

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

HCT-00-CV-CS-0013-2014

NSUBUGA TONNY ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

- VERSUS -

SPENCON SERVICES COMPANY LTD ::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

JUDGMENT:

The plaintiff filed this suit against the defendant Spencon Services Company Ltd claiming compensation for injuries suffered as assessed by Labour Officer, Special damages, General damages for disabilities, interest and costs of the suit.

The facts of this claim as can be deduced from the plaint that the plaintiff on the 1st day of November, 2010 while working as a Bitumen Operator for the defendant a hot bitumen pipe burst and hot tar poured on his neck, face, mouth, ears and chest and was admitted at Mulago Hospital on 16th December, 2010. As a result of the pipe burst, the Plaintiff sustained several cuts resulting in molten bitumen burns on the left side of the face, neck, chest, left arm and right forearm. The Plaintiff claims that the defendant was negligent on failure to provide proper industrial protective wear and that he worked with bare chest and head while operating hot bitumen pipe.

The defendant filed a defence out of time and denied liability. The defendant at the beginning was represented by Mr. Brian Emurwon from Katende Sempebwa & Co. Advocates but after mediation had failed neither counsel for the defendant appeared for hearing nor any representative of the defendant. Mr. Kakeeto Denis counsel for the Plaintiff applied to proceed *ex parte* which was allowed.

The issues framed for the determination by court are:-

1. Whether the defendant was negligent as and when the plaintiff was in employment?
2. What remedies are available to the parties?

I will now proceed and resolve the issues as framed:

Issue 1:

From the pleadings it is not disputed that the Plaintiff was working for the defendant. It is also a fact that the Plaintiff got an accident while working with the defendant. Paragraph 9 of the written statement of defence is to the effect that soon after learning of the accident the defendant notified the Labour Officer on Form LD31 as required by law and gave notice and details of the same to her insurer MS Phoenix of Uganda Assurance. The defendant however denies being negligent.

Counsel for the Plaintiff submitted that according to **Sultan Bin Ahmed Mugheiri Ismaile Djaramsi IZLR 1868-1918** that was quoted in **HCCS No. 793 of 2004 Kugonza Wilson Vs Spencon Services Ltd & Another** it was held that in order to prove negligence one must prove;

1. ***The defendant was under a recognized legal duty;***
2. ***The legal duty extended to cover the Plaintiff in particular circumstances;***

3. *That as a result of the breach of the duty by the defendant the plaintiff suffered loss or damage or injuries.*

In Watsemwa & Another Vs Attorney General Civil Suit No. 675 of 2006 which was cited with approval the celebrated case of Donoghue Vs Stevenson [1932] AC 362, court stated that to establish negligence, the plaintiff had to prove that:

1. *There existed a duty of care owed to the plaintiff by the defendant.*
2. *The defendant had breached that duty.*
3. *The plaintiff had suffered injury or damage as a result of the breach of duty.*

He submitted that Negligence was defined in the case of Blyth Vs Birmingham Water Works Co. 11 EX. 784, as:

“The omission to do something which a reasonable man would do; or doing something which a reasonable man would not do.”

Section 13(g) of the Occupational Safety and Health Act 2006 provides that provides that an employer must provide necessary adequate personal protective equipment as far as it is reasonably practicable to prevent the risks of accidents or of adverse effects of health.

Section 19 of the Occupational Safety and Health Act, 2006, an employer shall provide adequate and suitable protective clothing and protective equipment to the workers of his or her undertaking.

PW1 gave evidence that at the time of the accident he was in civilian clothes and gumboots, he had no head gear for protection and/or helmet for protection of his head. The protective gear would have at least protected the face, neck, ears, mouth and head of the plaintiff.

The defendant had a legal duty to provide the plaintiff with protective industrial clothing which they never did. She therefore breached that legal duty and thus was negligent causing the plaintiff injury when a hot bitumen pipe burst and hot tar poured on his neck, face, mouth, ears and chest.

I accordingly find this issue in the affirmative.

Issue 2:

I. Compensation for injuries suffered:

It is also undisputed that the Labour Officer Kawempe Division assessed compensation of Ug. Shs.2,925,000/= (two million nine hundred twenty five shillings) as Worker's compensation under Worker man's Compensation Act. I agree with the assessment and consequently judgment will be entered for the assessed Shs.2,925,000/= as Worker's compensation.

II. Special damages:

The principal of law is well settled that special damages must be specifically pleaded and proved. In *Musoke Vs Departed Asian Property Custodian Board and Another Civil Appeal No. 1992 (reported in [1990 – 1994] 1 EA 219*, it was held that;

“.....special damages encompass expense and lost earnings. They must be strictly and specifically proved. However there is no rule that documentary evidence is the only way of proving them”.

The plaintiff pleaded for shs.4,108,000/= (Four million one Hundred and Eighty Thousand Shillings) terms of transport and meals every other day of the visit to Hospital. I will decline to award this amount since there was no proof adduced to show that he indeed spent that money as pleaded.

III. General damages:

In an attempt to settle the claim for general damages during mediation, the plaintiff asked for shs.100,000,000/= general damages and the defendant offered shs.80,000,000/= which sum was rejected by the plaintiff. See court proceedings of 2/12/2015.

General damages are those that the law presumes to arise from direct, natural or probable consequences of the act complained of by the victim. These follow the ordinary course or relate to all other terms of damages whether pecuniary or none pecuniary, future loss as well as damages for paid loss and suffering. This was also decided in the case of *Uganda Commercial Bank Vs Deo Kigozi [2002] EA 293.*

It was held in the case of *Livingstone Vs Rawyards Coal Co. [1880] 5 APP Cases, 25, 39* that;

“where the injury is to be compensated by damages, you are to consider what is pecuniary consideration which will make good the sufferer as far as money can do so, the loss which he has suffered and the natural result of the wrong done to him”.

In *Wekesa John Patrick Vs The Attorney General Civil suit No. 130 of 2008,* it was stated that while considering the quantum of damages, the following should be taken into account:

1. *Pain and suffering;*
2. *Disability and loss of amenities;*
3. *Loss of expectation of life;*
4. *Loss of earnings;*
5. *Future expenses;*
6. *Loss of earning capacity.*

In the instant case, the plaintiff in his evidence asked court to award him general damages of shs.250,000,000/=. To justify the amount counsel submitted that the plaintiff has esthetic post burn, hypertrophic scar itching and pain from time to time, reduced movements of the neck extensive bitumen burn of the face, neck and chest with big itching scars with contracture.

At the moment the plaintiff is incapacitated by a permanent disability of 25% as revealed by the medical report from OSHA LTD by Dr. D.K. Sekimpi. He has undergone untold mental anguish and trauma. The defendant failed to protect him while on duty and there was negligence in failing to give protective gear to the plaintiff while carrying out his work.

I will therefore consider an award of UGX100,000,000/= as reasonable on account of general damages.

The said award will carry an interest of 6% from the date of filing of the suit until payment in full.

In the final result, judgment is entered for the plaintiff in the following terms:

- 1. UGX.2,925,000/= as assessed for workers compensation by the Labour Officer;**
- 2. An award of UGX.100,000,000/= as general damages;**
- 3. Interest on (2) of 6% from the date of filing the suit till payment in full.**

The plaintiff shall get the taxed costs of the suit. I so order.

Stephen Musota

J U D G E

15.06.2016.