



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 3098 OF 1992

ELISHA OTIENO TINDI PLAINTIFF

VERSUS

AFRICAN RETAIL TRADERS KENYA LTD DEFENDANT

J U D G E M E N T

During the periods 1985 to 1989 the plaintiff worked for the defendant as a carpenter and joinery fitter at its workshop situated in Nairobi.

While at work on 17th February, 1988 some frames which had been kept in the workshop fell on him and he was injured. He filed a suit in this court to claim both special and general damages as well as costs, arising from this accident.

Though a defence to the suit was filed by counsel for the defendant, when it was fixed for hearing on 8th May, 2001 only the plaintiff and counsel turned up while on the defence only counsel turned up.

Thus, on the date of hearing, only the plaintiff testified and said when the frames fell on him, he was bending down, working hence, he was injured on the back. The plaintiff stated that on impact with the frames, he became unconscious and only found himself at Kenyatta National Hospital. He said at the hospital the X-ray machine was not working, so he was taken to a clinic at Stanbank House where he was X-rayed. (see exhibit 1).

The plaintiff was also examined by Dr. Gatabaki on his side of the case and Dr. Walter Owen Ogunyi both of whom made out medical reports (Pl. Exh. 2 and Def. Exh. 1).

For the plaintiff's medical report the plaintiff said he paid Kshs.1,500/= (see exh. 3). The plaintiff said that after he was injured the defendant relieved him of his duties – see exhibit 4.

The plaintiff's medical report opined that the plaintiff was:-

“temporarily incapacitated for seventeen days and partially incapacitated to date. He has lost his employment because of this partial incapacitation. His effective earning has been and will be adversely affected for the rest of his entire life and he is only twenty seven years. One cannot be dogmatic about it but this man's effective earnings have been permanently adversely affected”.

According to this medical report dated 29th April, 1992 the main injury sustained from this accident as shown by the X-rays was

‘loss of normal lumbar -sacral spine curvature because of muscle spasm’.

In the defence medical report dated 8th May, 2001 Dr. Walter Owen Ogunyi stated that:-

“From the clinical examination there was no obvious external injury seen except for therapantie marks. There was no tenderness and the ventebreal movements in this area were normal. The injuries were mainly of soft tissue nature thus the muscle spasm that ensured immediately after. He has satisfactorily recovered from them after treatment without any permanent physical disability or incapacity.

The present complaints were minimal and can be overcome by peripheral analgesics and massage as they arise for which he attends some clinics to date. The expected outcome of his condition in life is good as no complication is anticipated. He is still able to work as a carpenter.

Though the plaintiff intimated that after the accident he was relieved of his duties, exhibit 4 shows that after the accident on 17.2.88, he worked for the defendant until 11th October, 1989 and that this exhibit was a certificate of good service, and not one to lay him off.

I also note that though the plaintiff left the defendants’ services on 11th October, 1989 he only went for this certificate on 3rd March, 1992.

However, failure by the defendant to testify in this case indicates acceptance of liability on its part. What, therefore, remains for a decision is the issue of damages suffered herein.

In this case the plaintiff claimed special damages which were shown as Kshs.1,500/= in the particulars thereof and Kshs.1,300/= in the prayer.

But a receipt produced for these (exh.3) shows Kshs.1,500/= and I take it that there was an apparent mistake on the part of the plaintiff who put a sum of Kshs.1,300/= in the prayers, otherwise there is ample evidence that a sum of Kshs.1,500/= was paid to Dr. Gatabaki for examining the plaintiff and making out a medical report (exh.2). I would therefore award the plaintiff a sum of Kshs.1,500/= as special damages.

As regards general damages, the plaintiff claimed these as well as damages for loss of future earnings. I do not think the plaintiff suffered the latter.

If this was so, he would not have gone to the defendant for a certificate. By obtaining this certificate the plaintiff gave the impression that he wanted to use it to obtain similar employment elsewhere.

But I agree the plaintiff suffered injuries due to the sudden and unexpected fall of the frames on his back. But again these injuries were not as serious as the medical report by Dr. Gatabaki depicted them in his report.

I note the plaintiff was not hospitalized at Kenyatta National or any other hospital due to these injuries. I agree that the injuries sustained by the plaintiff were of soft tissue in nature.

I award him Kshs.120,000/= as general damages. Consequently there will be judgement for the plaintiff against the defendant for Kshs.121,500/= with costs of the suit and interest to accrue from the date of this judgement.

The plaintiff to pay court fees on general damages awarded before the decree is drawn.

Delivered this 13th day of June, 2001.

D.K.S AGANYANYA

JUDGE