

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT K.MPALA

HIGH COURT CIVIL SUIT NO.490 OF 1997

MOSES KIMEZE.....PLAINTIFF

AFRI PLAST INDUSTRIES LTD.....DEFENDANT

BEFORE: THE HON. MR. JUSTICE E.S. LUGAYIZI

JUDGMENT

The plaintiff sued the defendant and claimed special and general damages arising from injuries he sustained on account of the defendant's negligence in the course of employment at the defendant's place of work.

In its WSD the defendant denied the plaintiff's claim and, among other things, averred that the defendant's place of work is safe; and the defendant is not guilty of any of the acts of negligence alleged in the plaint. During the hearing of the suit the plaintiff called two witnesses, namely, himself (PW1) and Dr. Ntege (PW2). On the other hand, the defendant brought one witness namely Bharat Gohil (DW1).

In brief the plaintiff's case was as follows. On 30th March, 1996 Moses Serunjogi (the plaintiff (PW1) was on duty at the defendant's place of work. He was working as a casual labourer. He had been with the defendant for 3 months. He mainly attended to a machine that shaped soles for old shoes. On that day, as Serunjogi did his work he was instructed to go and lift materials that were lying near the rotation machine. He moved as he was advised to do. However, as he passed by the rotation machine it began moving. In the process it cut off two of his fingers on the right hand, namely, the small finger and index finger. The machines at the defendant's place of work were open and not fenced. They could easily hurt the employees. Serunjogi was rushed to Nsambya Hospital where his fingers were stitched and he received medication. After the stitches were removed, the injuries on his fingers got worse. He was therefore compelled to look for

better medical treatment at Dr. Ntege's clinic where he received physiotherapeutic treatment for one month. In all, the injuries Serunjogi sustained disfigured him. Presently, he cannot grip objects properly with, his right hand. His permanent disability was assessed at 30% by Dr. Ntege. He spent Shs.50,000/= on transport and drinks in the course of his treatment. Finally, he prayed Court to award him special and general damages.

In essence the defendant's testimony was that the plaintiff was working for it at the time he sustained the injuries in question. The defendant paid the plaintiff's hospital bills and the salary due to him for the period of his sickness.

From the evidence on record it is clear that the plaintiff was working for the defendant at the time of the accident. What is not quite clear is whether the defendant was responsible for the injuries that the plaintiff sustained on the day in question. Consequently Court has to resolve two issues, namely,

1. Whether the injuries that the plaintiff sustained were as a result of the defendant's negligence?
2. The remedies available.

The Court will now resolve the above two issues in turn.

With regard to the first issue, the plaintiff's evidence was that on the day in question he was on duty at the defendant's place of work when the rotation machine cut off his two fingers as he passed near it. That machine was not in motion before, but when he reached it, it began running and injured him. All the machines at the defendant's place of work, then, were not fenced. The above evidence was neither challenged nor contradicted by the defendant. In fact, that evidence shows that the defendant contravened the provisions of Part V of the Factories Act (Cap.198) relating to "Safety in that it failed to fence the moving parts of the machines in its factory. For that reason, the defendant did not ensure a safe working environment for its employees as the law requires. In the circumstances, the defendant was negligent; and it was as a result of that negligence that the plaintiff sustained the injuries in question. The first issue is answered in the affirmative.

With regard to the second issue, the plaintiff prayed for special and general damages. In his evidence the plaintiff testified that in the course of his treatment he spent Shs.50,000/= on transport and drinks. The law relating to special damages is that they must be specifically pleaded and strictly proved. (**See; Sali v Bwenqye [1978] HCB 189; and Estate of Shamji Visram Kurli Karsan Shankesprasad Maqanlal Bhatt and Anor. Civil Appeal No.25 of 1964 [1965] E.A 789 at page 796**). The crucial question to answer is whether the sum of Shs.50,000/= that the plaintiff claimed as special damages was specifically pleaded and strictly proved? Although the amount of Shs.50,000/= could arguably be said to have been catered for under miscellaneous expenses in paragraph 9 of the plaint, it was not specifically proved during the hearing. Indeed, the plaintiff merely alleged that he spent that sum in respect of transport and drinks during the period of treatment, but he did not support it with any receipts during the hearing of this case. In the circumstances, that claim was not proved. For that reason Court will not grant it.

With regard to general damages, there is no doubt that the plaintiff suffered pain when his two fingers (that is to say, the small finger and the index finger) were cut off by the rotating machine on the day in question. According to Dr. Ntege (PW2) the plaintiff is currently disfigured and cannot hold things properly with his right hand. Dr. Ntege assessed the plaintiff's disability at 30%. In the case of **Matiya Byabalema and 2 Others v Uganda Transport Co. Civil Appeal No.10 of 1993**, the appellant had his leg amputated after an accident which was caused by the defendant. The High Court awarded him Shs.4m/= as general damages. On appeal, the Supreme Court raised that sum of money to Shs.9m/=. In the instant case, unlike Byabalema (supra) the subject of the award is two fingers which were cut off and not a limb. Despite the fact that the plaintiff cannot firmly hold objects with his right hand, Court does not think that he should get so much as the plaintiff was awarded in the Byabalema case (supra). All in all, Court thinks that a sum of Shs.3.5m/= would be adequate to compensate the plaintiff as general damages for the injuries he suffered.

In conclusion, the plaintiff's suit has succeeded; and judgment is hereby entered in his favour in the following terms.

1. The plaintiff shall be paid a sum of Shs.3.5m/= as general damages by the defendant.

2. The defendant shall bear the costs of this suit.

E.S LUGAYIZI

JUDGE

21/03/2001