



China Road & Bridge Corporation Kenya Ltd & another v Nzioka (Civil Appeal E065 of 2022) [2024] KEHC 17222 (KLR) (28 March 2024) (Judgment)

Neutral citation: [2024] KEHC 17222 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E065 OF 2022
TM MATHEKA, J
MARCH 28, 2024**

BETWEEN

CHINA ROAD & BRIDGE CORPORATION KENYA LTD 1ST APPELLANT

PETER NGANGA MUNGAI 2ND APPELLANT

AND

NICHOLAS MASILA NZIOKA RESPONDENT

JUDGMENT

1. From the plaint filed on 3/5/2021 Thomas Mutie Makau (deceased) was on 16/5/2018 at 1900hrs walking along Kalimbini along Nairobi/Mombasa Highway when the 2nd Defendant - who at the material time was the authorized driver of motor vehicle reg. no. KCH 925 T Toyota Van so carelessly and negligently drove the said motor vehicle and without due regard for other road users that the motor vehicle violently knocked him down causing him fatal injuries.
2. The doctrine of res ipsa loquitur was pleaded.
3. It was averred in the plaint that the Mutie (deceased) was at that time an employee of one Clementina Katuki Ndavuti at her poultry farm with a net salary of Kshs. 15,000 p.m.
4. That at the material time he was 19 years old and his parents and 2 sisters depended upon him. It was averred that the estate suffered loss and damage, and the claims were also brought under the [Law Reform Act](#).
5. The Plaintiff/respondent sought judgment in his favour against the defendants/appellants in the following terms; Special damages Kshs. 424,600 General damages for pain and suffering, Loss of expectation of life and dependency, costs, interest.



6. The defendants/appellants filed joint statement of defence in which it was denied that 1st defendant/appellant was the registered owner of the said motor vehicle , that 2nd defendant/appellant was authorized driver, all particulars of negligence and plaintiff/respondent was put to strict proof thereof.
7. The accident and its alleged circumstances were also denied.
8. The defendants/appellants accused the deceased of negligence and the author of his own demise.
9. The application of the doctrine of res ipsa loquitur was denied.
10. The averment on employment & income of the deceased, the alleged dependants and their dependency were denied, the special damage and Plaintiff/respondent was put to strict proof thereof.
11. The plaintiff/respondent replied to the defence, maintaining all the averments and putting the defendants/appellants to strict proof of their averments that they did not own/drive the motor at the material time.
12. On 5/7/2022 - parties entered into a consent on liability at 75:25 in favor of the plaintiff/respondent .
13. On 19/10/2022 – parties agreed on special damages at Kshs. 49,000.
14. Parties then filed submission on quantum of damages.
15. The plaintiff/respondent proposed the following ;
 - i. Kshs. 200,000 for loss of expectation of life- deceased was 29 years old see (Peter Kariuki Muirura & 3 others in AG [2019] eKLR.)
 - ii. Pain and suffering - Kshs. 100,000
 - iii. Loss of dependency - $15,000 \times 12 \times 40 \times \frac{2}{3} = 4,800,000$ less 25% =3,861,750 Relying on Crown Bus Services Ltd & 2 others Vs Jamilla Nyongesa & Another [2020] eKLR – Multiplier of 35 years for a 21 years old
16. The defendants/appellants proposed :-
 - i. Pain & suffering - Kshs. 10,000 see Moses Koome Mithika & another Vs Doreen Gathuri & another
 - ii. Loss of expectation of life - Kshs. 100,000 see Petronila Muli Vs Richard Muindi Savi & another [2021] eKLR - where deceased was 19 years old.
 - iii. Loss of dependency: Submitting that there was no proof of income adopted minimum wages at Kshs. 7,240/95
 - iv. $7,240/95 \times 12 \times 20 \times \frac{1}{3} = 579,276$ for multiplicand - relied on Petronila Muli above where the court substituted multiplier of 36 years to 20 years for a 19 years old.
17. In the judgment delivered on 16/11/2024 - the trial court accorded Kshs. 50,000 and 100,000 for pain and suffering and loss of expectation of life respectively.
18. For loss of dependency the court adopted Kshs. 15,000 and multiplier of 41 years and dependency ratio of 1/3;

$$15,000 \times 12 \times 41 \times \frac{1}{3} = 2,460,000.$$
19. Aggrieved, the appellants filed this appeal on the following grounds ;



1. That the learned trial magistrate erred in law and in fact in failing to find that the respondent did not sufficiently prove earnings of the deceased
2. That the learned trial magistrate erred in law and in fact in failing to use the applicable minimum wage under the regulation of wages (general) (amendment) order, 2018 in making an award on loss of dependency.
3. That the learned trial magistrate erred in law and in fact in awarding an amount on loss of dependency that was manifestly excessive.
4. That the learned trial magistrate erred in law and in fact in failing to consider the appellant's submissions and authorities attached thereto while assessing loss of dependency.

Reasons wherefore the appellant prays for orders that:-

- a. That this appeal be allowed and the lower court's judgment be set aside.
 - b. That the honourable court to assess the award on loss of dependency payable to the respondent.
 - c. That there be such other or further orders as the honourable court shall deem just, fair and expedient.
 - d. That the costs of this appeal and those in lower court suit be awarded to the appellant with interest.
20. The issues for determination from the grounds of appeal is whether the trial court erred in the award for cost of dependency.
 21. The dependency ratio of 1/3 is not challenged.
 22. It is argued that there was no proof that the deceased earned Kshs. 15,000 p.m and no jurisdiction for 41 years.
 23. It was submitted that no evidence was produced to support that the deceased earned Kshs. 15,000 hence the court ought to have analyzed the evidence around the alleged earnings.
 24. The employer's letter was dated 15/7/2018. It clearly stated that the deceased was a general worker in the - taking care of chicken, tending the garden, earning Kshs. 15,000 p.m. other than that the author did not attach any evidence to support the statement that she ran a broiler chicken farm - to warrant full time employment of the deceased. She did not produce any evidence to support the claim that she paid him Kshs. 1,500 p.m. and considering the fact that the defendants/appellants had put the plaintiff/respondent to strict proof of all the allegations . It was necessary to put in place sufficient evidence to prove the income of the deceased. In the circumstance I am in agreement that the sum of Kshs. 15,000 as salary was not proved.
 25. In the absence of concrete proof of income - then the minimum wage of Kshs. 7,240/95 was most applicable.
 26. For the respondent- Counsel relied on Roger Dainty vs Mwinyi Omar Haji & Another MSA CA and appeal NO. 59/2004 [2004] eKLR - that to ascertain reasonable multiplier & multiplicand, the court would have to consider the income or prospective income of the deceased, the kind of work he did, and prospect of promotion, expectations in life. Without any evidence having been tendered in court, it would be difficult to consider prospects and the expectations of the deceased.



27. The respondent also relied on Crown Bus Ltd & 2 others above where the court adopted multiplier of 35 years for a 21 year old.
28. In the circumstances - it is my view taking into account the vicissitudes of life the multiplier of 41 years was on the higher side.
29. In the circumstances it is set aside - and substituted with 35 years. Hence for loss of dependency the award would be;

Ksh 7240/95 x 12 x 35 x 1/3 =Kshs. 1,013,733

31. The total award would be:

Loss of dependency- 1,013,733 Loss of expectation of life - 100,000 Pain and suffering
50,000

Special damages 49,000

1,212,733

Less 25% = 909,549

Plus costs and interest below and ½ costs of the appeal.

31. The judgment of the subordinate court is set aside and substituted with the following.

Loss of dependency- 1,013,733 Loss of expectation of life - 100,000 Pain and suffering
50,000

Special damages 49,000

1,212,733

Less 25% = 909,549

Plus costs and interest below and ½ costs of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28TH MARCH 2025

MUMBUA T MATHEKA

JUDGE

SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA

THE JUDICIARY OF KENYA.

MAKUENI HIGH COURT

HIGH COURT DIV

DATE: 2025-03-28 18:36:35

