



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL APPEAL NO. 557 OF 2014

RAMKRISHNA BUILDERS LIMITED.....APPELLANT

VERSUS

BENEDICT MUASA.....RESPONDENT

It is clear that the appellant provided adequate equipment to facilitate the respondent in his work. He was expected to follow the instructions and use the said equipment for his own safety as he performed his duties. There is no evidence that he asked for any equipment which was denied by the appellant. If he did he would have said so. Other than P.W. 1 who was the doctor who examined him, the respondent did not call any other witness to support his allegations.

On the other hand, the defence called one witness who testified that the respondent had been given a safety belt but instead of wearing it, he hanged it on the ladder. He also testified that the ladder is stable and that the respondent had been given a helmet, gumboots, and hand gloves in addition to the belt. He was assigned duties as a store keeper and would issue stores to workers for use in their work. It was also his evidence that the respondent had wrongly placed the scaffold wrongly with two stones to support it. It was expected that the user was to put it on some even place. He witnessed the accident as he was near the scene.

It is clear that although the safety responsibilities were placed on both the appellant and the respondent, the respondent was expected to work independently after being issued with the relevant safety provisions. The reason that a worker is injured does not necessarily mean that the employer is to blame in the circumstances. Each case rests on its own peculiar facts. In the instance case, I find that both the appellant and the respondent were equally to blame.

The injuries sustained by the respondent were admitted but not to the extent thereof. From the reports that are on the record and in particular the medical reports by Dr. Cyprianus Okoth Okere dated 15th August, 2015 and by Dr. R.P. Shah dated 5th September, 2013 are instructive. The respondent was injured on 12th June, 2012. When Dr. Okere examined him it was two months after the fall that he had experienced. His injuries were identified as spinal injury with a compression fracture of the posterior column of L 5. He had been hospitalised for 5 days at Kenyatta National Hospital and put on Thora columbar cosset. The degree permanent incapacity then was assessed at 40%. As at the time of examination, he complained of backaches, inability to lift a heavy load and difficult in walking. When Dr. R.P. Shah examined him, it was about one year and three months from the date of the accident. The same injury was identified and the respondent complained of back pains on bending forward and could not hold anything heavy. He also complained that he was not able to take up any work.

After examination the doctor observed that he had some residual discomfort and merited 15% permanent disability. His temporary disability would be 2 to 3 months only. In the doctor's opinion very good recovery is expected to have occurred in two to three months as it usually does after such injury. Several authorities were cited to assist the court in arriving at the correct assessment of damages. The trial court said it had considered the seriousness of the injury and the cited cases. Those cases were not set out in the judgement but I have no doubt that the court considered them.

I have also looked at some of those authorities but most of them reflected more serious injuries some of which rendered the victims incapable of walking thereafter. Going by the report by Dr. R.P. Shah which was made after the respondent had under gone substantial recovery and which the doctor said reduced disability to 15 % I do not endorse the finding by the trial court that general damages should be Kshs.1,200,000/=. With respect this court is entitled to interfere with that award because it is inordinately high in the circumstances of this case. Going by the material presented, I make an award of Kshs. 600,000/= general damages for pain and suffering.

The assessment of loss of earning capacity was misdirection. The respondent was not totally incapacitated. His earnings were Kshs. 650/= per day. Incapacity ran for two to three months and I believe an award of three months is reasonable which works out to Kshs. 50,700/= taking into account 26 days for three months. Special damages proved amounted to Kshs. 2000/=. Doctors attendance fees was Kshs. 6,000/=. In the end this appeal is allowed and the lower court judgment set aside.

In place thereof there shall be judgment for the respondent in the sum of Kshs. 600,000/= general damages for pain and suffering, Kshs. 50,700/= for loss of earnings and Kshs. 2000/= special damages making a total of Kshs. 652,700/= which shall be subject to 50% contributory negligence leaving a balance of Ksh. 326,350/=. The doctors' fees remains Kshs. 6,000/=. To this extent only the appeal succeeds. Each party shall bear their own costs.

Dated, signed and delivered at Nairobi this 24th day of October, 2018

A.MBOGHOLI MSAGHA

JUDGE