



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT NO. 4 OF 2013

HARDEV KAUR DHANOA.....PLAINTIFF

(Suing as the legal representative of the Estate of HARMINDER SINGH DHANOA (DECEASED))

VERSUS

MULTIPLE HAULIERS (E.A) LIMITED.....DEFENDANT

JUDGEMENT

1. The plaintiff Hardev Kaur Dhanoa brought this suit as the legal representative of the Estate of Harminder Singh Dhanoa, deceased who died following a road accident on the 22nd January 2010 along the Eldoret-Nakuru Highway when the Defendants vehicle KBA 688P/ZC 8618 knocked the deceased down causing him to sustain fatal injuries. The Plaintiff claims general and special damages under both the Law Reform Act and the Fatal Accidents Act as a result of negligence which particulars are itemised.

2. Particulars pursuant to the Law Reform Act are stated that the deceased was a healthy and energetic 62 year old who enjoyed good health.

Particulars pursuant to the Fatal Accidents Act are stated that the deceased was at time of his death gainfully employed as a Civil Engineer earning a monthly salary of European Euro Kshs.6,500/=(equivalent to Kshs 737,750/= at exchange rate of 1 Euro to Kshs.113.5 as at 9th January 2013 and that his family depended on him for their upkeep, hence loss of dependency.

Dependents are stated as:

1. Wife Harder Kaur Dhanoa

2. Ranvir Singh Dhanoa – Son

3. Tanvir Kaur Dhanoa - Daughter

3. The Plaintiff claimed general and special damages in the sum of Kshs. 26,585,750/= and costs of the suit. Various documents were filed by earlier party in support of their respective claims.

4. On the 6th June 2014 the issue of negligence was resolved amicably when parties recorded a consent order, with the Plaintiff conceding to 20% and the Defendant 80%. Special damages are also agreed at Kshs.26,750/=. What remains for the courts determination is the awardable *quantum* of damages to the Plaintiff. Both parties have filed written submissions in respect thereof.

5. The Plaintiffs submissions are dated 9th September 2016 and 10th February 2017. Under the Law Reform Act, the plaintiff submits that a sum of Kshs. 250,000/= for pain and suffering and Kshs.3,000,000/= for loss of expectation of life are reasonable.

On damages under the Fatal Accidents Act, the Plaintiff proposes

a) Multiplier of 8 years and a

b) Multiplier of 2/3

On income a sum of Kshs.735,750/= is proposed as gross income. The defendant proposes a the gross salary of Kshs.516,425/= after deductions as the Net income.

6. It is relied on the authorities cited and filed, employment contract agreements, salary vouchers both in Kenya and at the United Kingdom, Bank statements from the deceased Bank account at Standard Chartered Bank Limited. Relied upon are the case **Ephrahim Mutahi Mutunde -vs- Rapture Services Ltd t/a Rapture Bus services (2016) e KLR, Kephers Usenge Atieno -vs- Region Coast services Ltd HCC no. 112 of 2006 (Kisumu), Rosemary Ohenga - vs - John Ngandu Kinuthia & another Nairobi HCC no 2774 of 1997 and Sammy Kiptruto Rop - vs - Francis Cheruiyot Barbelio (2016) e KLR** among others.

7. The Defendants submissions are dated 20th September 2016 and filed on the 21st September 2016. it is proposed a sum of Kshs.10,000/= being damages for pain and suffering and Kshs.20,000/= for loss of expectation of life in view of the deceased advanced under age under the Law Reform Act.

8. On loss of dependency, the Defendant proposed Kshs.516,425/= being net of all deductions with a multiplicand of 2/3 and a multiplier of 2 years. The Defendant cited several authorities among them **Eldoret Express Co. Ltd -vs- William Kirui Korir & Another (2014) e KLR, Joseph Kahiga Gathii & Paul Mathaija Kahiga -vs- World Vision Kenya & 2 others (2014) eKLR.**

I have carefully considered the submissions by counsel and the documents filed in support, and the authorities cited.

9. **Under the Law Reform Act**, I have considered that the deceased died on the spot and may not have experienced pain if at all. This fact is not disputed by the parties. Guided by the following cases, **Silas Mugendi Nguru -vs- Nairobi Women Hospital (2014) e KLR, Eldoret Express Co Ltd - vs- William Kirui Korir & Shekil Ahmed Khan (2001) e KLR**, I shall award a sum of Kshs. Kshs.20,000/= damages for pain and suffering. See also **Phyllis Wairimu Maliana - vs- Kiru Tea factory (2016) e KLR.**

10. For damages for loss of expectation of life, the Plaintiff testified that the deceased was strong and healthy and would have continued to work for long. As stated in the case **Ephrahim Mutahi** (Supra), every person who dies as a result of tortious acts by another is deemed to have lost the life courtesy of the wrongful acts leading to the death. Damages under this subhead is at the discretion of the court but the discretion should be exercised judiciously. In the above case, a sum of Kshs.180,000/= was awarded while in the **Phyllis Wairimu Macharia** case above a sum of Kshs. 100,000/= was awarded. In **Silas Mungendi Mguru** (Supra) a sum of Kshs.150,000/= was awarded. The general thread running through decisions cited above is that courts would award conventional sums, upon about consideration of circumstances of each case.

I shall award of Kshs. 200,000/= under this subhead.

11. Damages under the Fatal Accidents Act also known as Loss of Dependency are awarded to the deceaseds' Dependants. In assessing the said damages the court ought to be guided by the age of deceased at date of death, the annual or monthly income and the expected length of dependency. See **Beatrice Wangui Thairu -vs- Hon. Ezekiel Bargetuny & Another Nairobi HCC No. 1438 of 1998.**

(unreported).

I have confirmed from documents submitted by the plaintiff being certified copies of entries pursuant to the **Births and Deaths Registration Act 1953 (United Kingdom)** that the wife/Plaintiff was 61 years old, the son 35 years old and the daughter 33 old years. The son and daughter are Civil Engineers whereas the Plaintiff is a housewife as stated in her controverted evidence, and further that the deceased was the sole bread winner and took care of all the financial requirements of the family. It is evident that the Plaintiff relied fully on the deceased for her upkeep. The children of the deceased being adults and Civil Engineers, they may not have required as much financial upkeep as would their mother who was then 61 years old.

12. The Plaintiff proposed a multiplier of 8 years whereas the Defendant proposed of 2 years. I shall therefore adopt a multiplicand of 6 years upon a multiplicand of 2/3 which is acceptable to both parties. See **Ephrahim Mutahi** Case (Supra)

13. The Defendant has urged the court to adopt Kshs.516,425/= as the NET income out of a gross monthly salary of Kshs.735,750/=. On the other hand the Plaintiff purposes that the gross salary of Kshs.735,750/= be adopted and cited the authority **Ephrahim Mutahi** (Supra).

I have considered submission and the authority cited. In the said authority, the court declined to adopt the gross monthly salary and deducted all statutory payments and taxes to arrive at the NET. I too shall adopt the NET monthly salary which is Kshs.516,425/=.

This loss of Dependand is

$$\text{Kshs.516,425} \times 12 \times 6 \times 2/3 = 24,788,400/=$$

14. I am alive to the fact that the award shall go to the same Dependants. I have considered the Principles enunciated in the **Kemfro Africa Case** (Supra) and the provisions of **Section 2(5) of the Law Reform Act**. I have also considered that the expression “**taking into account**” and does not mean deduction of the award from the award under the Fatal Accident Act.

See **Court of Appeal decision in Hellen Wanguru Waweru(suing as the legal representative of Peter Waweru Mwenja (deceased) - vs- Kiarie Shoe Stores Ltd (2015) e KLR Nyeri Civil Appeal No. 22 of 2014**, among others.

For those reasons the award under the Law Reform Act shall not be deducted from the award under the Fatal Accidents Act.

15. In summary these are the awards to the Plaintiff,

A Under the Law Reform Act

- (1) Pain and suffering - **Kshs. 20,000/=**
- (2) Loss of expectation of life - **Kshs. 200,000/= Total Kshs.220,000/=**

B Under the Fatal Accidents Act

(Loss of Dependency) - Kshs.24,788,400/=

C Special damages - Kshs. 26,750/=

Total - Kshs.25,035,150/=

Less 20% contributory negligence - Kshs. 5,007,030/=

NET AWARD

- Kshs.20,028,120/=

16. Interest on court rates shall be applied to the award of general and special damages from the date of this Judgment.

Costs of the Suit shall be to the Plaintiff.

Dated, Signed and Delivered this 27th Day of April 2017.

J.N. MULWA

JUDGE