



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 2212 OF 1997

EXCELO STRUCTURES LIMITED PLAINTIFF

VERSUS

D. MANJI CONSTRUCTION LTD. DEFENDANT

JUDGEMENT

The plaintiffs M/s Excelo Structures Ltd. filed suit against the defendants M/s D. Manji Construction Ltd. on the 8th of September, 1997. They claimed for material damages to their motor vehicle registration KZQ 913 which was involved in a collision with the defendants motor vehicle registration number KTR 612.

The defendants filed a defence and denied negligence. They also filed a claim by way of a counter-claim in which they prayed that plaintiffs pay for the material damage on their motor vehicle. They also claimed that the defendants driver was charged before a subordinate court on traffic charges. He was later acquitted. The cost of defending the defendants was claimed.

The case was set down for trial on the 29.9.99 before Hon. Mr. Justice V.V Patel and was adjourned. The parties came for hearing on the 28.3..2000 and the advocate for the plaintiff again sort an adjournment. This is the same adjournment that had been earlier sort according to the defendants advocate. The reasons being that the plaintiffs directors have a dispute. They nonetheless said they would continue with the trial but had failed to attend court.

The advocate for the plaintiff offered no evidence. The Plaintiff case was dismissed. The trial of this case commenced on the counter-claim by the defendants.

DW1 - the driver of the defendants motor vehicle and DW2 the passenger who was in the vehicle at the time the accident occurred gave evidence as follows:-

Whilst driving on the material day DW1 noticed a matatu motor vehicle that had stopped. The plaintiffs vehicle attempted to over take the said matatu. It left its side of the lane and collided with their vehicle. DW2 confirmed this as so.

The said vehicle had extensive damages to it beyond repair. DW3, a witness who came from the insurance company gave evidence as to how his firm of insurance paid for the loss of the vehicle less the excess charges, paid for the lawyers fees in defending the traffic cases and for related disbursements. He produced documentary evidence to this effect.

The plaintiff called no evidence.

None of the advocates relied on any case law to support their case.

I am satisfied that the defendants have established that negligence was attributed to the plaintiffs driver. In the absence of any evidence from the plaintiffs I would compute liability at 100% against them.

As to quantum,. the claim before me is only for Special Damages. I am satisfied that this loss has been proved. I would therefore enter judgement for the defendants in their counter-claim as prayed. This includes the pre-accident value Ksh.180,000/-.

Assessors fees	Ksh. 3,253/-
Investigation fees	Ksh 6,594/-
Towing charges	Ksh. 1,200/-
Legal charges	Ksh <u>.83,500/-</u>
	Ksh.274,547/-
Less salvage	Ksh. 50,000/-
Net	<u>Ksh.224,547/-</u>

I award costs of this suit to the defendants. Interest on the above sum is awarded from the date of filing suit.

Dated this 30th day of March, 2000 at Nairobi.

M.A. ANG'AWA

JUDGE

29.3.2000