



EVANS MAKOKHA BARASA. APPELLANT

VERSUS

SILVERSTONE MASTERS LTD. RESPONDENT

(From the Judgment and decree of Mrs. L. Wachira, RM in Thika CMCC No. 30 of 2008)

J U D G M E N T

The Appellant, in a plant dated 13th December, 2006, sought special damages and general damages for pain and suffering and loss of amenities. He also sought costs. The pleadings were that he got injured while in the course of his employment with the Respondent by being electrocuted by an electric wire while he gathered stones which had fallen on the trench as a machine cut the stones.

The Respondent had filed a defence in which it denied that the Appellant had sustained injuries, loss or damages as alleged. It had denied all the particulars of negligence and/or breach of statutory or common law duty of care. The Respondent on the other hand, alleged negligence on the part of the Appellant solely or contributorily.

During the hearing of the suit at the lower court, the Appellant had testified and had called one witness. The Respondent had also called one witness.

In his evidence the Appellant who was 33 years old, testified that he was a casual worker of the Respondent in the year 2006. His work at the relevant time was removing stones from a trench using his bare hands after which he placed them besides the trench.

He testified further that as he, and another worker called David, pushed a piece of rail using an iron pole, they casually touched a bare electric live wire which at once electrocuted both of them. He fainted and the said David and other workers had to do first aid on him. When he came to, he was given Ksh.50/- by the supervisor and released to go to hospital. He went to hospital the next day and was given a treatment card after being medically treated.

Appellant also testified that he was receiving a remuneration of Ksh.280/- per day as such casual labourer and he worked from 6th October, 2006 until 18th November, 2006 when the accident took place. He produced the treatment card as exhibit 2. He also finally testified that as result of the electrocution accident, he lost his libido. He saw a doctor who prepared medical report after examining him. He paid the doctor Ksh.2000/- and prayed for general and special damages.

Dr. Cypranus Okoth Okeri, a medical practioneer with a clinic at Nacico Plaza, testified on the Appellant's behalf. He said that he had on 4th December, 2006, examined one Evans Makokha Barasa who was 33 years old. He got a history of electrocution which had caused a lower back injury leading to loss of libido. I also caused backache. He established backache with a possibility that the central nervous system was affected by the sudden contraction of the muscles caused by electrocution. The Doctor's report was introduced into evidence as Exhibit No. 1(a) and receipt for Ksh.2000/- as Exhibit 1(b). A third receipt for Ksh.5000/- is Exhibit 1(c).

The Respondent, on the other hand, called one witness, Charles Wainaina Ngugi. He was a casual worker like the Appellant and was on duty on 18th November, 2006. He denied that there was work of collecting stones and pushing away rails. He denied hearing a case of electrocution on 18th November, 2006. He denied seeing the Appellant at work that day. He said that Appellant was not one of his workers. He could not rule out the fact that Appellant may have been working in another group. He admitted that he was now a staff working for Respondent company. He concluded that he could not rule out the fact that the Appellant was injured on the relevant date.

The trial court's judgment was brief. She said that the Appellant was not able to prove his claim on the balance of probabilities. She said that the Appellant was not able to show how the backache developed. She could not see evidence to prove loss of libido notwithstanding the medical report of Dr. Okere.

I have carefully perused and considered the evidence adduced by the Appellant at the lower court. It is possible that the Appellant may have been stung by a bare electric wire. But the same is not explained sufficiently to be convincing. There is no evidence to show that there was an electric wire hanging loose from any electric pole. Where then did electricity come from?

There is also little convincing evidence that the Appellant was electrocuted. He easily walked about immediately after the alleged accident. He did not call his co-worker named David to testify for him to confirm the fact that there was electrocution indeed. He did not even find it necessary to go to hospital until the next day.

Furthermore, the Doctors who examined the Appellant were not categorical that the Appellant had any actual injury on his body – say a burn where the bare electrical wire stung the Appellant. Nor did the doctor clearly establish that he had backache or loss of libido. The medical reports finally only hang on the Appellant's story to them.

It is no wonder, accordingly, that the trial court felt that Appellant had not proved his case on the balance of probabilities. This court as well comes to the same conclusions and findings as the trial court.

In the above circumstances this court has no alternative but to dismiss this appeal with costs. Orders accordingly.

Dated and delivered at Nairobi this 16th day of October, 2012

.....

D A ONYANCHA

JUDGE