



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT NO. 16 OF 2017

ROY HAULIERS LIMITEDPLAINTIFF

VERSUS

HUSSEIN MOHAMED.....DEFENDANT

RULING

BACKGROUND

1. The plaintiff filed this suit by plaint dated **13th March 2017** seeking **special damages of Kshs. 31, 690, 793.76, general damages, costs of the suit and interest**. The claim arises from an accident which occurred on 16th March 2014 involving motor vehicle KBS 016E –ZD 1951 Prime Mover and motor vehicle KBL 680T –ZD 3615 Prime Mover, along the Nakuru Eldoret Highway Ngata Area.
2. The plaintiff's case is that the defendant's motor vehicle KBS 016E-ZD 1951 Prime Mover was so carelessly driven and/or controlled causing it to ramp on the motor vehicle KBL 680 TZ 3615 Prime Mover extensively damaging it.
3. The plaintiff pleaded the following particulars of the negligence of the defendant: -
 - a. Failure to exercise due care and attention.
 - b. Drove in a zigzag manner.
 - c. Failure to adhere to the highway code.
 - d. Failure to exercise due care and attention.
 - e. Drove at a speed that was excessive in the circumstances.
 - f. Failure to slow down, swerve, step on brakes or stop in any other manner to avoid the accident.
 - g. Overtaking another vehicle when it was unsafe to do so.
4. The plaintiff's case is that the impact of the accident resulted in the plaintiff's motor vehicle KBL 680T- ZD 3615 Prime Mover being declared write-off (constructive total loss) with a pre-accident salvage value of Kshs. 300,000.00.
5. The plaintiff also pleaded that as a result of the accident, it suffered a loss of income of Kshs. 28,879,093.76 in transporting its customer's goods and despite service of summons and plaint, the defendant failed to enter appearance and a default judgment was entered on 18th November 2019.
6. This matter proceeded for formal proof on 28th June 2021. Pw1 Patrick Kyalo the senior legal officer adopted his witness statement and documents. He stated that plaintiff was contracted by Bamburi Cement and Tororo Cement to transport cement raw materials from Mombasa to Nairobi and Tororo Uganda and KBL 680 - ZD 3615 Prime Mover was handed both contracts.
7. PW1 testified that before payments were done, the plaintiff was required to hand over its invoices and weighbridge tickets. He produced a bank statement showing the amounts received as payment from Tororo Cement being Kshs.5.3million. He blamed the driver of motor vehicle KBS 016E-ZD 1951 for the accident.

PLAINTIFF'S SUBMISSIONS

8. The plaintiff submitted that its motor vehicle KBL 680T –ZD 3615 was hit by defendant's motor vehicle KBS 016E ZD 1951 while overtaking another motor vehicle when it was unsafe to do so and wholly to blame for the accident and urged this Court to hold the defendant 100% for the accident.

9. On the issue of special damages, the plaintiff tabulated damages as hereunder: -

a. Under loss of income the plaintiff submitted that the vehicle was doing 5 rounds per month from Mombasa to Nairobi at an agreed Kshs. 2,856.00 per ton and the truck was carrying 30.88 tons; and 2 trips from Tororo Cement from Mombasa to Uganda at Kshs 6,100 per ton carrying 30.88 tons, making a total of Kshs. 628, 219.60 per month multiplied by 44 months which add up to Kshs 27,641,662.40.

b. Under lost value the plaintiff submitted that as per the report, the pre-accident value was Kshs 3,000,000, the repair costs valued at 2,547,128. The vehicle was a write-off with a salvage value of Kshs. 3000,000 and thus the lost value is Kshs 2,700,000.

c. Towing costs, Kshs 100,000/= as supported by the invoice attached at pg. 63 Exhibit 2.

d. Assessors fees Kshs. 11,600 paid to vide an invoice dated 2nd May 2014. Exhibit 1

e. Copy of the record of the motor vehicle 550.

10. The plaintiff urged this court to enter judgment against the defendant in the sum of Kshs. 31,690,793.76.

ANALYSIS AND DETERMINATION

11. I have considered evidence adduced and submissions herein and find the the following as the issues for determination: -

a. Who was to blame for the accident and to what extend

b. Assessment of damages.

(i) Who was to blame for the accident and to what extend

12. The defendant did not enter appearance nor file defence. There was therefore no evidence adduced to controvert the plaintiff's evidence. It is not disputed that an accident occurred on 16th March 2014.

13. The plaintiff's evidence is that the defendant's motor vehicle KBS 016E-ZD 1951 Prime Mover was so carelessly driven and/or controlled along Nakuru Eldoret Road at Ngata Area that it rammed onto motor vehicle KBL 680 TZ 3615 Prime Mover and damaged it.

14. No evidence was adduced to apportion any blame on the part of the plaintiff. I therefore find that the defendant 100% liable for the accident and damages occasioned to the plaintiff as a result of the accident.

(ii) Assessment of damages

15. PW1 produced vehicle assessment report in respect to the plaintiff's damaged vehicle and the loss incurred as a result of the accident. From pw1's evidence, the vehicle was declared written off with a salvage value of kshs.300, 000/=, and the lost value is Kshs 2,700,000/= .he adduced evidence to the effect that the motor vehicle was contracted by 2 companies being Bamburi Cement and Tororo Cement to transport raw cement from Mombasa to Nairobi and Mombasa through Nairobi to Uganda respectively.

16. In respect to the Bamburi contract, evidence adduced indicate that the vehicle made 5 rounds per month from Mombasa to Nairobi at an agreed cost of Kshs. 2,856.00 per ton carrying 30.88 tons; and for the Tororo contract, the vehicle made 2 trips per month from Tororo Cement from Mombasa to Uganda at Kshs 6,100 per ton carrying 30.88 tons, making a total of Kshs. 628, 219.60, both contracts were availed as evidence plus copies of invoices and the weighbridge tickets.

17. The cardinal rule on award of damages is that the offended party should be reinstated pre-accident position. Specific damages must not only be pleaded but also specifically pleaded.

18. Evidence has been adduced to demonstrate that plaintiff's vehicle was damaged beyond repair and loss incurred as a result of the damage shown by the plaintiff. Plaintiffs evidence has not been controverted.

19. Prior to occurrence of the accident, the motor vehicle was worth Kshs. 3,000,000/=. The salvage value Kshs. 300,000/= and the loss suffered on the damaged vehicle is Kshs. 2,700,000/=.

20. On the loss of use of the motor vehicle the plaintiff's evidence was contracted to transport cement raw materials as captured in paragraph 16. I find that it would be fair to allow a maximum period of 3 months' period within which the plaintiff would have made

alternative arrangements to replace the motor vehicle.

21. From the foregoing, I find the defendant is 100% liable and entered in favor of the plaintiff against the defendant in the following terms:

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- a. Pre-accident value of the motor vehicle Kshs. 2,700,000.
- b. Loss of business for 3 months
 - 1. Bamburi Cement - $2,856 * 30.88 * 5 * 3 = 1,322,899.20$
 - 2. Tororo Cement- $6,100 * 30.88 * 2 * 3 = 1,130,208.00$
- c. Towing fees Kshs. 100,000.

22. FINAL ORDERS

- 1. Defendant to shoulder 100% liability.**
- 2. Damages assessed as follows: -**
 - a) Value of motor vehicle.....kshs 2,700,000**
 - b) 3 months' loss of business....ksh 2,453,099.20**
 - c) Towing fee.....kshs 100,000**
- 3. Interest on 2 above at courts rate from the date of filing this suit.**
- 4. Costs of this suit to be paid by the defendant to the plaintiff.**

JUDGMENT DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU

THIS 14TH DAY OF OCTOBER 2021

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RACHEL NGETICH

JUDGE

In the presence of:

JENIFFER - COURT ASSISTANT

MR. MODI FOR PLAINTIFF