] eKLR** cited in **Albert Odawa v Gichimu Gichenji [2007] eKLR,** had even earlier, stated that:

> **"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 the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the 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."**

**30.** The Judge further stated as follows:

> "**As regards the income of the deceased there are no bank statements showing his earnings. Both counsels have made an estimate of the same using no figures. In the court's opinion that will be mere conjecture. It is better to opt for the principle of a lump sum award instead of estimating his income in the absence of proper accounting books**".

**31.** In this case, the Appellants clearly do not have a problem with the trial Court's choice and application of the "***global approach***" method adopted by the trial Court. They are simply of the view that the amount of Kshs 6,000,000/- awarded under this heading was excessive. The choice of the "***global approach***" is therefore not in dispute.

**32.** To establish comparable "***global awards***" made in "***loss of dependency***", I have perused various relatively recent authorities in which the circumstances at play were similar or close to those herein, and particularly, involving a university student who is yet to graduate and obtain employment or earn an income of his own. I have for instance, picked out the following:

**a)** **A.K. Ndungú J** in the case of **Zachary Abusa Magoma v Julius Asiago Ogentoto & Jane Kerubo Asiago [2020] eKLR**, on an appeal relating to a deceased who was a food and beverage student at the Gusii Institute, and who was due to sit for her final examinations, reduced a "***global award***" of Kshs 2,000,000/- made by the trial Court, to one for Kshs 1,500,000/-.

b) **Aburili J**, in the case of **Samwel Kimutai Koriri (Suing as personal and legal representative of estate) of Chelangat Silevia v Nyanchwa Adventist Secondary School) & Another [2016] eKLR**, on appeal relating to a deceased who was waiting to join the Jomo Kenyatta University to study a Bachelor of Science course, substituted an award of Kshs 5,822,600/- made by the trial Court under the "***multiplier approach***", with a "***global award***" of Kshs 3,000,000/-.

c) **Sergon J**, in the case of **Steve Tito Mwasya & Another (Both suing as legal representatives of the estate of Sherinna Koki Toti (Deceased) v Rosemary Mwasya [2015] eKLR**, awarded a sum Kshs 14,000,000/- in a case in which the deceased was a Bachelor of Commerce student at Strathmore University.

**33.** From the foregoing, I find that most "***global awards***" made in "***loss of dependency***" cases in comparable cases, namely, in which the deceased are college or university students yet to graduate and obtain employment or start earning an income, range at between Kshs 1,000,000/- and Kshs 6,000,000/-, each depending on the circumstances of each case, including, the extent of lucrativeness of the courses undertaken, and the status of the colleges or universities in which they had enrolled thereof. While the prevailing status of our currency and economy have to be taken into account in awarding damages, astronomical awards must also be avoided. The Court must therefore ensure that awards result in fair compensation.

**34.** In light of the comparable awards and the principles referred to, I find the sum of Kshs 6,000,000/- awarded by the trial Magistrate for "***loss of dependency***" to be considerably high and substantially excessive to amount to an error in principle, which justifies interference by this Court. I however also take judicial notice that compared to the professions involved in the authorities referred to above, the legal profession relatively is still more lucrative, and

thus still attracts higher salary scales. Accordingly, I set aside the award of Kshs 6,000,000/- and substitute it with one for Kshs 4,000,000/-.

**35.** In respect to "***special damages***", the Appellants faulted the trial Court for awarding the sum of Kshs 74,750/-, since, in their view, the same was not proved as no documentary evidence was produced. I note that in the Amended Plaint, special damages was claimed for post-mortem fees, funeral expenses, cost of obtaining the police abstract, certificate of death, and for mortuary fees, totalling the sum of Kshs 74,750/- as aforesaid. I have carefully perused the trial Court record and indeed, I have not come across any receipts produced in proof of the "***special damages***" claim. Regarding the claim for funeral expenses however, the 1st Respondent pleaded and testified that a sum of Kshs 50,000/- was spent for this purpose.

**36.** In making a determination in an appeal arising from a case in which, as herein, a claim for "***special damages***" was made for expenses incurred in funeral expenses but in which no receipts were produced, the Court of Appeal, in the case of **Premier Diary Limited vs Amarjit Singh Ssagoo & Another [2013] eKLR**, held as follows:

> **"We do not think that it is a breach of the general rule that special damages must be pleaded and proved, to hold that families who expend money to buy or otherwise inter that their relatives should be compensated. In fact, we do take judicial notice that it would be wrong and unfair to expect bereaved families to be concerned with issues of record keeping when the primary concern to a bereaved family is that a close relative has died and the body needs to be interred according to the custom of the particular community involved. The Learned Judge took what was a practical and pragmatic approach. Although a sum of Kshs. 400,000/- was pleaded in the plaint and witnesses who were the relatives of the deceased testified that they spent much more than this in preparing for and conducting a cremation, the learned Judge awarded a sum of Kshs. 150,000/ which sum he saw as a reasonable and prudent amount to compensate the family for funeral expenses. We are of the respectful opinion that the judge was entitled to award that sum without in any way breaching the general rule we have referred to on the issue of special damages."**

**37.** The Court of Appeal reached similar a conclusion in the case of **Capital Fish Kenya Limited vs The Kenya Power and Lighting Company Limited [2016] eKLR**.

**38.** Applying the above reasoning, which is, in any event, binding on this Court, I will say that there is no dispute that a funeral was definitely conducted by the family of the deceased following his death, and indeed, the 1st Respondent did plead and testify that a sum of Kshs 50,000/- was spent for this purpose. As the 1st Respondent did not produce any receipts in support of the special damages claim, I will set aside the award made in "***special damages***", save for the portion of "***funeral expenses***" awarded at the sum of Kshs 50,000/- which I find to be reasonable even in the absence of receipts, and which, in any case, I find to be quite low and unlikely to even correctly reflect the actual amount incurred, but which is what was pleaded.

**Final Orders**

**39.** In the end, I rule and order as follows:

i) The Appeal partially succeeds, and only to the extent that the trial Court's award on "***loss of dependency***" at the sum of Kshs 6,000,000/- is hereby set aside, and substituted with an award of Kshs 4,000,000/- under that head, and the award of special damages at Kshs 74,750/- is also set aside and substituted with an award of Kshs 50,000/-.

ii) The rest of the awards made by the trial Court are therefore left undisturbed.

iii) For avoidance of doubt therefore, the Judgment amount shall now read as follows:

| | | |
|---|---|---|
| a) | Liability at 80% in favour of the 1st Respondent | |
| b) | Pain & suffering | Kshs 50,000.00 |
| c) | Loss of expectation of life | Kshs 100,000.00 |
| d) | Loss of dependency | Kshs 4,000,000.00 |
| e) | **Sub- total** | **Kshs 4,150,000.00** |
| f) | Less 20% as agreed in the parties' consent | Kshs 830,000.00 |
| g) | **Sub- total** | **Kshs 3,320,000.00** |
| h) | Special damages | **Kshs 50,000.00** |
| | **Net total** | **Kshs 3,370,000.00** |
| i) | Plus costs and interest of the suit | |

iv) Each party shall bear his own costs of this Appeal.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 13TH DAY OF FEBRUARY 2026**

**……..……..**
**WANANDA JOHN R ANURO**
**JUDGE**

**Delivered in the Presence of:**

**Ms. Gati for the Appellant**

**Amihanda h/b Ms. Chumba for the Respondent**

**Court Assistant: Brian Kimathi**