



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT NO 171 OF 1998**

**JOHN JOEL KOSKEI.....PLAINTIFF**

**VERSUS**

**KENYA POWER & LIGHTING CO. LTD.....DEFENDANT**

**JUDGEMENT**

The defendant in this case is a Limited Liability Company that carries on business within the Republic of Kenya. On the other hand, the plaintiff was employed by the defendant as a Meter Reader.

On or about 23rd November, 1993 while the Plaintiff was in the course of his duty riding a Kenya Power and Lighting Company motor bike along Nakuru – Njoro Road he was involved in an accident and sustained serious injuries. In addition to the above, the Plaintiff has also pleaded that further or in the alternative the said injuries, loss and damages were occasioned to the plaintiff by reasons of the negligence of the defendant and breach of contract to statutory tenure of employment on the part of the Defendant.

During his evidence, the PW2 – John Joel Koskei (*hereinafter referred to as the Plaintiff*) deposed that he had worked for Kenya Power Lighting Company Limited for ten years as a Meter Reader. He recalled that on the material day he had been sent to Njoro and on the way he hit a pot-hole and fell down. According to the Plaintiff, though he tried to control the motor-bike, he failed as the same had **not** been taken for service.

Besides the above, the plaintiff stated that the said motor-bike was previously being used by his work-mate and that the brakes were loose while the accelerator was loose. He faulted the Company for **not** providing him with boots, helmet and raincoat. Due to the accident, the plaintiff stated that he sustained the following injuries:

- fracture of the skull
- soft tissue injuries on the knee
- 2 broken teeth.

Apart from the above, the plaintiff lost consciousness and only regained the same while at the Pine

Breeze Hospital where he had been admitted for 2 months. According to the plaintiff, he was admitted in hospital on three different occasions. He reckoned that he was admitted for the second time on 9th June, 1995. Subsequently, he was admitted on the third occasion on 3rd September, 1997. Eventually, the plaintiff was sent on early retirement on medical grounds. The plaintiff was retired when he was only 33 years old. Since he was thrown out of the job upto the time of the trial, the plaintiff has **not** yet been employed.

In his medical evidence, Dr. Wellington Kiamba deposed that on 28th January 2004 he examined the Plaintiff who had sustained injuries on 23rd November, 1993 following a road traffic accident. After taking the history of the patient, Dr. Kiamba perused the Discharge Summary, the Medical Report by Dr. Simiyu and the X-ray. Thereafter, Dr. Kiamba deposed that the plaintiff was later referred to a Psychiatrist for a mental checkup due to inappropriate behaviour. According to Dr. Kiamba, the plaintiff sustained injuries of grievous harm and had permanent disability of 30%.

After the close of the Plaintiff's case, the defendant opted **not** to offer any evidence. Consequently both Counsels made oral submissions to guide the Court on liability and the quantum to be awarded.

This Court has carefully perused the evidence on record together with the submissions. From the evidence on record it is crystal-clear that the Plaintiff was an employee of the Defendant for about 10 years. Though the Defendant's Counsel took issue with the fact that the Plaintiff never had any documentary proof to prove employment, he later conceded that he was an employee of his client.

Secondly, it was obvious that the defendant's Counsel neatly and deliberately avoided to respond to the allegations that the Plaintiff was not supplied with boots, helmet and raincoat before the accident. In fact, if the plaintiff had been supplied with the helmet and had used the same, then his head injuries would have been minimised to say the least.

Since the evidence of the plaintiff was **not** challenged **nor** controverted, I hereby find that the same is truthful and correct.

Thirdly, it is apparent that the Defendant is a well established and reputable firm. Having stated the above, this Court would expect the defendant to be maintaining its machinery, plant, equipment, motor vehicles and motor-bikes with registered and contracted firms.

These firms would also be expected to keep records of repairs and maintenance of the above. When the plaintiff alleged that the motor-bike had **not** been serviced and that the accelerator and brakes were loose – nothing would have been easier than to call the Company Mechanics to rebut the above. The defendant opted **not** to challenge or controvert that evidence. The only conclusion that the Court can reach is that the said Mechanic would have given adverse evidence. In view of the above, I hereby find that the said motor-bike had **not** been serviced and that the brakes and accelerator were loose. Given the above, I hereby find that the defendant was 100% liable.

As far as the Quantum of damages is concerned, the Court has carefully perused the injuries sustained by the Plaintiff and the quoted authorities. It is apparent that in this case, the Plaintiff sustained more serious injuries than those in the following two cases:

**- Wilson Munywoki Maketi**

**Vs**

**- Mugoya Construction**

**NAIROBI HCCC NO. 4803 of 1992**

**and**

**Mukesh Parmar & Another**

**Vs**

**Kenya Transporters & Another**

**NAIROBI HCCC NO. 861 of 1991**

In the above cases, the Plaintiffs were awarded Kshs.713,000/= and Kshs.800,000/= respectively.

However, the Court notes that the above authorities were delivered about 13 years ago. Given the rate of inflation, the value of the Kenya shilling has depreciated considerably over the last decade. The upshot is that I hereby award a sum of Kshs.1,700,000/= for general damages. Though special damages were pleaded, the same were not proved by production of receipts or invoices. It is on that note that this Court has declined to make any order in relation to the special damages. Since the plaintiff has proved his case on a balance of probabilities, I hereby enter judgment in his favour on the following terms:

**(a) General damages: Kshs.1,700,000/=**

**(b) Costs of the Suit**

**(c) Interest on (a) and (b).**

**Right of Appeal Explained.**

**MUGA APONDI**

**JUDGE**

Judgment read, signed and delivered in open Court in the presence of Mrs. Oduor for

Mrs. Odeny for plaintiff.

**MUGA APONDI**

**JUDGE**

**5TH MAY, 2005**



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