THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HCT-00-CV-CS-1215 OF 2000

MUKUNDIIRE JESCA::::::::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

THE ATTORNEY GENERAL::::::::::::::::::::::::::::::::DEFENDANT

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

JUDGEMENT

The plaintiff is a widow of Godfrey Muhanguzi (the deceased) and brought this suit under the Law Reform (Miscellaneous Provisions) Act, Cap. 79. Her late husband was run down on 7/4/2000 by a Ministry of Works motor vehicle driven by one John Ayeya in course of his employment. According to the plaint, the accident was due to the negligence of the driver of the offending motor vehicle. The claim is for special and general damages and costs of the suit.

The defendant denied liability, and contended that there was contributory negligence on the part of the deceased as was pleaded in paragraph 6 of the Written Statement of Defence.

During scheduling the following facts were agreed upon:

1. The accident occurred on 7/4/2000 at 6.00 p.m. at Nakirebe/Nsimbe in Mpigi District, along the Kampala - Masaka Road.

2. The Land rover pick-up Reg. No. UG 0214W that knocked down the cyclist, belonged to the Ministry of Works and was being driven by one John Ayeya Luguma, an employee of the Ministry of Works.

3. At the time of the accident, the said driver was acting in the cause of employment.

4. The deceased was riding his bicycle from Masaka, heading towards Kampala.

5. The Land rover UG 0214W was also travelling in the same direction from Masaka to Kampala.

6. The deceased one Godfrey Muhanguzi died on the spot as a result of that accident.

7. The plaintiff brought the suit in her own capacity as widow and administrator of the estate of the late Muhanguzi, and on her children's behalf.

The following issues were framed:

1. Whether the accident occurred as a result of the negligence of the Defendant's driver of motor vehicle UG 0214W one John Ayeya Luguma.

2. Whether there was contributory negligence on the part of the deceased, Godfrey Muhanguzi.

3. Whether the plaintiff is entitled to the remedies sought/Quantum of damages.

4. Costs.

The plaintiff had two witnesses, herself and one Jackson Katabazi, an eye witness to the accident who also testified as to the deceased's income. The original Traffic Accident Report and Sketch plan were also tendered in as exhibits.

PW1: JACKSON KATABAZI testified that he was 40 years of age, a charcoal dealer, and a resident of Kitemu on Masaka Road who knew the plaintiff and her husband, the deceased, one Godfrey Muhanguzi, as his friend. He also knew the circumstances under which Muhanguzi died. PW1 and the deceased were riding their bicycles returning from buying charcoal from Kiringente village in Mpigi District. As they were riding on the left hand of the road, from Masaka side towards Kampala, a white Landrover came at a high speed from behind, by passed PW1 and knocked dead the deceased who was in front of PW1. It was a sunny day. PW1 decided to stay with the dead body while the other people reported the matter to police who came and found him at the scene and took measurements. The body was taken to Mulago, then home to the deceased's village called Nyabiyooje, Ntungamo District for burial.

PW1 further testified that Shs. 280,000= was used to hire the vehicle that transported the body from Mulago to Nyabiyooje village. He made two police statements regarding the accident.

Before the deceased's death, PW1 had known the deceased for almost 20 years, but had dealt with him as a charcoal dealer for eight years. Each of them would make about Shs. 20,000= per day from the sale of charcoal, out of which the profit would be Shs. 13,000= per day, seven days a week. The deceased was married to one wife, the plaintiff, and they had five children, four of whom were their biological children.

During cross-examination, PW1testified that both him and the deceased resided at Kitemu, but their families were in the village. PW1's village was in the same Gombolola, but different villages. It is the people and colleagues in Kitemu who helped to raise money to take Muhanguzi's body to the village. A total of about Shs. 280,000= was collected, and an ordinary PSV Omnibus was hired for both the coffin and the mourners. PW1 did not know if the deceased had other sources of income. Neither did PW1 know the exact age of the deceased, but he was younger than PW1. He further testified that the offending vehicle did not hoot and neither was the deceased riding his bicycle in the

middle of the road. The cost of the vehicle taking the body to the village was Shs. 280,000= and they had to pay Shs. 35,000= for the coffin.

The next witness, PW2, was the deceased's wife Jesca Mukundiire who testified that she was 30 years old, and resided at Nyabiyooje village, Kazara County, Ntungamo District. She testified that her late husband died in a motor accident. The deceased was around 30 years when he died. They had married in 1991, customarily and she had three children (all girls) with the deceased as follows:

i) Jaskrin Ninpanya Mukama aged 9 years.
ii) Patience Kukundakwe aged 6 years.
iii) Godra Natweeta aged 4 years.

The deceased also had the following dependants:

i) His mother Edinansi Kyoyerize aged 60 years.
ii) His sister aged 35 years, called Scovia Massasi.
iii) Andrew Katureebe, an orphan nephew to the deceased aged 12 years.
1v) Marion Nuwamanya aged 10 years, an orphan niece to the deceased.

PW2 testified that she used to reside in the village with all the aforementioned children and dependants and would cultivate for subsistence. Her husband would send about Shs. 300,000= per month to her to sustain his family. They had spent some money on the funeral, and a bull was brought for about Shs. 250,000=.The villagers contributed the food items, except the bull, posho worth Shs. 30,000=, millet for Shs. 20,000= and crockery (hired) for Shs. 25,000=. They spent nothing on building the grave.

PW2 testified further that she used to contribute about Shs. 100,000= per month towards the family expenses (e.g. clothing, sugar, wages for workers etc), and was responsible for feeding, clothing and medical expenses of her sister and mother in law, plus the nephew and niece. She got income from subsistence farming but only twice a year, when they

harvested crops. She never remarried, though she got another child, by another man who supported her only in respect of this one child. PW2 not only lost a husband, she also lost her children's father and his financial assistance, among other things.

The plaintiff had one other witness to produce, ie the police officer to tender the police report. Before Counsel could call on him, however, there were a number of adjournments of the case due to absence of the defendant's Counsel, stated then to be Mr. Oluka Henry. When Mr. Oluka finally appeared on the 11/02/2009, he reported that the defendant had decided that since they could no longer get their expected witness, the driver of the motor vehicle that was involved in the accident, they would concede to liability and only submit on general damages. Both Counsel, therefore submitted on general damages.

On damages, it was submitted for the plaintiff that from the Police abstract, the deceased was aged 30 years. He still had 25 years of gainful employment. As a charcoal seller, he would earn about Shs. 200,000= a month. This is from evidence of PW1 Jackson Katabazi whom the deceased worked with, who said they would get Shs. 10,000= a day and would work including Sunday. That is Shs. 300,000=. If he used two thirds of that on his family, this would mean Shs. 200,000=. If this figure is then multiplied by 12 months and 25 years, you would get Shs. 60,000,000=. Since it is a lump sum, the plaintiff was entitled to 80% of that which is Shs. 48,000,000=.

Mr. Oluka, on the other hand, argued that there was no hard and fast rule that one would consistently earn Shs. 10,000= everyday. Life is always punctuated with various vagaries which do not engender human nature with the consistency of earnings. While conceding that the deceased spent 2/3 of his income on his salary on his family, counsel submitted that one could not always definitely earn Shs. 10,000= a day, and proposed a figure of Shs. 200,000= per month as a fair sum earned over a period of 30 days in any one month. He further submitted that the multiplier in this case should be one of life expectancy, that is to say, 45 years, and not 55 years (retirement age). The figure would then be left undiscounted.

In reply, the plaintiff's counsel, Mr Kakuru submitted that if life expectancy was 45 years, there would not be a retirement age of 55 or 60. The law on retirement should be the guide. Even National Social Security Fund specifies when one can be paid. The age for life expectancy is for planning and other statistical purposes. Even the monthly earnings which the plaintiff had put at Shs. 300,000= were very reasonable considering that the case was filed in 2000. The deceased would now be earning more. Counsel's argument of consistency would also apply in favour of the plaintiff. And since the defendant offered no evidence in that respect, court should accept evidence on record which was not contradicted in cross examination.
Taking into account that this case has been in court for over 8 years, the figure proposed for the plaintiff should not be reduced.

I have considered the submissions of both learned counsel, and I find that the only points of disagreement are the monthly earnings of the deceased and the expected working life of the deceased which the plaintiff's counsel based on the general retirement age of 55 years, while Counsel for the defendant said should be based on the current life expectancy which he said should be 45 years. No authorities were provided by either counsel to support their positions. However in ***British Transport Commission Vs Gourley (1956) AC.185 at page 197,*** which was cited with approval by the Supreme Court in ***Robert Coussens Vs Attorney General,*** it was held that:

> ***"The broad general principle which should govern the assessment of damages in cases such as this (accident) is that the tribunal should award the injured party such a sum of money as will put him in the same position as he would have been if he had not sustained the injuries. See per Lord Blackburn in: Livingstone Vs Rowyards Coal (1880) 5 App Cas. 259"***
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> ***"If (the plaintiff) had not been injured, he would have had the prospect of earning a continuing income, it may be, for many years, but there can be no certainty as to what would have happened. In many cases, the amount of that income may be doubtful even if he had remained in good health and there is***

always the possibility that he might have died or suffered from some incapacity at any time. The loss which he has suffered between date of the trial may be certain, but his prospective loss is not. Yet damages must be assessed as a lump sum once and for all not only in respect of loss accrued before the trial but also in respect of prospective loss. Such damages can only be an estimate, often a very rough estimate of the present value of his prospective loss".

In Robert Coussens case (Supra) Oder JSC, had this to say;

"***An estimate of prospective loss must be based in the first instance, on a foundation of solid facts; otherwise it is not an estimate, but a guess. It is therefore, important that evidence should be given to the Court of as many solid facts as possible. One of the solid facts that must be proved to enable the court to assess prospective loss of earnings is the actual income which the plaintiff (deceased) was earning at the time of his injury. The method of assessment of loss of earning capacity after the facts have*** **been proved is, in my view, persuasively stated by:** ***Mcgregor on Damages 14th Edition in paragraph 1164 (page 797)*** as follows:

"The Courts have evolved a particular method of assessing loss of earning capacity, for arriving at the amount which the plaintiff has been prevented by the injury from earning in the future. This amount is calculated by taking the figure of the plaintiff's present annual earnings less the amount if any, which he can now earn annually and multiply this by a figure which, while based upon the number of years during which the loss of earning power will last, is discounted so as to allow for the fact that a lump sum is being given now instead of periodic payments over the years. This figure has long been called the multiplier; the former figure has now come to be referred to as the multiplicand. Further adjustment however, may have to be made to the multiplicand or multiplier on account of a variety of factors: viz, the probability of future increase or decrease in the annual earnings the so called contingencies of life and the incidence of inflation and taxation".

In *Davies and Another Vs Pewell Duffryu Associated Collieries Ltd. (1942) 601 (HL*, also cited in Robert Coussens case (supra) Lord Wright stated at page 617:

> ***"There is no question here of what may be called sentimental damage, bereavement, pain or suffering. It is a hard matter of pounds, sterling and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extend may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years purchase. That sum however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again remarried and thus ceased to be a dependant and other like matters of speculation and doubt".***

I stand guided by the principles laid down in the above cases for evaluating general damages in accident cases (even tata). I note that in his calculation, counsel for the plaintiff had by and large followed the same principles. What was probably lacking was the provision for the uncertainties as to what would have happened. Even if the deceased had not been killed in that accident, there is always the possibility that he might have died or suffered from some incapacity at any time. Even the wife may cease to be a dependant on remarriage etc.

I agree that the working life should be taken as up to 55 years and not just 45 years as submitted for the defence. All the above considered, I take it that the deceased could have worked till age 55 years, at an income of about 300,000/= a month, and used two thirds of this on his family. Counsel for the defendant had prayed for Shs. 48 million in general damages, while the formulae proposed by Mr. Oluka would yield Shs. 24 million as the proposed general damages. I am of the view that Shs 30 million would be adequate

compensation in damages. As for the special damages, most of these in the particulars were not specifically proved or even proved by testimony. I therefore allow the following special damages which I find proved in testimony:

1. Shs. 325,000= for feeding mourners.
2. Shs. 50,000= for transporting the body of the deceased to Mulago Hospital.
3. Shs. 35,000= for the coffin.
4. Shs. 30,000= for the treatment of the body.
5. Shs. 20,000= cost of accident report.

In conclusion, the plaintiff is awarded Shs. 30 million as general damages, Shs. 460,000= as special damages, and costs of this suit.

Elizabeth Musoke
JUDGE
23/03/2009

Ruling read in the presence of:

Melanie Nagasha, holding brief for Mr. Keneth Kakuru
Attorney General not represented.
Imelda Naggayi, Court Clerk

Elizabeth Musoke
JUDGE
23/03/2009