IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Omolo, Tunoi & Owuor JJ A)

CIVIL APPEAL NO 119 OF 2000

SUNRIPE (1976) LTD…….. APPELLANT

VERSUS

GHELANI…..……..….RESPONDENT

(Appeal from the Judgment of the High Court (Mulwa J) dated

18th January 2000 in HCCC No 1161 of 1996)

JUDGMENT

This is an appeal from a judgment of the High Court of Kenya at Milimani Commercial Courts, Nairobi, Mulwa J delivered on 18th January, 2000, whereby the learned judge entered judgment for the respondent, the plaintiff in the suit, against the appellant, the defendant in the suit, in the sum of Shs 1,805,084.75 together with interest and costs being in respect of both special and general damages arising out of a road traffic accident that occurred on 9th August, 1995, in which the deceased Rajesh Natwarlal Gelani was killed. The suit was instituted by his mother in her capacity as the personal representative of his estate.

As liability is not in issue in the appeal before us, Mr Rammik Shah, counsel for the appellant, has submitted in the main that in assessing damages the learned judge erred in not taking into account relevant factors material in calculating the multiplier as a result of which the learned judge arrived at a quantum of damages that was so inordinately high as to form an entirely erroneous estimate.

The deceased was aged 20 at the time of his death. He had been recalled from Sheffield University, United Kingdom, to manage the family business after the death of his father. He earned Shs. 20,000/= per month and supported his widowed mother with whom he stayed. She was 52 years old at the time of the trial of the suit.

The learned judge, in consideration of local comparable cases and both English and Hong Kong decisions which were cited to him by Mr Shah, fixed the multiplicand in respect of the deceased's monthly income at Shs 10,000/= and the multiplier at 20. Mr Shah vigorously submitted that in assessing damages the learned judge failed to take into account factors such as the vicissitudes of life, the ages of the deceased and the dependant, the nature of the deceased's occupation and his marital status. He contended that the approach adopted by Kenyan courts in assessing damages in such cases as these has been haphazard and arbitrary. He urged us to adopt the approach which has been consistently followed by Hong Kong courts

whereby the multiplier in most cases is below 10, mostly between 5 and 7. To persuade us and to augment his submissions, Mr Shah referred us to the cases of *Cham Yuk- Sum v Wong Pai-Kwan* OJA No 3091 of 1973 and *Koon Kan Kin-te v Wong Chung-Kau* OJA No 1642 of 1972. In the former the deceased, a man of 20, was killed in a traffic accident. He left as dependants his mother, a brother aged 13 and a sister aged 10. Briggs J held that in view of the probability of marriage, a multiplier of 7 was applicable. In the latter case the deceased, a 23 - year old man, was killed in similar circumstances. He left as dependants his plaintiff mother, his father, and three younger brothers and sisters. A multiplier of 5 years was adopted, in view of the possibility of marriage and likely contributions from the other children.

With much respect to Mr Shah we must admit that we are at a complete loss as to why he wants our courts to suddenly make a drastic departure and apply the decisions of Hong Kong courts in quantifying damages in local traffic accident cases. However, the submissions made by Mr Shah are not novel and were fully considered by this court in the following two cases. In *Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini v AM Lubia and Others* [1982-88] 1 KAR 727 Kneller JA said:

"Awards by foreign courts do not necessarily represent the standards which should prevail in Kenya where the relevant conditions for such assessment are very different: *Kimothoia v Bhamra Tyre Retreaders* [1971]

EA. They are, however, what Madan JA called 'helpful indicators' in *Mohamed Juma v Kenya Glassworks Ltd* (ibid)."

And Nyarangi, JA in *Sheikh M Hassan v Kamau Transporters & Others* [1982-88] 1 KAR 946 said:-

"The judge had before him a suit involving Kenya parties and he was therefore duty bound to apply the decision of the English High Court having due regard to the customs and reasonable expectations under the culture of the parents of the deceased who are Kenyans.

It was an error on the part of the judge to approach the case as if the appellants were citizens of the UK and as if the trial was held in London." In the circumstances we would adopt the *dictum* enunciated in the above cases and we find no justification whatsoever to discard altogether comparable local awards made by our courts as urged by Mr Shah. It is obvious that our local situation has little comparison social, economic or cultural with Hong Kong. Nor has Mr Shah made any attempt to explain to us the basis of limiting the multiplier to below 10. However, what is obvious is that Kenya has limited social schemes for the majority of its people.

In our view, the learned judge did not apply any wrong principle of law in assessing damages in the manner that he did and the resultant quantum is not at all so inordinately high as to be a wholly erroneous estimate of the damages.

Accordingly, we would not be justified in interfering with the award. As we think that the other grounds of appeal do not merit our consideration, the appeal must fail and we order it dismissed with costs.

Dated and delivered at Nairobi this 11th day of April, 2003

R.S.C. OMOLO

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JUDGE OF APPEAL

P.K.TUNOI

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JUDGE OF APPEAL

E. OWUOR

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JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR