



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CIVIL CASE NO. 89 OF 2000**

**FLORENCE WAMBUI MWANGI ..... PLAINTIFF**

**VERSUS**

**MICHAEL WARUI GITHINJI ..... DEFENDANT**

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

Florence Wambui Mwangi brought this suit in her capacity as the Administratrix of the Estate of her late sister Jane Nyambura Mwangi seeking general and special damages under the Fatal Accidents Act and the Law Reform Act against Michael Warui Githinji and James Macharia (hereinafter referred to as 1st & 2nd Defendants) respectively.

The plaintiff maintains that the deceased who was lawfully travelling as a fare paying passenger in the 1st Defendant's motor vehicle Registration No. KAJ 710F suffered fatal injuries in an accident caused by the negligence of the 2nd Defendant for which 1st defendant is vicariously liable.

A part consent judgment was recorded awarding a total of Kshs.234,457/= for pain suffering, loss of expectation of life and special damages which amount is to be reduced by 20% contribution. That is to say that the issue of liability has been impliedly settled and the only issue which remains for further determination is the quantum of damages if any in respect of lost years.

The plaintiff has produced the results slip for the deceased's K.C.S.E. results showing that she secured a grade "C". She has also produced a letter from Carlile College showing that the deceased was a student at the college. She testified that the deceased was aspiring to be an accountant. She was 21 years old and her mother and 4 younger sisters and 2 brothers looked forward to assistance from her. On this evidence the advocate for the plaintiff urged the court to adopt a monthly salary of Kshs.15,000/=, a multiplicand of 30 and a dependency ratio of 1/3.

The Defendant's were duly served with a hearing notice but did not attend court for the hearing which therefore proceeded ex-parte.

No evidence was adduced in support of the allegation that the deceased aspired to be an accountant. Indeed the deceased was doing a general basic computer course and not anything to do with accountancy. Secondly no evidence was adduced in support of the proposed income of kshs.15,000/=.

With the qualifications that the deceased had, including the computer knowledge the best that the

deceased could have done is a general clerical job for which the best income that she could possibly have got in the market is Kshs.10,000/=.

At her age of 21 years she could probably have worked upto the retirement age of 55 years, however given the uncertainties in life, she could also have died earlier due to some natural causes. I would therefore consider a period of 25 years to be an appropriate average period that she could have worked. I would adopt a monthly income of Kshs.10,000/= and a multiplier of 25 for purposes of calculating the damages in respect of lost years, and having discounted the amount payable to allow for lump sum payment I arrive at a figure of Kshs.2.6 million as general damages for lost years.

There was also a claim for loss of dependency. However this claim subsumed in the award for lost years. I do therefore not find it appropriate to award any further damages under that head.

There shall therefore be final judgment entered in favour of the plaintiff as against the Defendants jointly and severally and severally as follows:-

|                             |                           |
|-----------------------------|---------------------------|
| Pain & suffering            | - Kshs.100,000/=          |
| Loss of expectation of life | - Kshs.100,000/=          |
| Special damages             | - Kshs.34,457/=           |
| Lost years                  | - <b>Kshs.2,600,000/=</b> |
| Total                       | - Kshs.2,834,457/=        |
| Less 20% contribution       | - Kshs.566,892/=          |
|                             | <b>- Kshs.2,267,565/=</b> |

The plaintiff shall further have costs and interest on the decretal sum from the date of this judgment.Orders accordingly.

Dated signed and delivered at Nyeri this 1st day of December 2003.

**H. M. OKWENGU**

**JUDGE**



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