



REPUBLIC OF KENYA

High Court at Nairobi (Milimani Commercial Courts)

Civil Appeal 913 of 2004

SPINNERS AND SPINNERS LTD. APPELLANT

VERSUS

ALEX ANDAYI ATIELI. RESPONDENT

(From the judgment and decree of D Morara, Resident Magistrate in Gatundu Resident Magistrate's court Civil Case No. 606 of 2003)

J U D G M E N T

In a brief judgment dated 23rd September, 2003 the honourable trial magistrate awarded the Respondent General damages of Ksh.165,000/- and special damages Kshs.7,500/-. The damages arose from a claim by the Respondent against the Appellant. The Respondent had in the plaint alleged that the Appellant, as employer, had in its Statutory or Common Law duty of care, failed to provide the Respondent with eye goggles to prevent cotton manufacturing dust from entering his eyes. That as a result, the Respondent's eyes were infested with cotton dust which in turn, cause on the Respondent an eye disease known as allergic conjunctivitis.

The facts of the case show that the Respondent/Plaintiff, worked for the Appellant from the year 1998 to 2002. He resigned due to ill health related to his sick feet. It is not denied that the eye disease now the issue of this case, started in the year 2000 when the Respondent was still working for the Appellant and two to three years before he resigned as aforesated.

It is also observed from the evidence that the Respondent worked in the wasted spinning section in which dust could be coming out of cotton waste as the same was being handled. For that reason, the Appellant provided nose masks to its employers to prevent the dust from causing ill-health. It is common knowledge and was not denied by the Appellant, that the employer did not provide workers with eye goggles to protect the eyes from being infested with the said cotton dust.

When the Respondent started attending hospital for an eye allergy treatment, the medical doctors appear to have linked the Respondent's eye problem with the dust coming from the cotton waste which he handled day to day at his place of work. The situation remained so until he resigned from working for the Appellant in 2002. .

The Plaintiff/Respondent however filed this claim two years after he had resigned from his work with the Respondent. He alleged breach of duty of care on the apart of the Appellant/Employer who he said, had failed to provide him with eye goggles to prevent cotton waste dust from entering his eyes as he handled the cotton waste. He also alleged that his employer had failed to warn him of the possible negative health effects of the cotton dust on workers eyes.

The honourable trial magistrate's judgment dated 23rd September, 2004 is brief. Having noted the evidence adduced by both parties, the magistrate simply proceeded to conclude thus: -

“The plaintiff proved his case on the balance of probabilities and I, therefore, enter judgment for the plaintiff against the defendant as follows: -

i) General damages Ksh.165,000/- less 35% contribution.

ii) Special damages Ksh.7,500/-.

iii) Costs plus interests.....”

It is the above judgment which provoked this appeal on the grounds.

- a) That the trial magistrate failed to judicially take into account and analyze the evidence adduced.**
- b) That the trial magistrate erred in awarding the general damages above which were not proved on the proper civil cases standard**
- c) That the trial magistrate erred in law in failing to heed Section 35 of the Workman's Compensation Act Cap 236 of the Laws of Kenya.**

This court has carefully perused the lower court's pleadings, their written submission before the lower and this court and the judgment of the honourable trial magistrate. There is no doubt in this court's mind that the honourable trial magistrate failed to disclose how he arrived at his conclusions in the judgment. He clearly did not, as he ought to have done, explicitly analyze the evidence from both sides before showing his preference and the reason thereof. He failed to identify issues for decisions and what evidence he used to resolve them. The judgment he wrote, therefore, was not a reasoned out judgment which this court can allow to stand. This is so notwithstanding the fact that this court may end up arriving at a similar conclusion using the evidence on record.

On merit however, the main issue which initially stood to be decided by the trial magistrate was whether or not the Respondent eye allergic disease, was caused by the cotton waste dust at his place of work.

Medical evidence on the record would suggest that allergic conjunctivitis is a common disease caused by various kinds of dust. It could, therefore, have been caused by the cotton waste dust coming out of the cotton waste which the respondent commonly handled at his place of work. Although the Appellant's evidence rightly suggested that the Respondent's eye disease could have been caused by any other dust outside his working place, it led no evidence to suggest that it was not the cotton waste dust in his working place that was the culprit. On the other hand, the Respondent in his evidence firmly stated that he was not otherwise exposed to any other kind of dust elsewhere other than at his working place.

Furthermore, the fact that the Respondent eye disease was not linked with his original working place at the Appellant's factory until after his resignation therefrom may appear to complicate the court's process of arriving at the conclusion it has reached. However, considering that no other reasonable hypothesis of explaining the Respondent's dust-activated disease is available, it is not unreasonable to accept the best reasonable explanation available, which the explanation above.

The conclusion this court arrives at therefore, is this that the Appellant posted the Respondent to work in a section of the factor where he handled cotton waste for a long period. The Appellant failed to provide the Respondent with eye goggles to prevent the cotton waste dust from entering his eyes. As a result, the cotton waste dust entered his eyes and caused the Respondent to develop the disease commonly known as allergic conjunctivitis. The Appellant in failing to provide the eye protecting goggles, breached its statutory and/or common law duty of care to its said employee. For the said breach the Appellant is liable to pay compensation for the ill health to the extent of the Appellant's injury and suffering as provided by law.

The trial court award failed to show how the general damages of Kshs.165,000/- was arrived at. This court therefore, has the burden of re-assessing the general damages. The respondent did not suffer any permanent injury of his eyes. Proper medical treatment would likely cure and improve the health of his eyes. I note generally that the court awarded between Ksh.80,000/- to Ksh.100,000/- in similar cases at that time. Doing the best I can and taking into account the erosion of the shilling since the year 2004 when the case was decided, I would and hereby award general damages of Ksh.200,000/- with interest and costs. Interest to run from the date of the lower court judgment. The special damages of Ksh.7,500/- is maintained and will attract interest at court rates from the date of filing of the case at the lower court. These awards replace the awards of the trial court which are hereby set aside. Orders accordingly.

Dated and delivered at Nairobi this 10th day of April 2013.

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D A ONYANCHA
JUDGE