

Silobo v Bamburi Portland Cement Co. Ltd

High Court, at Mombasa

February 27, 1992

Omolo J

Civil Case No. 214 of 1988

February 27, 1992, **Omolo J** delivered the following Judgment.

This unfortunate Plaintiff had an accident at his place of work on the 11th April, 1985. During the accident, bricks fell on his leg and on his thigh and it is now agreed that as a result of the accident the only injuries sustained by the Plaintiff were contusions on the right thigh and knee (see Mr. Patel's medical report produced as Exhibit 4). The Plaintiff, at the time of the accident, was an employee of the Defendant Bamburi Portland Cement Co. Ltd. It would appear that sometime in 1980, the Plaintiff was involved in another accident when he was electrocuted at his place of work. The Plaintiff apparently made no complaint about the 1980 accident and continued with his work normally until the accident of 1985. When Mr. Patel saw him on 7th June, 1991, the Plaintiff complained about back pain. On the evidence available, it was not possible to determine whether the back pain is due to the 1980 or the 1985 accident and in the end the Plaintiff conceded that the injuries sustained in 1985 were only the contusions to the thigh and the knee. The Defendant promptly admitted liability for these injuries.

Those injuries are of a minor nature. I was referred to two cases, one Mr. Jiwaji for the Plaintiff, and another one by Mr. Khanna for the Defendant. Mr. Jiwaji referred me to the Mombasa case of Buishi Hamisi Faki v Abdi Duda, H.C.C.C No. 243 of 1984 (unreported) Faki was a 39 year old housewife and she suffered lacerations on both elbows, right heel and contusion on both laps (thighs). The injuries healed leaving no lasting effects. Mr. Justice Bosire awarded to her Shs.30,000/- as general damages on the 21st November, 1989. Mr. Khanna thought that her injuries were of a graver nature than those of the present plaintiff, and he in turn referred me to the Nairobi case of Nancy W. Karriuki v Francis Mwangi & Another, H.C.C.C. No. 2982 of 1986 (unreported). Nancy suffered bruises on the right side of the chest, bruises on the right side of the pelvis and laceration of the chest. The late Mr. Justice Rauf awarded to her Shs.7,000/- as general damages on the 29th June, 1987. Mr. Khanna submitted that these injuries are nearer to those suffered by the present plaintiff, but that taking into account the question of inflation, I should double the award and give the plaintiff Shs.15,000/-. I personally think that the injuries suffered by the plaintiff while they are clearly of a minor nature, are nearer to those of Mr. Jiwaji's case than Mr. Khanna's case. Mr. Justice Bosire awarded Shs.30,000/- in 1989 and taking into account the question of inflation, I now award to the Plaintiff Shs.40,000/- as general damages for the injuries he suffered on the 11th April, 1985.

Accordingly, I now enter judgment for the Plaintiff against the Defendant as follows:-

1. Special Damages – Shs.3,000/- with interest thereon at court rates with effect from the date when the suit was filed;
2. General Damages – Shs.40,000/- with interest thereon at court rates with effect from the date of this judgment.
3. Costs of the suit to the plaintiff.

Those shall be the order of the court.