



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

Civil Appeal 835 of 2001

WOODTEX (K) LIMITED APPELLANT

VERSUS

MOSES OTIANGALA SOLOMON RESPONDENT

(An Appeal from the Judgment of Hon. J. G. Kingori, SRM

in Kiambu Civil Suit No. 106 of 2001 delivered on 23rd November, 2001).

JUDGMENT

By a Plaintiff dated and filed on 7th May, 2001 in the lower court, the Respondent (Plaintiff in the lower court) claimed general and special damages from his employer, the Appellant, for injuries sustained in the course of his employment when a joinery machine crushed his right hand fingers.

The parties entered into a consent Judgment on liability in the ration of 90 – 10% in favour of the Respondent. Therefore, the only issue in this appeal is quantum of damages.

According to paragraph 5 of his Plaintiff, the Respondent suffered the following injuries:

- (a) Amputation of the 1st finger on the right hand
- (b) Laceration of the third and fourth fingers of the right hand
- (c) Stiffness of the digital interphalangeal
- (d) Permanent scaring of the digital phalanges.

There were two medical reports presented before the lower court – one by Dr Manasseh S. Ndakalu dated 26th January, 2001, and the other by Dr W. M. Wokabi dated 21st August, 2001.

Dr Ndakalu concluded as follows:

“Moses sustained grievous bodily harm injuries following the said industrial accident. He was subject to sever pains and suffering. He was subjected to unnecessary blood loss. He sustained amputation of the distal phalynx of the right little finger. This is a permanent incapacity which, he has to live with for the rest of this life. This with the contractures of the right middle and ring finger has led to loss of grip function of the right hand. This is also worsened by the pains

experienced in the respective finger. This has greatly compromised his day to day work”.

Dr Wokabi offered the following opinion:

“The medical evidence indicates that indeed sustained deep lacerations of the right hand fingers. The laceration involved the distal parts of the affected fingers. He also lost large portions of the small finger. A lot of the soft part of the middle and ring fingers is missing. There is stiffness of the distal interphalangeal joints. All these in my opinion will confer disability which in this case would assess at 15% (fifteen). It was too early for the time of the injury when the workmans compensation form was filled. It may have appeared at that time the disability was 20%. My assessment now only 15% (fifteen per cent) disability”.

Based on the above medical evidence, the learned Magistrate awarded Kshs.290,000/= for general damages. She relied on the two authorities submitted by the Respondent, namely **Margaret Ochieng vs David Njihia (HCCC No. 57 of 1993)** in which the court awarded Kshs.250,000/= for fracture of the radius and ulna and paralyses of the left hand; and **Peter Ondiek Odera vs Nenguyo Agricultural Construction (HCCC No. 2607 of 1984)** where the Court awarded Kshs.225,000/= for amputation of the second, third and fourth fingers.

According to the Appellant’s Counsel, Mr Mutua, the award is inordinately high. He relied on the following three authorities: **Joram Karani Bijeti vs Cadbury Schweppes (HCCC No. 4507 of 1991)** where Mwera, J awarded Kshs.200,000/= for loss of three fingers; **Daniel Mutiso Mwema vs N. C. C. (HCCC No. 5379 of 1992)** where Angawa, J awarded Kshs.300,000/= for amputation of the right arm; and **Rashid Abed vs Omar Mohamed (C. A. 28 of 1983, Mombasa)** where the court awarded Kshs.14,000/= for loss of third finger in the left hand.

So, based on the medical evidence outlined above, and the authorities submitted, was the award of Kshs.290,000/= for general damages so inordinately high that this court should interfere with the same?

The Court of Appeal in the case of **Butler vs Butler C A No 49 of 1983** laid down the following principles that an appellate court should consider in reversing an award of damages by the lower court.

“(a) That the court acted on wrong principles;

(b) That the court has awarded so excessive or so little damages that no reasonable court would;

(c) That the court has taken into consideration matters he ought not to have considered, or not taken into consideration matters he ought to have considered, and in the result, arrived at a wrong decision.”

Now taking those principles into account, and having carefully reviewed the medical evidence before the Court, I cannot say that the award is so excessive as to call for interference by this Court. The Respondent suffered grievous bodily harm. He lost the right little finger, and over-all loss of grip in his right hand, which is his functional hand. The permanent disability is 15%. In addition he had one and half phalanges missing, the middle and ring fingers have crooked finger nails; and a lot of the soft tissue on these fingers is missing according to Dr Wokabi’s report.

Now, these injuries must be seen in the light of other comparable ones decided by our courts – for clearly comparable injuries should be compensated by comparable awards.

The **Joram** case (Kshs.200,000/= for loss of three fingers) was decided in 1993, and **Daniel Mutiso** (Kshs.300,000/= for loss of right arm) was decided in 2001, while the **Rashid** case is extremely old (1983).

The learned Magistrate’s reliance on the **Margaret Ochieng** and **Peter Ondiek** cases appear to me to be

fair. These are also fairly old cases. I believe that given the inflation and loss of the value of our currency in the last ten years, an award of Kshs.290,000/= for the injuries suffered by the Respondent in this case cannot be described as “inordinately high”.

Accordingly, I will uphold the lower court’s award, and dismiss this appeal. As the Respondent was not present, and offered no submissions, I will make no order as to costs.

Dated and delivered at Nairobi this 8th day of August, 2005.

ALNASHIR VISRAM

JUDGE