

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 365 of 2003

NYORO CONSTRUCTION CO. LTD.....APPELLANT

VERSUS

BENSON MASAGWE OBAGWA.....RESPONDENT

JUDGMENT

This is an appeal against the judgment and decree of A. Owino Senior Resident Magistrate delivered on 29th May 2003 in Milimani CMCC No. 6452 of 2002.

The facts which gave rise to this appeal briefly may be stated this:

On or about the 10th April 2001 while the Respondent was in the course of his employment at the Appellant's Company holding a metal poll it accidentally touched a live electric wire and he was electrocuted and fell down and he sustained the following injuries – A deep cut in the occipital region, electric burns on both hands and loss of consciousness for sometime. The Respondent filed the suit being CMCC No. 6452 of 2001 seeking damages and costs of the suit. Judgment on liability was entered by consent and the Respondent was to bear 20% contributory negligence and the matter proceed to hearing for assessment of damages. The Respondent called Dr. Okoth, the doctor who treated him and prepared a medical report to testify. According to the medical report dated 22nd August 2002 and which was produced in evidence the Respondent had sustained a deep cut in the occipital region, electric burns on both hands and loss of coconsciousness for sometime.

The Respondent was treated at St. James Hospital where the wounds were cleaned, sutured and dressed. He was given analgesics, antibiotics and an injection of tetanus toxoid. The learned trial magistrate after considering the injuries sustained by the Respondent and the submission by both counsel awarded the Respondent a sum of Shs.150,000/= general damages less 20% contributory which was calculated at Shs.120,000/= which award gave rise to this appeal.

Mr. Mwangi counsel for the appellant submitted that the damages awarded by the trial magistrate was excessive taking into account that the injuries sustained by the Respondent were minor and urged the court to allow the appeal and reduce the sum of the award to Shs.80,000/= while Mr. Motende counsel for the Respondent submitted that the damages awarded were adequate compensation for the injuries sustained by the respondent.

Having considered the submissions by both counsel and considering the injuries sustained by the Respondent, I find the damages awarded by the trial magistrate commensurate to the injuries suffered by the Respondent and I see no reason to interfere with the award.

I dismiss the appeal with costs to the Respondent.

Dated and delivered at Nairobi this 27th day of September 2007.

J.L.A. OSIEMO

JUDGE