

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 3187 OF 1993

HENRY ALBERT ANDERA.....PLAINTIFF

VERSUS

CAR & GENERAL (K) LTD.....DEFENDANT

JUDGMENT

Plaintiff claims general and special damages from defendant as a result of injuries he sustained at defendant's factory allegedly due to defendant's negligence or breach of duty.

Defendant has admitted liability to the extent of 70% and plaintiff has admitted contributory negligence to the extent of 30%. A consent judgment on liability has been recorded to that extent.

Plaintiff is 44 years old. He was employed by defendant as a machine operator. He had no formal training as a machine operator. He learned the job at work. He was right handed. While at work he sustained

- 1 Compound fractures of the right ring and little fingers
2. Fracture of the radius and ulna bones of the right forearm,

He was admitted in hospital for 7 days. Amputation of the right ring and little fingers was carried out. Operation of plating of the forearm bones was also carried out. He was discharged and thereafter he had lots of sessions of physiotherapy. Later he was admitted in hospital for 3 days when a small operation was done to increase the movements of the remaining fingers. Lastly he was admitted for 3 days when plates were removed from the forearm bones. Defendant paid all hospital bills. He resumed work but as an inspector of goods earning the same salary. He was dismissed in October 1998 in connection with loss of goods by defendant defendant's counsel recommends shs 250,000 - shs 280,000 while plaintiff's counsel recommends shs 600,000 as general damages.

I have considered the cases cited. The case of Samuel Kariuki versus Foto Farm ltd - HCC NO. 1949/93 she 300,000 was awarded in March 1995 for amputation of three fingers severely disabling the forearm. In John Were Wambenje versus Timber Merchants ltd - HCCC NO. 3287/88 shs 250,000 was awarded in May 1992 for traumatic amputation of four fingers of the left hand.

In the present case, plaintiff suffered two main injuries. It is the overall disability to the right arm which has to be considered. The disability that plaintiff suffered cannot be equated with loss of right forearm. The arm is still useful.

I would assess general damages at shs 400,000 which I reduce by 30% to shs 280,000. Special damages are agreed at shs 1000/=

Consequently, I enter judgment for plaintiff against defendant for shs 280,000 net being general damages and shs 1000 being special damages plus costs of the suit. General damages carry interest at court rates from date of this judgment and special damages from date of filing suit.

E. M. Githinji

Judge

9.5.2000

Mr. Oduk present

Mr. Patel absent