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|----|-------------------------------|---------|-------------|-----|-------|--------------|
| 1. |                               | School  |             | bus |       | accident     |
| 2. |                               |         | Fatal       |     |       | accident     |
| 3. | Deceased,                     | student | aged        | 17  | years | old          |
| 4. |                               |         | Liability   |     |       | 100%         |
| 5. | Quantum                       |         |             |     |       |              |
| a) | Pain                          | and     | suffering   |     | Ksh.  | 10,000/-     |
| b) | Loss                          | of      | expectation | of  | life  | Ksh 60,000/- |
| c) | Lost                          |         | years       |     | Ksh.  | 1,680,000/-  |
| d) | Special damages Ksh. 14,000/- |         |             |     |       |              |

**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA**

**AT NAIROBI MILIMANI LAW COURTS**

**CIVIL CASE NO. 2409 OF 1998**

**DAVID NGUNJE MWANGI ..... PLAINTIFF**

**VERSUS**

**THE CHAIRMAN OF THE BOARD OF**

**GOVERNORS OF NJIRI HIGH SCHOOL.. DEFENDANT**

**J U D G M E N T**

The motor vehicle registration number KUV 145 is owned by the Njiri High School. On the material night of the 17th of March 1996, at about 8.00 p.m., the vehicle which had been carrying a group of students, lost control along the Kiria-ini Murangaa road and had an accident.

One of the students, David Ngunje Mwangi met his death as a result of the said accident. His father sued the defendants for damages under the Law Reform Act cap 26 and the Fatal Accident Act cap 32.

The parties agreed to liability at 100% against the defendant. I am made to understand from the state counsel that there are several other suits pending in several courts involving the same accident. I do not see any application for a “test” suit and or stay of proceedings pending the establishment or finding on liability. Nonetheless, in this particular case liability has now been agreed on.

The issue now left for determination is that of assessment of damages. These heads of damages are under the:-

- 1) Law Reform Act cap 26. General Damages Pain and suffering Loss of expectation of life.
- 2) Fatal Accidents Act Cap 32 Lost years.

### 3) Special Damages.

#### 1. General Damages for pain and suffering

The father of the deceased and plaintiff in this case George Mwangi Eric, stated that he was not at the scene of the accident. He was notified that his son had been involved in an accident. He proceeded to the hospital but could not find his son on the hospital register. All along he had thought his son was alive. He proceeded to the police and confirmed that his son was indeed dead. He identified the body. He later obtained a death certificate. It is unclear from the evidence before the court by the plaintiff whether the deceased died instantly or whether he remained alive for a certain period prior to his death. The plaintiff thinks he may have died instantaneously.

I note the conventional sum the High Court of Nairobi gives under this head of damages is a nominal Ksh.10,000/- when a person dies instantly or soon thereafter. The advocate for the plaintiff prayed that a sum of Ksh. 20,000/- be awarded. She relied on the decision of Juma, J. in the case of:-

#### **John Wagachs Munyui v. Joseph Mbugua Njenga and another HCCC 3130/93.**

An award of Ksh. 20,000/- was made for pain and suffering. there was no indication as to how soon the deceased died. The state counsel is willing to go along with this figure but leaves it entirely to the court.

In a very old case of **E.K. Ndumba & Another v. Francis Ndungu & Another HCCC 3182/87** a decision of Butler-Sloss an award of Ksh. 1,000/- was made.

I would adopt the sum of Ksh. 10,000/- as nominal for the award of general damages for pain and suffering.

#### 2. Loss of Expectation of Life

The advocate for the plaintiff asked this court to award Ksh. 100,000/- under this head of damages. She relied on the case law of:-

#### **John Wagada Muyu v. Joseph Mbugua Njenga and Another (supra) Juma J.**

I do not see the reasoning of how this figure was arrived at. The state counsel on the other hand produced authorities that had no full text. I am therefore unable to know how the decisions by the court was arrived at. I would urge that any digest of cases relied on should only be a guide to the advocates to obtain a full text to present to court.

The state counsel had recommended Ksh. 80,000/-. Conventionally the High Court of Kenya at Nairobi has been giving an award of Ksh. 60,000/- for loss of expectation of life (see the case of Edward Kimotho Nduchi and another v. Francis Ndungu & Another (supra))

I would award a sum of Ksh. 60,000/- under this head of damages.

#### 3. Lost Years

In assessing lost years under the Fatal Accidents Act cap 32, the principles on which damages should be assessed is set out in the case of:-

#### **Radhakrishen M. Khemaney v. Mrs. Lachaba Murlidhar (1958) E A 268.**

whereby it cited the case of **Peggy Frances Hayes & another v. Chunibhai J. Patel & Another (1961) E.A 129.**

The task of the court is to find the age, wages and consider the expectations of the deceased and the

properties of the net income the deceased would have made available for his dependants.

In this particular case the deceased was aged 17 years old. He was presently still under the care of his parents.

Section 4 (1) of the Act outlines who is permitted to benefit from the estate.

**“every action brought by notice of the provision of this act shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused...”**

The deceased was the son to the plaintiff. He, the father, is therefore entitled to claim under this heading.

The deceased was described as a smart boy. There was no evidence to lead what kind of person he may have been inspired to become save that he helped his father in the shop. There was no inclination that he may perhaps have gone to university or been an architect (see the case Sheik Mustag Hassan v. M.M. Kamau ask liability for council specially in 1982-988 reports Transporter Mombasa C.A 823/85 The advocate for the defendant stated that the job market now is in fact not very good and the possibility of getting employment may not be good.

I would find that the deceased is entitled to lost years.

I find that the multiplier of 30 years would be reasonable. The plaintiff would have worked up to the age of 50 years.

As to the income he may have earned, there was no suggested proof of evidence on this except of the statement that Ksh. 10,000/- should be provided. the advocate for the defendant had recommended Ksh. 5,000/-.

I would state that the minimum wage be considered. This is not exceeding 4,000/- per month. Therefore  $30 \times 4,000/- \times 12 = \text{Ksh } 1,680,000/-$

The law requires there to be a deduction to this amount commonly known as a discount for accelerated payment to the widow in the event a widow remarries. In this situation there is no widow but a parent namely the father. A deduction by way of discount may be made but in the circumstances of this case I make none. (A discount for accelerated payment see the case of Hayes v Patel (supra)

#### **4. Special Damages**

The plaintiff has particularised the special damages as

- a) Police abstract and death certificate Ksh.150/-
- b) Obtaining letters of administration Ksh.15,000/-
- c) Funeral expenses Ksh. 20,000/-.

I would dismiss the claim for police abstract and death certificate. No receipt as proof of payment was tendered for this item at Ksh. 150/-.

I would also dismiss the claim for obtaining letters of administration at Ksh. 15,000/-. The maximum one pays to obtain letters of administration is Ksh. 1,000/-. There was no explanation of how Ksh. 15,000/- was arrived at, neither did the plaintiff speak of this. The same is hereby dismissed.

As to Funeral expenses there is an amount of Ksh. 20,000/- claimed, only 4,000/- comprised the cost of a coffin. The other receipts of Ksh. 5,000/- each does not clearly describe what the same is for save that they are two tickets. This is to transport the body. These documents were admitted in evidence without

calling the maker thereof. I would allow this claim totalling 14,000/-.

I hereby enter judgment for the plaintiff accordingly.

In summary

1) Fatal accident passenger male minor 17 years old

2) Liability 100%

3) Quantum Law Reform

a) General damages

i. Pain and suffering ..... Ksh. 10,000/-

ii Loss of expectation of life Ksh.60,000/-

Fatal Accidents Act

iii Lost years Ksh.1,680,000/-

iv Total Ksh.1,741,000/-

b) Special Damages Ksh. 14,000/-

Ksh.1,764,000/-

The said amount under the Fatal Accidents Act is apportioned jointly to the parent of the deceased. I award costs of this suit to the plaintiff.

I award interest on General damages from the date of judgment. Interest on Special Damages from the date of filing suit.

**Dated this 25th day of January, 2001.**

**M. A. ANG'AWA**

**JUDGE**