



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CIVIL APPEAL NO. 109 OF 2014

CORAM: D.S. MAJANJA J.

BETWEEN

TOBIAS ODOYO OBURU.....APPELLANT

AND

RUTH MORAA OIGO & DENIS OTUNDO SAIDI

suing as the legal representatives of

KENNETH OIGO OTUNDO (Deceased).....RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. J. M. Njoroge, CM

dated 8th September 2014 at the Chief Magistrates Court

at Kisii in Civil Case No. 370 of 2012)

JUDGMENT

1. The deceased died as a result of a road traffic accident that took place on 2nd May 2012 along the Kisii-Kilgoris road. He was a pillion passenger on a motorcycle which was involved in a collision of two motor vehicles, the appellant's motor vehicle registration number KAH 254A and another motor vehicle registration number KAQ 884S. As a result of his death, the respondents claimed damages from the appellant under the ***Law Reform Act (Chapter 26 of the Laws of Kenya)*** and ***Fatal Accidents Act (Chapter 32 of the Laws of Kenya)***. The issue of liability was settled by a consent recorded in the ratio of 80:20 against the appellant. Thereafter the court assessed damages and made the following award which has led to this appeal;

Pain and Suffering	Kshs.	20,000/-
Loss of expectation of life	Kshs.	100,000/-
Loss of Dependency	Kshs.	1,024,000/-
Funeral Expenses	Kshs.	30,000/-
Special Damages	Kshs.	20,000/-
Less 20%		
TOTAL	Kshs.	955,200/-

2. At the hearing of this appeal, Mr Mbeka, counsel for the appellant, submitted that the appellant was only challenging the multiplier of 16 years awarded under the claim for loss of dependency under the ***Law Reform Act***. He submitted that the deceased was aged 39 years old thus the multiplier of 16 years was excessive. He considered a multiplier of 16 years unreasonable.

3. Mr Nyatundo, counsel for the respondent, supported the award and submitted that the appellant had not demonstrated to this court that there was any reason to intervene in the assessment.

4. In **Board of Governors of Kangubiri Girls High School & Another v Jane Wanjiku Muriithi & Another NYR CA Civil Appeal No. 35 of 2014 [2014] eKLR**, the Court of Appeal held that the choice of multiplier is a matter of the court's discretion which must be exercised judiciously. In **Roger Dainty v Mwinyi Omar Haji & Another MSA CA Civil Appeal No. 59 of 2004 [2004] eKLR** the Court also held that the determination of the multiplier is a question of fact to be determined from the peculiar circumstances of the case. In determining the multiplier to be adopted, the court may consider the nature of employment of the deceased and the fixed retirement age, the period of expected dependency, the conditions of life of the deceased could have lived, keeping in mind that the standard of life and the life expectancy in Kenya has reduced over the years due to factors such as poverty, impact of HIV and the risk of road traffic accidents.

5. At the time of his death the deceased was a businessman aged 39 years. The trial magistrate held that the deceased would have carried on business actively until the age of 60, though there taking into account imponderables of human life, he awarded a multiplier of 16 years.

6. For an appellate court to interfere with an award of damages, it must be shown that the trial court, in awarding damages, took into consideration an irrelevant fact or failed to consider a relevant fact or that the sum awarded is inordinately low or too high that it must be a wholly erroneous estimate of the damage, or it should be established that a wrong principle of law was applied (see **Butt v Khan [1981] KLR 349**).

7. I have considered the facts and I note that the deceased had four children between 4 and 15 years, meaning that the period of dependency of the children would be 14 years and given that the deceased was a businessman, I do not consider the multiplier of 16 years excessive or outside the bounds of reasonableness.

8. I dismiss the appeal with costs to the respondent. The appellant shall pay costs assessed at Kshs. 20,000/-.

DATED and DELIVERED at KISII this 12th day of July 2018.

D.S. MAJANJA

JUDGE

Mr Mbeka instructed by L. G. Menezes and Company Advocates for the appellant.

Mr Nyatundo instructed by Khan and Associates Advocates for the respondent.