



REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT 533 OF 2001

AMIS ANTHONY ANDATI PLAINTIFF

- V E R S U S -

SEA HARVEST (K) LIMITED DEFENDANT

J U D G M E N T

The plaintiff was in the employment of defendant Sea Harvest (K) Limited as an Assistant Supervisor when on 24.4.1998 in the place of work and in the course of employment a heavy plate being lifted in the plaintiff premises suddenly dropped and fell on the ground hitting the plaintiff and causing him serious injuries as described by medical evidence of Dr. Rasik Patel in his report exhibited as exh. 1 and his oral evidence given at the trial. injuries suffered are stated to be:-

- a) **skull-depressed small fragments embedded in the brain.**
- b) **Chest – fractures of 1st 2nd & 3rd ribs on the right side**
- c) **Linear fracture of the right parietal bone with haemorrhagic**

Contusion

He was discharged on 5.5.98 and reported to work at the end of July 1998. he also suffered severe headaches and fits of dizziness and it became difficult to work and the company retired him in February 200. The constant headaches and fits of dizziness are a permanent disability. He may suffer epileptic fits in the which case he would require further treatment. The defendant also produced a medical report made March 1999 from Dr.H Patel. I find this report rather inadequate. It is sketchy and does not to give proper description of injuries and treatment and his opinion that there is no permanent injury is not supported by subsequent events. The plaintiff had to be retired because he found it difficulty to work. The first issue to be decided is that of liability. The plaintiff pleads that he was entitled to protection by defendant while he was carrying his employment in the premiesies of the defendant. He asserts that the plate was heavy and was being lifted with a rope and bolted with trusses and under his contract of employment the defendant should have provided a safe method of lifting the heavy plate to avoid it falling and injuring the plaintiff.

The defendant denied such a duty under contract of employment or at all and alleged that it was duty of plaintiff to be mindful of his safety as he worked. According to evidence the plaintiff was a trusted person he was given the work of guarding for 2 days a week and would be asked to do fish cutting for the rest of the week. In 1994 he was promoted to the position of Assisant Supervisor at a salary of 9200/- His duties was the supervising of casual and loading fish in the machine. On the material day he was on duty. He was called by supervisor David Maregwa and ordered to help a person do some job. The job

was being preformed by 5 other workers under Engineer Philip Robert. They had a crane. The plate was 10ft in width (like the counsel table in court). He was asked to pull on the rope. The plate went high and the rope cut. The plate came down and the plaintiff was hurt in the head and became unconscious. This is supported by medical report. His head was swollen. The plaintiff showed scars on his head and depression. After treatment in various hospitals he returned to work to perform light duties. He said he has epilepsy and headaches and his sight was affected and he gets black outs from the time to time. He denied causing the accident. On consideration of the above evidence which I find credible it clear to me that the defendant as employer through the supervisor (superior to the plaintiff) requested the plaintiff to perform a special job (together with other workers) of lifting a heavy plate. This was not the plaintiff's daily job. He was specially requested to help other workers to do the job. It is clear the heavy plate was not securely fastened. It was tied with a rope and in the cause of doing the job the rope cut and the heavy plate fell down upon the plaintiff. I have no difficulty in finding that the employer was guilty for requesting the plaintiff to take part in that job without having ensured that the system of doing the hand lifting the heavy metal, was safe as it is the rope cut and the metal fell on the plaintiff. The plaintiff could not refuse to perform the job as it was his superior who requested him to it. I find the plaintiff was put in a difficulty situation. He could not refuse to perform. I find he is not guilty of the negligence or breach of duty as pleaded in the defence. The blame is to be placed squarely upon the defendant who did not ensure the heavy plate would be lifted without causing any injury to any of the workers who were helping to lift the same. That there were five men to perform the job is an indication that it was not a light job and more care should have been taken to ensure such a heavy metal would not fall and injure any of the workers. I, therefore, find defendant negligent in his duty towards the plaintiff and in breach of his employment contract with plaintiff which is not denied. The liability is on 100% basis. Regarding the damages suffered the plaintiff pleads special damages for loss of earnings for 20 months and for medical report due to Dr. R. Patel coming to a total of 187,000/- and general damages.

At the time of trial the appellant was aged 34 years. In his submission Counsel for the plaintiff suggested shs. 1.2. million award. The defendant proposed shs. 300,000. It is clear from the report of the plaintiff that he resumed work for defendant. There is no evidence that his terms of employment have been changed to his detriment. However he was out of employment for the 20 months claimed and I am of the view that he is entitled to the amount claimed. He is also entitled to shs. 4000/- due to Dr. Rasik Patel. For pain suffering and loss of amenities I take into consideration the awards already awarded in the authorities filed by Counsel. I also taken into consideration the period the plaintiff suffered in hospital, the permanent headaches and fits and the possibility of becoming epileptic and requiring further medical treatment and the serious injuries sustained. I am convinced that a sum of shs. 750,000/- is adequate to cover all general damages.

Judgment is therefore entered for plaintiff against the defendant in sum of:-

General damages 750.000

Doctors 4.000

Unemployed period 187.000

941.000

Interest at court rates and costs are awarded to the plaintiff.

Dated this 15th day of October, 2004

J. KHAMINWA

JUDGE