Sandy Carriers Ltd v Mwangi & another (Suing as the Legal Representatives of the Estate of Onesmus Kamau Weru) (Civil Appeal E065 of 2024) [2025] KEHC 8931 (KLR) (24 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8931 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CIVIL APPEAL E065 OF 2024

RN NYAKUNDI, J

JUNE 24, 2025

BETWEEN

SANDY CARRIERS LTD .... APPELLANT

AND

ESTHER WANJIKU MWANGI .... 1ST RESPONDENT

PETER WERU .... 2ND RESPONDENT

SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF ONESMUS KAMAU WERU

JUDGMENT

1. The Appeal herein emanates from a Judgement that was delivered by the Honourable Keyne Gweno Odhiambo (SRM) on 8th March 2024 in Eldoret CMCC No. 1134 of 2021- Esther Wanjiku Mwangi & Peter Weru (Suing as the Legal Representatives of the Estate of Onesmus Kamau Weru Vs Sandy Carriers Ltd.

2. The Respondents instituted the suit as the legal representatives of the deceased wherein they pleaded that the deceased was lawfully driving motor vehicle registration number KBC 226G along Eldoret-Nakuru road when the Defendant's agent and/or driver while negligently driving trailer registration number KCF 602N/ZF 2103 caused it to lose control, veer off, infringe on the other lane and collided with motor vehicle registration number KBC 226G which the deceased was driving at the material time.

3. The aforesaid judgement was delivered against the Appellants as follows:

   Considering the foregoing, judgement is entered in favour of the Plaintiff as against the Defendant as follows:

a. Pain and suffering- Kshs. 50,000/=

b. Loss of expectation of life- Kshs. 100,000/=

c. Loss of dependency- Kshs. 2,800,000/=

d. Special damages – Kshs. 104,550/=

Total Kshs. 3,054,550/=

4. The Appellants being dissatisfied with the whole judgement, proffered an appeal vide a Memorandum of Appeal dated 4th August 2024 based on 5 grounds summarized as follows:

    a. The Learned Trial Magistrate erred in law and fact in holding the Appellant 100% liable contrary to the evidence on record.

    b. The Learned Trial Magistrate erred in law and fact in failing to find that the Respondents had not proved their case on a balance of probabilities.

    c. The Learned Trial Magistrate erred in law and fact in awarding damages that were inordinately excessive.

    d. The Learned Trial Magistrate erred in law and fact in using the wrong principles in awarding damages.

    e. The Learned Trial Magistrate erred in law and fact in failing to consider the Appellant's submissions.

5. The Appellant sought the following orders from the Memorandum of Appeal;

    a. The Judgement of the lower court be set aside.

    b. The Respondent's suit be dismissed.

    c. The Appellant be awarded costs of this appeal and the lower court.

6. The Appeal was canvassed by way of written submissions.

Appellant's Written Submissions

7. The Appellant filed submissions dated 23rd April 2025 through the firm of Kitiwa & Partners Advocates in which the learned counsel on record listed 3 issues for determination as follows; Whether the Learned Trial Magistrate erred in apportioning 100% liability to the Appellant; whether the Trial Magistrate erred in awarding damages that were inordinately excessive and based on wrong principles of law; whether the Respondents proved their case on a balance of probabilities.

8. On the first issue whether the Trial Court erred in holding the Appellant 100%, the Learned Counsel submitted that PW1, a police officer expressly testified that he was not the investigating officer, he did not visit the scene, he was not the maker of the Police Abstract (PEXH1) and he did not produce sketch maps or plans hence the trial court was even unable to ascertain the point of impact. Reference was made to the following cases: Pesa Hamisi Vs Mashru Limited [2020] eKLR; Postal Corporation of Kenya & Another Vs Dickens Munayi (2014) eKLR; Esther Atieno Obonyo Vs Anne Nganga & Another [2021] eKLR.

9. Counsel stated that from the evidence by PW1, it was not sufficient to establish that the Appellant was 100% liable for the accident. Counsel submitted that of all the eye witnesses by the Plaintiff, PW2 was

the only one present at the time of the accident and she attributed the blame to the Appellant's driver. It was also submitted that PW2 was also a passenger in motor vehicle registration number KBC 226G and she also has personal connection to the Plaintiff and the driver of the motor vehicle registration number KBC 226G. Reference was made to the case of Sally Kibii & Another Vs Francis Ogaro (2012) eKLR where it was held; "In the Kenital case (above) I held that in all adversarial legal systems like ours, a party undermines his case drastically by not calling or failing to call witnesses. The Plaintiff simply did not adduce any evidence before the trial court on liability. They could have called eye witnesses and/or the investigating Police Officer. Proof of negligence was material in this case and the burden of proof was upon the Plaintiff. She did not discharge the burden and the appellant's Counsel Submission before me that 'someone, has to explain how the accident took place, is telling. That 'someone' is the Plaintiff who alleges negligence on the part of the Defendant."

10. The learned counsel submitted that the trial court's finding of 100% liability on the part of the appellant was contrary to the established burden of proof as set out under Sections 107-109 of the *Evidence Act*, Cap 60 Laws of Kenya. Reference was made to the cases of Eastern Produce (K) Ltd Vs Alfonse Makokha [2017] eKLR; Khambi & Another Vs Mahithi & Another [1968] EA 70. It was the counsel's submission that the finding of 100% liability against the Appellant was not supported by evidence and they pray that this Honourable Court sets it aside as the Respondents failed to prove their case on a balance of probabilities against the Appellant and if anything, the deceased was to be blamed for the accident as he was the one who rammed motor vehicle registration number KBC 226G into the trailer of motor vehicle registration number KCF 602N/ZF 2103.

11. On the issue whether the award of damages was excessive and based on wrong principles of law, the learned counsel submitted that the trial court erred in law and fact in using wrong principles in assessing general damages and the trial magistrate erred in law and fact in awarding damages that were not commensurate with the age of the deceased and made reference to the case of Charles Oriwo Odeyo Vs Appollo Justus Andabwa & Another (2017) eKLR in which the court held as follows; "On the issue of damages, it is settled that the award of damages is within the discretion of the trial court and the Appellate court would only interfere on the particular grounds. These grounds were and are (a) that the court acted on wrong principles or that the award is so excessive or so low that no reasonable tribunal would have awarded or (b) that the court has taken into consideration matters which it ought not to have or left out matters it ought to have considered and in the result arrived at wrong decision."

12. Reference was made to the Damages under the *Law Reform Act* in section 2(2). The Learned Counsel submitted on the grounds such as: Pain and Suffering and stated that the award of Kshs. 50,000 under this head by the learned magistrate was inordinately excessive and a sum of kshs. 10,000/= would be very much adequate since the deceased died on the very day of the accident as captured in his death certificate and considering the uncertainties and vagaries of life. Counsel also submitted on loss of expectation of life and stated that the trial court should not have made an award under this head as doing the same amounted to double compensation as the beneficiaries were the same under the *law reform act* and the *fatal accidents act*. Reference was made to the case of Maina Kaniaru & Another Vs Josephat M. Wangondu [1995] eKLR where it was held that, "The rights conferred by section 2(5) of the *Law Reform Act* (cap 26 Laws of Kenya) for the benefit of the estates of deceased persons are stated to be "in addition to and not in derogation of any rights conferred on the dependents of the deceased persons by the *Fatal Accidents Act*." This does not mean that damages can be recovered twice over but that if damages recovered under *Law Reform Act* devolve on the dependents the same must be taken into account in reduction of the damages recoverable under the *Fatal Accidents Act*. The House of Lords held in the case of Davies and another v Powell Duffryn Associated Collieries Ltd (1942) All ELR p 657 that in assessing damages under the *Fatal Accidents Act*, 1846, damages under the Law

Reform (Miscellaneous Provisions) Act, 1934, must be taken into account in the case of dependents who will benefit under the latter Act."

13. Counsel submitted on the ground of loss of dependency and submitted that the Respondents failed to prove that PW3 was a wife to the deceased and the mentioned dependants/beneficiaries children of the deceased and that the Appellant urged the trial court to adopt the ratio of 1/3 and cited the case of Patricia McCarthy Vs Ronald Abere & 6 Others [2022] eKLR, where the dependency ratio of 1/3 was adopted where the deceased was aged 55 years and was allegedly survived by the wife and 4 sons but no credible evidence was produced to prove that the alleged wife and sons were the deceased's wife and children and that they actually depended solely on the deceased prior to his demise.

14. On the ground of multiplicand, the Learned Counsel submitted that the Respondents alleged that the deceased used to be in transport business and used to earn approximately Kshs. 50,000/= per month and that no documentary evidence was brought to the attention of the court such as account statement and/or bank statements or Mpesa statements confirming the same. Counsel also submitted that since the Respondents failed to prove the monthly income of the deceased, they urged this court to adopt the minimum wage of Kshs. 9,000/= as provided under the Regulations of Wages (General Amendment Order). Reference was made to section 2 of the Insurance (Motor Vehicle Third Party Risks Act).

15. On the ground of multiplier, the learned counsel submitted that the trial magistrate erred in adopting a multiplier of 7 years as he ought to have adopted a multiplier of 5 years. Counsel also urged this Honourable Court to reverse the said award of Kshs. 2,800,000/= and substitute it as follows: Kshs. 9,000 (Multiplicand) x 5 years (Multiplier) x 12 months' x 1/3 (Dependency ratio) = Kshs. 180,000/=.

16. On the issue of special damages, the learned counsel submitted that the Respondent pleaded Kshs. 104,550/= as special damages and that the trial magistrate erred in awarding Kshs. 104,550/= as special damages as the same was not proved. Counsel also submitted that special damages must be specifically pleaded and proved and made reference to the case of Hahn Vs Singh, Civil Appeal No. 42 of 1983 [1985] KLR 716. Counsel noted that the Respondents pleaded kshs. 104,550/= but only produced a receipt of kshs. 25,000/= as PEXH2b and a receipt of Kshs. 19,000/= as PEXH5 and that only kshs. 44,000/= was proved as special damages and the trial magistrate ought to have only awarded the same.

17. On the issue of whether the Respondents proved their case on a balance of probabilities, the Learned Counsel submitted that the Respondents failed to discharge their burden of proof on both liability and quantum and that the trial court ignored glaring gaps and inconsistencies in the Respondent's evidence. Counsel also stated that no bank statements or M-Pesa statements were produced by the Respondents during trial to show that the deceased used to earn kshs. 50,000/=. It was the learned counsel's closing submission that the Respondents failed to prove their case on a balance of probabilities against the Appellant and the same ought to have been dismissed with costs.

Respondent's Written Submissions

18. The Respondent filed submissions dated 10th April 2025 through the firm of Alwanga & Co. Advocates in which the Learned Counsel on record listed on two issues for determination as follows: whether the Respondent proved their case on a balance of probabilities and Whether the damages awarded by the trial court were excessive. On the first issue, it was the counsel's submission that the Respondents did prove their case on a balance of probabilities as to who was to blame for the accident and the court considering all the evidence before it arrived at a just determination on liability and stated that this court has no basis to interfere with that finding and urged the Honourable court to uphold that finding and decision.

19. On the issue of whether the damages awarded by the trial court were excessive, the Learned counsel submitted that the guiding principle in the assessment of damages is that an award must reflect the trend of previous, recent and comparable awards and supported this with the case of Stanley Maore Vs Geoffrey Mwenda [20024] eKLR where the court of Appeal held as follows, "Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases."

20. In the issue of pain and suffering, the learned counsel submitted that the award of kshs. 50,000/= was reasonable and not excessive and urged this court not to disturb the award. On the issue of loss of expectation to life, Counsel also submitted that no award should be made here and the award was appropriate putting into consideration the inflation trends that the economy has experienced since the conventional award of Kshs. 100,000/= was first adopted by the courts. Counsel stated that it is high time the conventional award reflected the current inflation and economic trends and therefore the award ought not to be interfered with by this Honourable Court.

21. On the issue of loss of dependency of kshs. 2,800,000, counsel submitted that the same was well reasoned and founded on the evidence before the court and the court found that there was sufficient evidence on the financial burden placed on the deceased and proof that he was in transport business given that the motor vehicle he was driving at the time of his untimely death was a commercial lorry. Counsel also stated that in arriving at the loss of dependency the trial court exercised its discretion judiciously and being guided by the evidence before it, the award is therefore a reasonable and well-reasoned determination and urged this court not to disturb the same.

22. On the special damages, the learned counsel submitted that there was proof of kshs. 44,000/= by way of receipts as admitted by the Appellant in their lower their court submissions and that the trial court in addition took judicial notice of the funeral expenses usually incurred in burial ceremonies and being guided by the decisions of superior courts in MMM (Deceased) Vs Chairman Board of Governors [...] Boys High School (2018) eKLR and Wilfred Marita Onsomu Vs Joshua Nyamenia Ogari & Anor [2020] eKLR awarded funeral expenses of Kshs. 60,000/=. It was the learned counsel's submission that the appeal is unmerited and should be dismissed with costs to the Respondent.

Analysis and Determination

23. As the first appellate Court, it is now well settled that the role of this court is to revisit the evidence on record, re-evaluate it and reach its own conclusion in the matter. (See the case of Selle & Ano. Vs Associated Motor Boat Co. Ltd [1968] EA 123). This court nevertheless appreciates that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings. This was the holding in Mwanasokoni Vs Kenya Bus Service Ltd. (1982-88) 1 KAR 278 and Kiruga Vs Kiruga & Another (1988) KLR 348).

24. Having carefully considered the record, the evidence adduced before the trial court, and the comprehensive submissions by counsel for both parties, this Court proceeds to examine the substantive issues raised in this appeal. The Court notes that proper analysis of evidence and application of legal principles is essential in the determination of both liability and quantum in such cases. The trial court's reasoning and the basis for its conclusions must be scrutinized to ensure that justice has been served and that the correct legal principles have been applied.

25. I have certainly perused and understood the contents of the pleadings, proceedings, judgment, grounds of appeal, submissions and the decisions referred to by the parties herein. The court thus forms the view that it has been called upon to determine whether the appeal herein has merits.

26. The Court of Appeal in Mkube v Nyamuro [1983] LLR at 403, Kneller JA & Hancox Ag JJA held that-

> " A Court on appeal will not normally interfere with the finding of fact by a trial court unless it is based on no evidence, or on a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching his conclusion."

27. In Khambi and Another vs. Mahithi and Another [1968] EA 70, it was held that:

> " It is well settled that where a trial Judge has apportioned liability according to the fault of the parties his apportionment should not be interfered with on appeal, save in exceptional cases, as where there is some error in principle or the apportionment is manifestly erroneous, and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial Judge."

28. Having established the legal framework for appellate interference, this Court now turns to examine whether the trial magistrate's finding of 100% liability against the appellant should be disturbed. It is important to note at the outset that the trial court conducted a comprehensive analysis of the liability issue, properly applying established legal principles and making reasoned findings based on the evidence before it.

29. The trial magistrate correctly cited and applied the burden of proof principles established in Anne Wambui Ndiritú v Joseph Ngeino Rebkoi and Nadiwa v Kenya Kazi Ltd. The court methodically established vehicle ownership through DW1's own testimony and motor vehicle registration evidence, fulfilling a fundamental requirement for liability determination.

30. In his analysis, the learned magistrate noted material discrepancies between DW1's version of events and what was recorded in the police occurrence book, raising valid questions about the reliability of his testimony. Furthermore, the court applied logical reasoning in questioning why a vehicle being driven at 45 KPH uphill would suddenly lose control during what should have been a routine overtaking maneuver, particularly when the driver claimed to be experienced.

31. The appellant's challenge to this finding centers on procedural and evidentiary concerns rather than substantive errors in the trial court's reasoning. The appellant argues that the absence of the investigating officer's testimony and proper scene investigation evidence created gaps that should have prevented a finding of 100% liability. While these concerns have merit, they must be weighed against the fact that the trial court worked with the evidence that was actually presented by the parties.

32. The Court of Appeal in Micheal Hubert Kloss & Another v David Seroney & 5 others [2009] eKLR:

> " The determination of liability in a road traffic case is not a scientific affair. Lord Reid put it more graphically in Stapley v Gypsum Mines Ltd (2) (1953) A.C. 663 at p. 681 as follows:
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> 'To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law this question must be decided as a properly instructed and reasonable jury would decide it...The question must be determined by applying common sense to the facts of each particular case. One may find that as a matter of history

several people have been at fault and that if any one of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally…"

33. The critical question for this Court is not whether the trial magistrate conducted a proper analysis, which he demonstrably did but whether the evidence before him was sufficient to support the finding of 100% liability, and whether the appellant successfully raised reasonable doubt about the respondent's case. Having gone through the analysis of the trial court's judgment, I am of the considered opinion that the trial court did not err in finding the appellant 100% liable for the accident. I therefore uphold the trial court apportionment of liability.

34. On the issue of loss of dependency, the appellant submitted that the respondent did not adduce sufficient evidence to prove that the deceased earned Kshs. 50,000/= per month from transport business, arguing that no documentary evidence such as bank statements, account statements, or M-Pesa statements were produced to substantiate this claim. The appellant further contended that the respondents failed to prove that PW3 was legally married to the deceased and that the alleged dependents were indeed his children who relied on him for support. The appellant urged the court to adopt the minimum wage of Kshs. 9,000/= as the multiplicand, a dependency ratio of 1/3, and a multiplier of 5 years rather than 7 years. The trial court, when addressing this issue, gave reasons for accepting the respondent's evidence that the deceased was in transport business, noting that he was driving a commercial lorry at the time of the accident, and found sufficient evidence of financial dependency to justify the award of Kshs. 2,800,000/=.

35. Besides the domestic case law the law governing pleadings in personal injury cases well-articulated in the persuasive authority in British Transport Commission v Gourley (1956) AC 185 at 2006 in which the court stated as follows: " "In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as special damage, which has to be specially pleaded and proved. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. Secondly, there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future.

36. On this head, the Court of Appeal in Chunibhai J. Patel and Another vs. P. F. Hayes and Others [1957] EA 748, 749, stated the law on assessment of damages under the *Fatal Accidents Act* and held as follows:

> " The Court should find the age and expectation of the working life of the deceased and consider the ages and expectations of life of his dependants, the net earning power of the deceased (i. e his income less tax) and the proportion of his net income which he would have made available for his dependants. From this it should be possible to arrive at the annual value of the dependency, which must then be capitalized by multiplying by a figure representing so many years' purchase."

37. Having perused through the trial court record, it is evident that the appellant took issue with the fact of earnings of the deceased were not properly established.

38. The Court of Appeal in Isaack Kimani Kanyingi & another (Suing as the legal representative of the Estate of Loise Gathoni Mugo (Deceased) v Hellena Wanjiru Rukanga [2020] eKLR observed that:

> " In our view, there was sufficient evidence that the deceased was a business lady. All that was required of the court was to assess the net income of the deceased, given the business enterprise that she was undertaking and the evidence that was available before the court."

39. In Jacob Ayiga Maruja & Anor vs.Simeon Obayo[2005]eKLR, this Court dealing with a similar situation in which a plaintiff had no documentary proof of the deceased's earning, stated as follows:

> " In our view, there was more than sufficient material on record from which the learned Judge was entitled to, and did draw the conclusion that the deceased was a carpenter and that his monthly earnings were about Shs. 4,000/= per month. We do not subscribe to the view that the only way to prove the profession of a person must be by the production of certificates and that the only way of proving earnings is equally the production of documents. That kind of stand would do a lot of injustice to very many Kenyans who are even illiterate, keep no records and yet earn their livelihood in various ways. If documentary evidence is available, that is well and good. But we reject any contention that only documentary evidence can prove these things."
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> 32. We reiterate that it would be unrealistic and unfair to expect strict proof of income through documents in regard to a small business enterprise carried out by a sole proprietor who is deceased. If there is sufficient evidence that the deceased was carrying out the alleged business, the court has to assess the income, doing the best that it can in the circumstances of the case.
>
> 33. ....
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> 34. We find that the learned judge misdirected herself and abdicated her responsibility in failing to assess the deceased's net income as she was expected to assess the income as best as she could, using the little evidence available. The minimum wage of Kshs. 11,995/- was an appropriate place to begin because the deceased being a business lady carrying out a timber and furniture business, she must at least have employed a carpenter for the business and was unlikely to earn less than the carpenter. In our view given the evidence before the trial Judge including the bank statement showing monies going into and out of the deceased's account, a sum of Kshs 30,000/= would have been appropriate as the net monthly income of the deceased."

40. In Moses Mairua Muchiri v Cyrus Maina Macharia (Suing as the personal representative of the estate of Mercy Nzula Maina (deceased) [2016] eKLR, it was held as follows-

> " It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case."

41. Based on the preceding analysis, I see no grounds to overturn this award. Kenyan citizens often struggle to meet the strict documentation requirements in such cases, and this shortcoming should not be held against them. Many earn their livelihood through informal employment arrangements. It would be unreasonable to expect that all individuals have the privilege or capacity to maintain detailed records of every transaction or business dealing they undertake.

42. Regarding award of damages as stated elsewhere in this judgement an Appeal's court is essentially disinherited always by law expected to decline to reverse the findings of a trial magistrate as to the exercise of discretion on the amount of damages being complained of by an Appellant merely because the judge thinks if he had tried the case in the primary court he or she would have given a higher or a lesser sum of compensation. The emphasis here is on the principles stated in the case of Khambi and Another vs. Mahithi and Another [1968] EA 70, The important point I am making in this Appeal and which has got to be noted by the Appellant is that an award by a trial court would not be disturbed by this court siting on appeal unless it is inordinately high or inordinately law and for those reasons there is a blatant breach of some constitutional imperative or of some other principles of law. It is my evaluation of the evidence that the Appellant has not made the threshold for this court to disturb the learned trial magistrate decision to justifiably interfere with the findings of fact and application of the law.

43. Having carefully considered the evidence on record and the submissions by both parties, I find that the trial court properly assessed the deceased's income based on the available evidence. The fact that the deceased was driving a commercial lorry at the time of the accident supports the finding that he was engaged in transport business. While documentary evidence would have been preferable, the absence thereof does not invalidate the claim where there is sufficient circumstantial evidence to support the finding.

44. Regarding the multiplier of 7 years adopted by the trial court, this falls within the acceptable range for a person of the deceased's age and circumstances. The appellant's argument for a multiplier of 5 years is not sufficiently compelling to warrant interference with the trial court's discretion in this regard.

45. On the dependency ratio, while the appellant argued for a 1/3 ratio, the trial court's assessment appears to have been based on the specific circumstances of this case and the evidence of actual dependency presented. I find no error in principle that would justify disturbing this finding.

46. Accordingly, I see no basis to interfere with the trial court's award of Kshs. 2,800,000/= under the head of loss of dependency.

47. The appellant challenged the award of Kshs. 50,000/= for pain and suffering, arguing that since the deceased died on the day of the accident, a sum of Kshs. 10,000/= would be adequate.

48. However, the assessment of pain and suffering is not solely dependent on the duration between injury and death. The trial court was entitled to consider the nature of the injuries sustained and the suffering endured, however brief. The award of Kshs. 50,000/= is not so excessive as to warrant interference by this appellate court. I therefore uphold the trial court's award under this head.

49. On loss of expectation of life, the appellant argued that no award should have been made under this head as it amounts to double compensation. While the principle against double compensation is well established, the trial court's award of Kshs. 100,000/= under this head was made with due consideration of the established principles. The respondent's counsel correctly submitted that this conventional award should reflect current economic trends and inflation.

50. I find no error in the trial court's approach to this head of damages and accordingly uphold the award of Kshs. 100,000/=.

51. As for special damages, the appellant contended that only Kshs. 44,000/= was proved through receipts (PEXH2b - Kshs. 25,000/= and PEXH5 - Kshs. 19,000/=), and that the trial court erred in awarding the full claimed amount of Kshs. 104,550/=.

52. The principle that special damages must be specifically pleaded and strictly proved is well established in numerous decisions. However, the trial court's reasoning in taking judicial notice of reasonable funeral expenses, as supported by the cases of MMM (Deceased) Vs Chairman Board of Governors 2018 (eKLR) and Wilfred Marita Onsomu Vs Joshua Nyamenia Ogari & Anor (2020) eKLR, demonstrates proper judicial discretion.

53. While only Kshs. 44,000/= was directly supported by receipts, the trial court's addition of Kshs. 60,000/= for funeral expenses through judicial notice is justified given the nature of the case and established precedent. The total award of Kshs. 104,550/= is therefore reasonable and I decline to interfere with it.

54. Having considered all the grounds of appeal and the comprehensive submissions by both parties, I find that the trial court conducted a thorough analysis of the evidence and applied the correct legal principles in reaching its decision. The appellant has not demonstrated any error in principle or manifest error that would justify this court's interference with the trial court's findings on liability or quantum.

55. In the result, this appeal lacks merit and is hereby dismissed and the judgment of the trial court delivered on 8th March 2024 is hereby upheld in its entirety.

56. Each party shall bear their costs.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 24TH DAY OF JUNE 2025.

....

R. NYAKUNDI

JUDGE

Kitiwaadvocates.co.ke