

TANZANIA / JUDGMENT

mariam mussa messo vs boniface chesco myovele others 2017 tzhc 2217 10 february 2017

COURT
TZHCDECIDED
10 February 2017

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM
CIVIL CASE NO. 272 OF 2014 MARIAM MUSSA MESSO..... PLAINTIFF
VERSUS BONIFACE CHESCO MYOVELE..... 1st DEFENDANT AQUARIUS
ROADWAYS TRANSPORT COMPANY LIMITED..... 2nd DEFENDANT LIBERTY
EXPRESS (TANZANIA) LIMITED.... 3rd DEFENDANT 21/11/2016&10/02/2017

JUDGMENT

MWANDAMBO, 3 This is an undefended suit in by the Plaintiff in her capacity as an i administratrix of the estate of the late Godfrey Daniel Magati (the deceased) who met his sudden death from a road accident by a car in which the 1st Defendant was its driver. By reason of the alleged death, the Plaintiff claims special damages in the sum of Tshs. 181,377,768/=, general damages interest and costs. Although the Defendants were duly served by publication in Mwananchi News Paper following abortive efforts to serve them physically through a Court process server none of them entered appearance to defend the suit and hence an order for hearing exparte by oral evidence pursuant to order VIII Rule 14 (2) (b) of the Civil Procedure Code, Cap 33 R.E. 2002. The undisputed facts of the case are as follows. The deceased, who was 35 years of age on 31, December 2011, was an employee of Tanzania Zambia Railways Authority until his sudden demisethrough a road accident on 31 December, 2011. Until his death, the deceased was earning a salary of Tshs 453,200/= as evident by a salary slip for December, 2011 forming part of exhibit P2. According to the Plaintiff's evidence led by Doris Busee learned Advocate, the decease had 25 years to retirement but for his untimely death. It is equally not in dispute from the death certificate C. No. 1000008752 dated 15 February, 2012 (exhibit P5) that the cause of death was severe brain tissue injury and severe head injury. Ownership of the cars/ trailer was established through certified copies of Motor vehicle Registration cards admitted as exhibits PS1 (a) and PS1 (b) respectively. Following the accident resulting into the death of the deceased, the 1 stDefendant was arraigned in Court for careless driving on the a public road contrary to section 41 and 63 (2) (b) of the Road Traffic Act, Cap 168 R.E 2002 (per exhibit P4) before Temeke District Court which convicted him on his own plea of guilty and sentenced him

to pay a fine of Tshs 40,000/= (exh. P3). After the death, the Plaintiff who was duly appointed as an Administratrix of the deceased by Kinondoni Primary Court per exh. P 2A made demands to the Defendants for compensation but to no avail as evidenced by copy of the demand note addressed to Tanzindia Insurance dated 2 May 2012 (exh. P6). By reason of the refusal to compensate the Plaintiff for the wrongful death of her late brother, she instituted the suit claiming Tshs 181,377,768= by way of salaries for the remaining period up to the deceased's retirement at the age of sixty (60) years. Ms. Doris Busee learned Advocate filed short closing submissions inviting the Court to enter judgment for her client on the basis of oral and documentary evidence placed on record. There is no dispute as to the death and the cause of the said death at the instance of the 1st Defendant who was found guilty of and convicted of careless driving per exhibit P 4. There is equally no dispute that at the time of the accident, the 1st Defendant was driving in the course of his employment of the 2nd Defendant and I think the 3rd Defendant. By the doctrine of vicarious liability the 2nd and 3rd Defendants are found vicariously liable for the death of the deceased. The next question for my determination relates to damages for the wrongful death. Admittedly, the only evidence available is constituted by copies of monthly salary slips from the deceased's employer. There is no other material on which to assess damages. Understandably from the examination of pleadings, the evidence is scanty as it is, the Plaintiff would have the Court make an order for compensation equivalent to salaries the deceased would have earned up to his retirement but for his untimely death. Is there any justification for that? That I will tell shortly. The right to sue for wrongful death is governed by statute that is to say; section 4 of the Law Reform (Fatal Accidents and Miscellaneous 3 I provisions) Act Cap. 310 R.E 2002. I take the liberty to reproduce S. 4(1) of cap 310 as under: Every action brought under the provisions of this Part shall be for the benefit of the dependants of the person whose death has been so caused, and shall be brought either by and in the name of the executor or administrator of the person deceased or by and in the name or names of all or any of the dependants (if more than one) of the person deceased. It will be obvious from the foregoing section that an action for wrongful death of a deceased as it were must be brought for benefit of the dependants of the person of whose death was so caused. Admittedly there is no dispute that the Plaintiff is an administratrix of the estate of the ... estate but that fact alone does not entitle her to bring an action for wrongful death of the deceased without her stating facts and evidence on which her benefit has she instituted the suit. She has not pleaded that she was, immediately before the death of the deceased his dependant neither has she pleaded facts supported by evidence that the claim is for the benefit of any of the deceased's dependents. Indeed, the plaint does not allege anything about any dependent left behind by the deceased. Perhaps it may not be irrelevant to state here that Cap 310 is derived from English law following the abolition of the common law rule which recognized claims arising out of wrongful death as any other injury to a person entitling persons other than dependants to claims for compensation. 4 See: Winfield and Jolowicz on Tort, 12th Edition by W. V.H Rogers, at page 661 That being the legal position, a plaintiff who fails to place himself or herself within the ambit of section 4(1) of Cap 310 cannot maintain any cause of action for the death of a deceased person. It is for that reason the Plaintiff cannot under the circumstances bring an action for compensation for wrongful death without disclosing her basis or cause of action against the Defendants. There can thus be no basis for discussing any

compensation in the manner the Plaintiff has invited the Court to do. , In the event and for the foregoing reasons, the suit must be and is hereby dismissed with no order as to costs. Order accordingly. , i L. J. S. MWANDAMBO JUDGE 1 10/03/2017

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