REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

Civil Appeal 18 of 2005

AFRO SUGAR CO. LIMITED ..... 1ST APPELLANT

NYALSONS MIWA MILLERS LIMITED .....2ND APPELLANT

VERSUS

LEVI JUMA ELIUD ..... RESPONDENT

(Being an Appeal from Judgment and decree of Hon. W. N. Njage (Principal Magistrate) in Eldoret CMCC. 609 of 2003 read and delivered on 11th day of February, 2005)

JUDGMENT

This appeal arises out of domestic factory accident which occurred on 15th October, 2002 in which the Respondent was injured whilst he was duly engaged upon his duties and while within the scope of his employment with the Appellant.

The injuries suffered by the Respondent may be summarized as soft tissue. Medical Reports by two experts were by consent of the parties produced before the learned trial Magistrate. One was prepared by Dr. Aluda and the other by Dr. Gaya. Both experts concur that the Respondent had suffered soft tissue injuries and that they had healed well.

The learned trial Magistrate awarded Shs. 280,000/= for pain, suffering and loss of amenities.

The grounds of appeal do not challenge liability but they contend that the damages are too high. Mr. Nabasenge Counsel for the Appellant has based the appeal on the following four grounds:-

1. That the learned trial Magistrate erred in law and in fact in awarding the Plaintiff general damages which was quite high in the circumstances of the case.

2. That the learned trial Magistrate erred in law and fact in disregarding submissions and the authorities in support thereof without any reasonable cause to do so.

3. That the learned trial Magistrate erred in law and fact in awarding general damages without giving any reason and/or saying the basis for the award.

4. That the learned trial Magistrate erred in law and fact in using wrong principles in assessing the general damages.

Mr. Nabasenge argued these grounds together and contended that the resultant award was based on the wrong and misapprehended analysis of the total evidence produced in Court and in so doing arrived at a manifestly excessive and erroneous award.

There was no real contest about the medical evidence which was comprised in the two reports tendered into account by consent.

While Mr. Esikuri Counsel for the Respondent submitted that the trial Magistrate did not error either in law or fact. The award was proportionate and adequate. The trial Magistrate did consider both submissions and the authorities cited in arriving at such an award.

In order for the Appellate Court to interfere with the lower Court's award on general damages, it has to be shown that the sum awarded was demonstrably wrong or that it was based on a wrong principle or was so manifestly excessive or inadequate that a wrong principle may be inferred. See **KIGARAGARI VS. AYA (1985) KLR 273**.

In awarding damages for personal injury the Count should consider that there is need to develop consistency in the awards and that the awards should both be within the limits of the decided cases and avoid the effect of making insurance cover and fees unaffordable for the public.

It is trite law that in awarding damages the Court has to take into consideration comparable awards. The awards should not be too high or too low, so as not to reasonably provide the injured person with something for pain, suffering and loss of amenities. In the instant case the cases cited by both Counsel are within the same bracket. They range between Shs. 80,000/= and Shs. 180,000/=. My understanding of the bracket is that it does not fix a sum certain to which, like a prosecution bed, all awards was for similar or almost similar injuries must fit. The bracket only provides a range.

Despite the fact that the highest award in the cited case by both Counsel, was Shs. 180,000/= the trial Magistrate awarded Shs. 280,000/= for general damages. The award of Shs. 280,000/= in respect of pain, suffering and loss of amenities was in my view erroneous as to lead me to believe that the award was too high to merit inference taking into account that the Respondent had sustained only one injury on the foot caused by hot water. It has been quite often pointed out by Courts that award of damages must be within limits set by decided cases and also within limits that Kenyans can afford. By common consent awards must be reasonable and must be assessed with moderation.

Accordingly, the award of general damages is reduced from shs 280,000/= to Shs 210,000/= and further reduced by 35% which amounts to Shs. 136,000/= and order that the decree appealed from be amended accordingly.

Notwithstanding this partial success, I would make no order as to the costs of this appeal and would leave the parties to bear their own costs.

DATED AND DELIVERED AT ELDORET THIS 29TH DAY OF SEPTEMBER, 2009.

J. L. A. OSIEMO

JUDGE