



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL. 188 OF 2008**

**ANNE ATIENO ABADE & ANOTHER.....PLAINTIFFS**

**VERSUS**

**KICHANA PHILIP .....DEFENDANT**

**Coram :** **Mwera J.**  
**Mrs Kalwa for Plaintiff**  
**N/A for Defendant**  
**Njoroje court clerk**

**JUDGEMENT**

The judgement herein followed a formal proof based on the plaint filed here on 14.5.08. The defendant did not enter appearance after due service and a default judgement was entered against him on 13.8.08. The court is thus to enter final judgment in the matter.

It was pleaded that on 7.7.07 one Tom Mboya Ochieng, now deceased, while as a police officer he was aiding an accident victim along Ngong Road the defendant drove by so negligent and knocked down the said Tom fatally. That the defendant drove his motor vehicle reg no. KAV 133T at the scene at an excessive speed in the circumstances; he did not keep proper control of it to avoid the accident or slow down, brake or do anything in that regard. That the defendant had no regard for the safety of other road users; he drove a defective motor vehicle negligently with no sense of road safety rules. The deceased aged 28 years died leaving a wife, a daughter and his 2 parents without support, he used to give them a working as police officer. So the plaintiffs suing as joint administrators of Tom's estate sought damages under the Law reform and fatal Accidents Acts, costs and interest.

As noted earlier, judgment in default of appearance was entered and the 2<sup>nd</sup> plaintiff Benard Onyang'o Ochieng (PW1) went into the witness box to testify in formal proof. He, with the widow of the late To Mboya (the 1<sup>st</sup> plaintiff), had brought this suit having been granted a grant ad litem on 11.02.08 (Exh P1). The plaintiffs acquired a certificate of search from KRA (Exh. P2) showing that motor vehicle KAQV 133T belonged to the defendant who knocked down the deceased along Ngong Road. On being informed by the 1<sup>st</sup> plaintiff about the death of his brother (Tom) in Nairobi, the witness travelled to the hospital where he had been admitted. Tom died some 2 days later. The accident was reported to the police (Exh P3, the abstract). The deceased was a police officer (Exh P 4) earning sh. 18 905/= per month (Exh P5 – June 2007 payslip) with which he supported his wife, child and 2 parents. ( Exh P6). The witness

produced Tom's daughters birth notification certificate (Exh P7) as well the death and burial certificate of the deceased. (Exh P\* (a) (b)). Also produced were notices to the defendant and his insurer about the accident and the claim (Exh. P9, 10). So the court should grant the reliefs.

P. C. David Osebe (PW2) was on patrol duties with the deceased along Ngong Road on the night of the accident. They noticed some 2 motorists who had been involved in an accident. They stopped their own vehicle safely nearby and went over to assist. But as they did so the defendant came by driving at a high speed and hit Tom. The two motorists had put out warning signs. The offending motorist stopped; PW2 went and arrested him. He called for help and the deceased was taken to hospital. He died there. That closed the trial and counsel submitted.

It was stated that liability had been proved as against the defendant coming to damages it was proposed under the Law Reform Act that sh. 100,000/= be awarded on either item of pain and suffering and loss of expectation of life.

Under the fatal Accidents Act, with a multiplier of 23 over the income of sh.18,905/= the court was urged to award sh. 3,478,52/= loss of dependency with nothing for special damages as none had been pleaded. Two cases were cited to support the proposals.

Beginning with damages under the Law Reform Act and Tom Mboya having died 2 days after the accident:

Pain & suffering sh.	70,000/=
Loss of Expectation of Life sh.	<u>100,000/=</u>
	170,000/=

Sums under this Act are usually nominal

Loss of dependency under the Fatal Accidents Act is computed thus:  $18905 \times 12 \times \frac{2}{3} \times 18 = 2,722,320/=$

The court took a multiplier of 18 as reasonable and considering the uncertainties of life and other relevant aspects.

The grand award is

Under the Law Reform Act sh.	170, 000/=
Under the Fatal Accidents Act sh.	<u>2,722,320/=</u>
Total	sh. <u>2,892,320/=</u>

In the light of the fact that the same claimants have awards under the two Acts and to avoid double benefits (see Kemp & Kemp: **The Quantum of Damages**) the total award is reduced by that under the Law Reform Act leaving a net of sh. 2,722,320/= (two million seven hundred and twenty two thousand three hundred and twenty shillings). In cases like this a principle lies that due to accelerated award award a certain percentage be knocked off. But having regard to the dependants this court is not inclined to do so. Costs and interest awarded at the lower court rates.

Judgement accordingly.

Dated 31.3.11.

**J. W. MWERA**  
**JUDGE**