



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 429 OF 1998

TIMOTHY WAFULA.....PLAINTIFF

VERSUS

SIETCO DEVELOPMENT AFRICA LIMITED.....DEFENDANT

JUDGMENT

According to the plaintiff, on or about 11th May, 1995 as he was acting in the course of his employment with the defendant, when due to the negligence of the latter – and or that of the employees, while digging a foundation at a construction site, the wall of the foundation collapsed on him, causing him serious injuries and has suffered loss and damages.

Due to the accident, the plaintiff became unconscious and only regained the same at Lugulu Mission Hospital where he had been admitted for 2 months. The plaintiff explained that due to the accident, he received the following injuries:

- two broken ribs.
- Chest injuries which led to two operations.
- On the hand and shoulders.

Consequently, the plaintiff underwent two medical examinations by Dr. Malik and Katam who later prepared – Ex.3 and Ex.5. Even by the time of the trial, the plaintiff was still complaining of feeling a lot of pain when walking long distances. He also complained of

feeling headache whenever he was hungry.

Earlier, the parties had entered a consent judgment on liability. The consent was entered on the following terms:

(i) That judgment be and is hereby entered in favour of the plaintiff on liability at the ratio of 75:25.

(ii) That costs of Kshs.42,400 in respect of Bungoma CMCC No. 566 of 1990 be deducted from the sum to be awarded as general damages in this instant suit.

On completion of the plaintiff's case, the defendant opted not to offer any evidence.

Consequently, both Counsels handed in detailed submissions to guide the Court on the quantum of damages. Both of them also quoted several authorities to assist the Court.

Having carefully perused the above, the Court is of the considered opinion that the injuries suffered by the plaintiff were serious and are in the same class as those suffered in the following cases:

- SISCO Murunga Ndanya & 2 Others Vs Coast Bus Services Ltd.

HCCC No. 4425 of 1990 (Nairobi)

and

In Mercy Richard Vs Raphael

Mombasa HCCC No. 871 of 1982

Taking into account the rate of inflation and the passage of time since the other authorities were delivered, I hereby award Kshs.800,000 as general damages.

The upshot is that I hereby enter final judgment on the following terms:

(a) General damages:

Kshs.800,000.00

Less 25% contribution Kshs.200,000.00

Less Kshs.42,000.00

Kshs.557,600.00

- (b) Special damages – Kshs.2,000.
- (c) Costs of the suit.
- (d) Interest on (a), (b) and (c) at Court rates.

MUGA APONDI

JUDGE

Judgment read, signed and delivered in open Court in the presence of Mr. Odhiambo
Advocate.

MUGA APONDI

JUDGE

17TH FEBRUARY, 2004



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