



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL CASE NO. 2765 OF 1985

KARITAPLAINTIFF

VERSUS

MUTHUA.....DEFENDANT

JUDGMENT

On 30th June, 1984 the plaintiff was working at the defendant's workshop splitting timber with an electric machine when his hand was caught in between the gauge and the cutting blades of the machine and was seriously injured. He has sued the defendant who was his employer to recover damages arising out of the injuries and alleges that the defendant was negligent and/or was in breach of duty of care in that he failed to take any or any adequate precaution for the safety of the plaintiff while working in the workshop: exposed the plaintiff to risk of injury of which he knew or ought to have known and failed to provide an adequate system of maintenance of the machine.

The plaintiff's evidence was supported by one witness, Samson Kanamu, a workmate of his, who saw the accident. The evidence was that the plaintiff had, prior to the accident, worked for the defendant for 4 years.

On the day of the accident he reported for duty at 6.00 am and started work immediately. There was no supervisor, as the supervisor normally reported for duty at 8.00 am and by the time the accident occurred, at 7.00 am, he had not arrived at the defendant's workshop.

As the plaintiff was using the defendants machine to cut timber, his right hand was caught by the machine and badly cut. His injuries according to a medical report compiled by Dr J L Becher (F R C S), Consultant Orthopaedic Surgeon, were:

1. Amputation of the thumb
2. Amputation of the index finger
3. Serious injury of the middle finger.

The doctor estimated permanent disability at 60%.

On the basis of the evidence adduced by the plaintiff and his witness I find that the defendant was negligent in that he failed to take precautions to guard his workers from being injured whilst working on the timber cutting machine. In my view, the defendant was under a common law

duty of care to fence off the machine, or at least those parts of it that were dangerous to the users of the machine; he was also under a duty to supervise the workers and to issue them with such protective wear as would ensure that they were not exposed to injury by the machines they were required to work with. That he failed to do so, and as a result thereof, the plaintiff got injured, is evidence of the defendant's negligence. The defendant is therefore liable to the plaintiff in damages for the injuries he sustained.

As regards the claim for general damages for pain and suffering and loss of amenities, it is noted that the defendant lost the thumb and the index fingers of his right hand, which hand is his dominant one. What is left now are stumps of those fingers. He must have suffered severe pain and was admitted in hospital for 18 days.

Learned counsel for the plaintiff cited the cases of *Ondiek Odera v Nenguyo Agricultural Construction and Transportation Ltd* (HCC No 2607 of 1984) and *Southern Engineering Co Ltd v Musingi Mutia* (HCC no 46 of 1983) both of which I have taken into consideration. I have also taken into consideration the plaintiff's disability as described by Dr Beecher. Bearing in mind all the injuries sustained by the plaintiff as well as the factors mentioned above and doing the best I can in the circumstances, I would assess general damages for pain and suffering and loss of amenities at Kshs 110,000.

On the claim for damages for loss of earnings there was evidence that the plaintiff is now 26 years old which means that he was 23 years when the accident occurred. His salary was Kshs 480 per month. Since sustaining the injuries, he has not been in employment and it is unlikely that he will get any work since the right hand that was injured, is his dominant hand.

I agree with the submission of counsel for the plaintiff that a multiplier of 20 would be appropriate in the circumstances of this case. That would bring the sum to be awarded in respect of loss of savings to Kshs $20 \times 12 \times 480 =$ Kshs 115,200. I also agree that the figure should be increased by 5% ie 5,760 on account of inflation and the possibility of a rise in the salary of Kshs 480 which he was earning at the date of the accident. Accordingly the total sum to be awarded to the plaintiff for loss of earnings is Kshs 120,960.

To the figures awarded by way of general damages must be added the sum of Kshs 420 special damages being charges for the medical report.

For the above reasons, there will be judgment for the plaintiff against the defendant for Kshs 230,960 general damages and Kshs 420 special damages plus costs together with interest on both the damages and costs at the court rate. As the plaintiff has received Kshs 7,000 from the defendant under the Workmen's Compensation Act (cap) the sums payable by the defendant to the plaintiff will be reduced by that sum.

Orders accordingly.

Dated and delivered at Nairobi this 4th day of August, 1987

T. MBALUTO

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JUDGE