



**Jumbo Foam Mattresses Limited v Farrah (Suing on his behalf and on behalf of the Estate of Gideon Mkando Farrah) (Civil Appeal E013 of 2024) [2025] KEHC 3549 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 3549 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CIVIL APPEAL E013 OF 2024  
M THANDE, J  
FEBRUARY 28, 2025**

**BETWEEN**

**JUMBO FOAM MATTRESSES LIMITED ..... APPELLANT**

**AND**

**EDWARD KINROSS FARRAH (SUING ON HIS BEHALF AND ON BEHALF OF THE ESTATE OF GIDEON MKANDO FARRAH) ..... RESPONDENT**

*(An Appeal from the judgment of Hon. Ritah Amwayi P. M. delivered on 31.1.24 in Kaloleni PMCC No. E105 of 2022)*

**JUDGMENT**

1. The Respondent herein filed Kaloleni PMCC No. E105 of 2022 against the Appellant, as legal representative of the estate of Gideon Mkando Farrah (the deceased) under the [Fatal Accidents Act](#) and the [Law Reform Act](#) on his own behalf and on behalf of the estate of the deceased. He claimed both general and special damages arising from a road traffic accident that occurred on 19.3.21 at Mwele along Kaloleni-Mazeras Road between the Appellants motor vehicle registration number KCK 593G and motor cycle registration number KMEQ 411P, in which the deceased, a pillion ride in the said motorcycle, sustained fatal injuries.
2. Following hearing the trial magistrate entered judgment in favour of the Respondent as follows:  
Liability against the Appellant 100%  
Pain & suffering Kshs. 100,000/=  
Loss of dependency Kshs. 800,000/=  
Loss of expectation of life Kshs. 100,000/=  
Special damages Kshs. 50,000/=



Total Kshs. 1,050,000/=

Costs and interest at court rates.

3. The Appellant filed the Appeal herein, challenging the decision of the trial court on the grounds reproduced hereunder:
  1. That the Learned Principal Magistrate erred in awarding to the Plaintiff (the Respondent herein) a sum of Kshs. 800,000/= for loss of dependency under the Fatal Accident Act which said sum is so excessive as to amount to erroneous estimate of the damages payable to the Plaintiff.
  2. That the Learned Principal Magistrate erred in failing to give any of any adequate reason for reasons of how he computed the global award of Kshs. 800,000/= for loss of dependency.
  3. That the Learned Principal Magistrate erred in adopting the wrong principals of law whilst awarding a global sum of Kshs. 800,000/= to the Plaintiff for loss of dependency under the Fatal Accidents Act.
  4. That the Learned Principal Magistrate erred in awarding to the Plaintiff a sum of Kshs. 100,000/= for pain and suffering in spite of holding that the deceased died on the spot and did not suffer pain for prolonged period before his death.
  5. That the Learned Principal Magistrate erred in awarding special damages of Kshs. 50,000/= to the Plaintiff when there was no documentary evidence adduced before him in support thereof.
  6. That the Learned Principal Magistrate erred in law and in fact in not holding that in the absence of any documentary and credible evidence in respect of the actual earnings of the deceased and consequently there was no evidence before the Honourable Court to assess damages for loss of dependency under the Fatal Accidents Act.
  7. That the Learned Principal Magistrate erred in law and in fact in not coming to a finding that the 2 daughters and the son of the deceased as per the particulars given in paragraph 5 of the Plaint dated 22nd February, 2022 are adults and consequently capable of looking after themselves and were not Dependants of the deceased.
  8. That the Learned Principal Magistrate erred in law in making awards under the various heads by failing to take into account that the general damages awarded to the Plaintiff would be invested to earn interest. If the Learned Principal Magistrate had bourned that factor in mind it is reasonably possible that he would have awarded a lesser amount to the Plaintiffs under each head.
  9. That the Learned Principal Magistrate erred in law in failing: -
    - a. To consider or properly consider all the evidence before him and/or
    - b. To make any or any proper findings on the aspect of quantum of damages on the evidence before him
  10. That the Learned Principal Magistrate erred in failing to consider or properly consider the written submissions filed by counsel for the Defendant/Appellants.
4. The Appellant prayed that the appeal be allowed with costs herein and in the court below and that the judgment delivered on 31.1.24 be set aside and/or varied as this Court may deem fit.



5. I have re-examined the entire record and given due consideration to the submissions by the parties' respective counsel. This being a first appeal, the Court is under a duty to reconsider and re-evaluate the evidence and draw its own conclusion. However, the Court must make due allowance with respect to the fact that it has neither seen nor heard the witnesses. These principles were set out in *Selle and another v Associated Motor Boat Company Ltd. & Others* [1968] EA 123 by Sir Clement De Lestang, V. P. as follows:

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.

6. The Appeal challenges the trial court's award of damages.
7. On pain and suffering, the Appellant submitted that because the deceased died on the spot, an award of Kshs. 10,000/= is sufficient. Reliance was placed on the case of *Wachira Joseph & 2 others v Hannah Wangui Makumi & another* [2021] eKLR where an award of Kshs. 10,000/= was awarded for the deceased who died the same day and *Sukari Industries Limited v Clyde Machimbo Juma* [2016] eKLR where the deceased died instantly, the court said that an award of Kshs. 50,000/= was not unreasonable.
8. For the Respondents, it was submitted that in awarding the sum of Kshs. 100,000/= for pain and suffering, the trial court relied on the case of *Beatrice Mukulu Kang'uta & another v Silverstone Quarry Limited & another* [2016] eKLR where the sum of kshs. 200,000/= was awarded for the deceased who died about 5 hours after the accident. The Court was thus urged not to disturb the award.
9. The generally accepted principle is that nominal damages will be awarded for pain and suffering where death occurs immediately after the accident. The rationale of awarding such damages was set out in the *Sukari Industries Limited* case (*supra*), where Majanja, J. stated:

"On the first issue, I hold that it is natural that any person who suffers injury as a result of an accident will suffer some form of pain. The pain may be brief and fleeting but it is nevertheless pain for which the deceased's estate is entitled to compensation. The generally accepted principle is that nominal damages will be awarded on this head for death occurring immediately after the accident. Higher damages will be awarded if the pain and suffering is prolonged before death. According to various decisions of the High Court, the sums have ranged from Kshs 10,000 to Kshs 100,000 over the last 20 years hence I cannot say that that the sum of Kshs 50,000 awarded under this head is unreasonable."

10. It is common ground that the deceased herein died on the spot. Accordingly, and being guided by the generally accepted principle, my view is that the sum of Kshs. 200,000/= awarded by the trial court is excessive. While the deceased no doubt experienced pain and suffering before succumbing to the injuries sustained, the same was not prolonged. Accordingly, the sum of Kshs. 30,000/= is in my view adequate.
11. On loss of dependency, the Appellant faulted the trial Magistrate for awarding a sum of Kshs. 800,000/= under this head without giving reasons. The Appellant argued that the deceased was 65 years old and was survived by 3 adult children with no evidence that they were dependent on him. The Appellant thus urged the Court to set aside the award and substitute therefor no more than 300,000/=. Reliance was placed on the case of *Eston Mwirigi Ndege & another v Damaris Kairiari* (suing as the Legal



Representative of the Estate of Felix Kibiti (Deceased) [2018] eKLR where the deceased, a 69 year old farmer and Mabeya, J. upheld the award of Kshs.216,576=.

12. The Respondent submitted that although the deceased was survived by adult children, they were still dependent on him.
13. In the impugned judgment, the trial Magistrate adopted a global approach as the income of the deceased was not ascertainable. She relied in the case of China Civil Engineering & another v Mwanyoha Kazungu Mweni & another [2019] eKLR, where the deceased died at 79 years and survived by the claimant was awarded Kshs. 700,000/= . She also relied on the case of Moses Maina Waweru v Esther Wanjiru Githae (Suing as the Personal Representative of the Estate of the Late David Githae Kiririo Taiti [2022] eKLR where the sum of Kshs. 800,000/= was awarded in respect of the deceased who died at 68 years and was survived by his wife and adult children.
14. Loss of dependency is a question of fact. As indicated, the deceased herein was survived by 3 adult children. No evidence was however placed before the trial court demonstrating that these adult children were dependent on the deceased.
15. Taking into account the cited case law and principle that comparable injuries ought to be compensated by comparable awards (see Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004] eKLR), I find that the sum of Kshs.800,000/- awarded by the trial court was reasonable
16. On special damages, it was the Appellant's contention that no single receipt was produced to support the award of Kshs. 50,000/= under this head. The Appellant urged the Court to set aside the said award. For the Respondent, it was submitted that while the claim of Kshs. 167,000/= was rejected for want of receipts, the trial court should not be faulted for awarding Kshs. 50,000/=for funeral expenses as she noted that receipts are usually not kept.
17. In the impugned judgment, the trial Magistrate awarded Kshs. 50,000/= which she viewed as reasonable for funeral expenses in the circumstances.
18. It is now well settled that due to their nature, burial expenses need not be proved as special damages. In the case of Premier Diary Limited v Amarjit Singh Sagoo & another [2013] eKLR, the Court of Appeal had this to say on burial expenses.

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 bury or otherwise inter their dead 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.

19. The Court notes that no receipts for funeral expenses were produced. However, duly guided by the Court of Appeal in its decision in the Premier Diary Limited case (supra), that families who expend money to bury or otherwise inter their dead relatives should be compensated even if they do not keep



and provide receipts. Indeed, the Court went on to say that it would be unfair to expect grieving families to be concerned with record keeping during the process of making funeral arrangements for their departed kin.

20. In light of the foregoing, I find that the trial court's award of Kshs. 50,000/= in the absence of receipts to be reasonable.
21. The upshot is that the Appeal partly succeeds. The award of Kshs. 200,000/= for pain and suffering is hereby set aside and the Court substitutes therefor an award of Kshs. 30,000/=. All other awards remain the same.
22. Each party shall bear own costs.

**DATED SIGNED AND DELIVERED IN MALINDI THIS 28TH DAY OF FEBRUARY 2025**

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**M. THANDE**  
**JUDGE**

