



1. Running down cause
2. Motor vehicle collision between two vehicles
3. Passenger, female adult aged 46 years old in 2007
4. **injuries**
  - a) amputation of right limb above the knee
  - b) Deep cut wound on medial aspect of left knee
  - c) Severe injury to the left eye
  - d) Blunt injuries on chest
5. Plaintiff files suit on 15<sup>th</sup> August, 2007 but dies on 6<sup>th</sup> April, 2008 aged 48 years
  - a) Cardiopulmonary arrest due to hypolciami depression due to hypertension.
  - b) Legal representative substituted under Order 23 r 3 civil procedure rules on 19.2.09(Ang'awa J)
6. **Liability** – 100% against the defendant 1 and 2 jointly and severally
7. **Quantum**
  - I. General Damages
    - i) Pain suffering and loss of amenities Kshs. 800,000/=
  - II. Special Damages
    - a) Treatment expenses – Kshs. 59,969/=
    - b) Police Abstract Kshs. 200/=
    - c) Official Search Kshs. 500/=
    - d) Medical report Kshs. 4,000/=
    - e) Future medical expenses of artificial limb to be stated.
8. **Case Law**
  - a) **Dauglas Erick Nyakundi Masira V Rongai Workshop Ltd & Another**

HCCC. 88/07(Ang'awa J)

b) **Losiamuro V Lochab Brothers & Another HCC. 48/1988**

HCCC. Mombasa (Wambilyangah J)

9. **Advocates**

K.O. Obae advocate from the firm of K.O. Obae & Co. advocate for the Plaintiff – present

G.B. Moturi advocate from the firm of G.B. Moturi & Co. advocates for the defendant - present

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERICHO**  
**Civil Case 92 of 2007**

**SILVANUS ONDIEK OCHOLA .....PLAINTIFF**

**VERSUS**

**DELTA HAULAGE SERVICES LTD & ANOR..... DEFENDANT**

**JUDGMENT**

**I. Procedure**

1. On sustaining injuries due to a road traffic accident, Mary Atieno Ondiek, then aged 46 years old in 2007 filed suit against the defendant Delta Haulage Services Ltd and Hussein Ibrahim for damages on 15<sup>th</sup> August, 2007.
2. She sought this courts orders that she be compensated in damages both General and Special. The Defendants entered appearance, after being correctly sued, and filed defence denying the allegations claimed.
3. On the 6<sup>th</sup> April, 2008 the plaintiff passed away. Her cause of death was described as being due to cardio pulmonary arrest due to hypoglycemic depression due to hypertension.
4. Her husband/widower took out grant of letter Ad Litem and became legal representative under **Order 23 r 3** Civil Procedure Rules. He then proceeded with the conduct of this case.

**II: Facts.**

5. On the material day of the 17<sup>th</sup> April, 2007, the late Mary Atieno Ondiek together with PW4 Felinda Atieno were passengers in motor vehicle registration KAS 642s. According to PW4, whilst on the said road a motor vehicle coming from the opposite direction collided with the vehicle. This vehicle KAR 332 J Mercedes Benz trailer lorry was traveling at an excessive speed in a zig zag manner that it collided into the vehicle the Plaintiff and PW4 were traveling in.
6. Both PW4 and the late Plaintiff sustained injuries. PW4 was treated at Kericho District hospital and discharged. The late plaintiff was treated at Kericho District Hospital then later transferred to Tenwek Hospital. Her injuries included inter alia an amputated right lower limb.

### **III: Liability**

7. It was pleaded by the Plaintiff that a Traffic Court case No. 662/07 at Kericho was raised against the 2<sup>nd</sup> defendant driver. This case was never produced under **Section 34** of the **Evidence Act Cap 80** Law of Kenya before court.
8. The police PW3 P.C Samuel Saiga came to give evidence in this case whereby a copy of a police abstract was produced. The original being in another court.
9. The only evidence this court therefore has on liability is the evidence of PW4. She appears to be a truthful witness in her evidence.
10. The defendant failed to come to court. They nonetheless filed a defence in which they blame liability and fault on the motor vehicle registration KAS 042S as being negligent and causing the said accident.
11. According to **order 1 r 18** Civil Procedure Rules the defendants, if they blame a third party for an accident, they are required to take out third party proceedings where they attribute the blame, whether partially or wholly on the third party. No such third party proceedings had been taken out.
12. The late Mary Atieno Ondieki was a passenger. She did not contribute to the accident according to the evidence before this court.
13. I accordingly hold that liability has been established against both the defendants jointly and severally. This is hereby computed at 100%.

### **III: Quantum**

14. The late plaintiff sustained injures as a result of the said road traffic accident. This being:-

- a) amputation of right (lower limb above the knee)*
- b) Deep cut wound on medial aspect of left knee*
- c) Severe injury to the left eye*
- d) Blunt injures on the chest.*

15. It is after the accident that the deceased plaintiff was taken to the Kericho District Hospital. Her husband transferred her to Tenwek Hospital where he was informed would be a better hospital.

16. The said deceased was examined by DR. P.M. Ajuoga (M.D. Switzerland) who confirmed the above knee amputation to the right leg and the deep cut wound on the medial aspect of the left knee and severe injury to the left eye. The chest contusion was noted. He assessed the injury at 80%.

17. The history and physical examination on admission notes, namely the initial treatment notes was available to the court Exhibit B2 together with the discharge summary being Exhibit B3.

18. PW2 DR Stephen Oketch produced the medical report on behalf of Dr. Ojuoga who was said to be ill and admitted to the ICU hospital in Kisumu. This was not objected to by the respondent/defendant.

19. None of the parties gave me an indication as to what a probable award they may be expecting. The advocate for the plaintiff relied on this case law.

**Dauglas Erick Nyakundi Masira**

**Rongai Workshop Ltd & Anor.**

**HCC. 88/07 at Kericho – Ang’awa J**

where a 17 year or 18 year old male was involved in a motor vehicle accident as a pedestrian and sustained injuries of amputation of the right leg above the knee, this court awarded a sum of Kshs. 800,000/= in damages for pain suffering and loss of amenities.

A second case of

**Losiamuro V Lochab Brothers & Another**

**HCC. 48/1988 Wambilyangah J**

An award of Ksh. 824,000/= was made to the plaintiff for injuries sustained of an amputation on the right leg, inter alia.

20. In the present case the defence relied on the case of **Muthoni Kahiga V Catholic Diocese of Kirinyanga and Another**

**HCCC. 5108/92** an award of Kshs. 500,000/= was made (*Ang’awa J*)

21. I am satisfied from the evidence herein that the deceased did undertake a painful experience by having her leg amputated. Normally such patient would further experience phantom pain.

22. I would find an award of Kshs. 800,000/= be and is hereby awarded for damages of pain suffering and loss of amenities.

**IV. Special Damages**

23. The plaintiff pleaded

a) *Hospital expenses Kshs. 59,969/=*

b) *Police abstract Kshs. 200/=*

c) *Official search fee Kshs. 500/=*

d) *Medical report Kshs. 4,000/=*

e) *Future medical expenses*

*“Costs of artificial limb to be stated at the hearing”.*

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**Total Kshs. 641,669/=**

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24. Out of this sum I have proof of expenses of Kshs. 4,000/= being a medical report issued by DR. P.M. Ajuoga. The rest of the claim had not been proved and one accordingly rejected. This court would enter judgment for Kshs. 4,000/= being the sum of a medical report fee.

25. Judgment is entered for the plaintiff on the sum proved.

25. **In summary**

25.1. Female adult aged 46 years old in 2007

25.2. Motor vehicle collision between two vehicles

25.3. Passengers

25.4. Injuries

i) *Amputation of the right leg above the knee*

ii) *Deep cut wound on the medial aspect of left knee.*

iii) *Severe injury to the left eye*

iv) *Blunt injuries (to) the chest*

25.5. **Liability**

100% against the 1<sup>st</sup> and 2<sup>nd</sup> defendant jointly

and severally.

25.6. **Quantum**

I. **General Damages**

i) Pain, suffering and loss of amenities

Kshs. 800,000/=

II. **Special damages**

a) Hospital expenses – Nil not proved

b) police abstract – Nil not proved

c) official search – Nil not proved

d) medical report – Kshs. 4,000/= proved

e) Future medical expenses

Cost of artificial limb to be stated at

hearing – NIL

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**Total      Kshs. 804,000/=**

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26. I award the costs of this suit to the plaintiff. I award interest on General Damages from the date of this judgment. Interest on Special Damages from the date of filing suit.

**DATED** this 18<sup>th</sup> day of May, 2009 at **KERICHO**

**M.A. ANG'AWA**

**JUDGE**

**Advocates**

K.O. Obae advocate from the firm of K.O. Obae & Co. advocate for the Plaintiff – present

G.B. Moturi advocate from the firm of G.B. Moturi & Co. advocates for the defendant - present