



**REPUBLIC OF KENYA
IN THE HIGH COURT**

**AT NAIROBI
MILIMANI LAW COURTS**

CIVIL CASE NO. 4400 OF 1987

RAPHAEL OLOO.....PLAINTIFF

-VERSU

SINDUSTRIAL PLANT (E.A.) LTD.....DEFENDANTS

JUDGMENT

Background

The Plaintiff has sued the defendant for Special and General Damages for pain, suffering and loss of amenities and damage for breach of contract following an accident on 13th May, 1986 at his place of work while working for the defendant.

Liability

The plaintiff testified that he was employed by Industrial Plant (E.A.) Ltd. as an X-ray Welder. He stated that before he could attend to his work the Supervisor had to ensure that the working conditions were safe. He testified that on the material day he and his hand help had been assigned work at Kiambere Power Station where the defendant was constructing a dam. They were on a Scaffold which gave way whereupon they fell down thereby sustaining injuries. The plaintiff further testified that the supervisor had signed the necessary forms satisfying himself as to the safe working conditions.

The defendants did not adduce any evidence to rebut the plaintiff's averments and testimony. I find that the Plaintiff has proved its case against the defendant on a balance of probabilities and I hold the defendant wholly liable for the accident and the consequent injuries, pain and suffering.

Quantum

The plaintiff sustained injuries to the hand and lower back and lost six teeth. Presently, he experiences pain on the upper incissor especially when he takes cold food. He has severe low backache. He cannot be able to bend or lift heavy objects. The doctor opines that the backache or inability to do strenuous work is very likely to persist for many years and that there are high chances he may develop complications to the back injury.

The Plaintiffs counsel cited several authorities which I have considered. Taking into account inflation and efluxion of time I award the sum of kshs.1,000,000 as general damages. The plaintiff further claims loss of earning. The plaintiff earned

kshs.2,600/- per month. It is now over 14 years since the accident took place. Being satisfied that this claim has been specifically pleaded as required by law, I award the following:-

Kshs.2,600 x 12 x 15 = Kshs.468,000/-

Special Damages were pleaded and proved as follows:

(a) Medical report Kshs. 700/-

(b) Hospital Bills Kshs.3,300/-

Total Kshs.4,000/-

There will be judgement for the plaintiff against the defendant as follows:

General damages Kshs.1,000,00

Loss of earnings Kshs. 468,000

Special damages Kshs. 4,000

Less amount paid under sub total Kshs.1,472,000

The workman's compensation Act Kshs. 18,958.30

Total Kshs.1,453,041.70

The Plaintiff shall have the cost of the suit and interest.

Delivered and dated this 31st day of January, 2001

KASANGA MULWA

JUDGE