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| Case Number: | civ suit 289 of 98 |
| Date Delivered: | 17 Dec 1999 |
| Case Class: | Civil |
| Court: | High Court at Nakuru |
| Case Action: | Judgment |
| Judge: | Sarah Chibai Ondeyo |
| Citation: | ZACHARIA MUKORA vs GILGIL SAW MILLS LTD[1999] eKLR |
| Advocates: | - |
| Case Summary: | - |
| Court Division: | Civil |
| History Magistrates: | - |
| County: | Nakuru |
| Docket Number: | - |
| History Docket Number: | - |
| Case Outcome: | Judgment entered for the plaintiff |
| History County: | - |
| Representation By Advocates: | - |
| Advocates For: | - |
| Advocates Against: | - |
| Sum Awarded: | Kshs.316,000 |
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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT NO. 289 OF 1998

1. ESTHER NYAMBURA WAINAINA.....1ST PLAINTIFF
2. HARRISON KAMAU NGANGA.....2ND PLAINTIFF
3. ZACHARIA MUKORA.....3RD PLAINTIFF

V E R S U S

- GILGIL SAW MILLS LTD.....1ST DEFENDANT
- JAMES NJUGUNA.....2ND DEFENDANT

J U D G M E N T

The second plaintiff, describing plaintiff as the administrator of the estate of Virginia Wanjiku Kamau, filed this case against the two defendants to recover damages under the fatal accidents Act and the Law Reform, Miscellaneous provisions Act. The suit was filed for the benefit of the dependants of the deceased and for the benefit of the estate of the said deceased. The names of the dependants were not disclosed in the plaint.

Initially, there were three plaintiffs in this case, but the case between the 1st plaintiff and the defendants and the 3rd plaintiff and the defendants, was settled out of court. This judgment is therefore in respect of the case for the 2nd plaintiff alone.

It was the plaintiff's case that the deceased who was his daughter, and single mother of two sons, aged 7 years and 5 years respectively at the time of her death. The second plaintiff is the administrator of the estate of the deceased Virginia Wanjiku, having obtained a limited grant of letters of administration intestate to the estate of the deceased, for purposes of filing this case. The grant was produced as exhibit 3 issued on 4th March, 1988. The suit was filed on 12th May, 1988.

It was the evidence of PW3 that on 15th June, 1988, the 1st plaintiff and the deceased together with other people were traveling from Gilgil to Mbaruk as fare paying passengers on motor vehicle No. KTL 322. Somewhere near Mbaruk, a lorry registration number KQQ 278, belonging to the 1st defendant and driven by the second defendant was driven so carelessly by the second defendant that, it rammed into motor vehicle KTL 322 from the rear killing the driver of KTL 322 and one passenger by name Naomi Wanja, on the spot, and injuring other passengers, among them, Virginia Wanjiku Kamau, who is the subject matter of this judgment. The second defendant at the material time, drove motor vehicle KQQ 278 in his capacity as a servant and/or agent of the 1st defendant.

As a result of the injuries which the deceased suffered, she was taken to hospital where she remained for a period of 55 days before she succumbed to the injuries and died. The death certificate was produced as exhibit 2 and it showed that she died at the age of 21 years, as a result of the injuries she sustained during the accident.

A police Officer (PW1) produced a copy of the O.B. Report of the accident (Exhibit 1). The report shows that the deceased, Virginia Kamau was one of the people who sustained injuries during the accident and was taken to hospital and admitted in Ward 13. It was the evidence of the second plaintiff that the deceased ran a tailoring business at Mbaruk and that she also sold second hand clothes. Her monthly income, he said was about Kshs.3,000 per month. He called a witness who said that the deceased was his tenant in a shop at Mbaruk paying rent of Kshs.300 per month and produced a receipt exhibit 4 for Kshs.600 being rent for the month of May and June, 1985.

The allegation by the 2nd plaintiff, that his deceased daughter ran a tailoring business and sold 2nd hand clothes cannot be true because in the plaint, paragraph six (6) which I reproduce below, it states as follows of the deceased;-

“.....prior to her death, the deceased was aged 21 years and in good health. He was employed as a house girl earning Kshs.750 per month. She had good financial prospects generally and was a healthy young woman with a normal expectation of life.”

It is clearly pleaded that the deceased was a house girl with a salary of Kshs.750 per month. Had she been self employed as a tailor and business lady selling second hand clothes, that could have been pleaded in the plaint. I am satisfied and I find that the deceased was not a tailor or running any business, and that the evidence of the second plaintiff to the effect that she was a tailor and in business is a deliberate lie aimed at misleading the court. I am also satisfied and I find that the receipt (exhibit 4) is a forgery and the same is rejected.

It is pleaded that the deceased left two sons aged 5 years and seven years who at the time of the hearing of the case were in Form III. The deceased also supported her parents.

A defence was filed for the defendants but on the hearing date, neither the defendants nor their advocate attended court although they were notified of the hearing date. The plaintiff's evidence has therefore not been challenged or disputed. On the undisputed evidence of the second plaintiff and his witness, I am satisfied and I find that the second defendant drove motor vehicle KQQ 278 in a careless and dangerous manner, and too close to motor vehicle KTL 322 as a result of which the 2nd defendant's vehicle rammed into motor vehicle KTL 322 from the rear and the deceased suffered fatal injuries as a result of the collision. The 2nd defendant is liable to pay damages to the estate and dependants of the deceased. The 1st defendant, being the employer of the second defendant is vicariously liable to the estate and dependants of the deceased.

I have much earlier rejected the allegation that the deceased was a tailor or that she was in any type or form of business since that is not pleaded in the plaint. I find that as is pleaded in the plaintiff, the deceased was in fact a house servant earning a salary of Shs.750 per month. Out of this sum, she must have spent about 1/3 on her own requirements and the remaining 2/3 on her children and parents. She died at the age of 21 years. With improved health facilities, perhaps she could have lived to die of old age. It is also possible that she could have died sooner or later due to natural causes. It is difficult to tell how long a person could live and so, as the court ventures into this area of uncertainties, some amount of speculation cannot be avoided. It is fair and reasonable to imagine and find that perhaps she could have lived for another 26 years during which time, she could have continued to support and educate her two sons and to some extent support her parents who cannot really say that they wholly depended on her without making their own efforts to earn a living, after all she was only 21 years old. They must have

brought her up and supported her before she become employed. When she was unemployed, the parents must have been supporting themselves and they could not have stopped supporting themselves just because she took up a job as a house servant.

With a salary of Kshs.750 per month, and a multiplier of 26 years, with the deceased spending 2/3 of the money on her dependants, the loss of dependancy is worked out as shown below:-

$$2/3 \times 12 \times 26 \text{ years} \times 750 = \text{Kshs.156,000}$$

The deceased died after 55 days in hospital. She must have suffered a lot of pain all that time. I shall award Kshs.100,000 for pain and suffering and another Kshs.60,000 for loss of expectation of life.

I therefore enter judgment for the plaintiff as against the defendants jointly and severally in the following terms:

| | |
|---------------------------------|-----------------------|
| (a) Loss of expectation of life | = Kshs. 60,000 |
| (b) Pain and suffering | = Kshs.100,000 |
| © Loss of dependancy | = <u>Kshs.156,000</u> |
| Total | = <u>Kshs.316,000</u> |

(Three Hundred and Sixteen Thousand Only)

(d) I also award costs of the suit and interest all these sum at court rates.

(e) The claim for special damages was not proved and it is rejected.

(f) Once the costs have been taxed, by the Deputy Registrar, the 2nd plaintiff shall come back to this court for apportionment of the damages and cost to all the four dependants i.e. the parents and two sons of the deceased.

These are the orders of the court.

S. C. ONDEYO

JUDGE

17.12.99

Delivered this 17th day of December, 1999.

2nd plaintiff present.

S. C. ONDEYO

JUDGE

2nd Plaintiff:

I apply for release of original exhibit 2 and 3. I replace them with copies.

Order: Release exhibits 2 and 3. Replace them with copies.

S. C. ONDEYO

JUDGE



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