



IN THE HIGH COURT OF SIERRA LEONE
LAW COURTS BUILDING
SIAKA STEVENS STREET

CC 386/17

MOHAMED BAH

PLAINTIFF

AND

THE MANAGING DIRECTOR,
AFRICELL (SL) LTD

1ST DEFENDANT

AFRICELL (SL) LTD

2ND DEFENDANT

REPRESENTATION:

E.S. ABDULAI ESQ.

COUNSEL FOR THE PLAINTIFF

A. SHOWERS ESQ.

COUNSEL FOR THE DEFENDANTS

BEFORE THE HON. MR. JUSTICE SENGU KOROMA JA.
JUDGMENT DELIVERED ON 26TH JULY, 2018

1. The Plaintiff herein filed a Writ of Summons dated the 9th day of December, 2017 against the Defendant Company and its Managing Director (hereinafter referred to as "the Defendants") claiming the following:
 - 1) Damages for breach of duty;
 - 2) Recovery of the sum of Le 1,094,151,776.00; and
 - 3) An order that the Plaintiff be flown to India for his second medical treatment at the expense of the 2nd Defendant
 - 4) Any order or orders that this honourable court may deem fit and just.
2. The Defendants entered appearance to this action on the 8th of January, 2018 and filed a defence on the 18th January, 2018.
3. I have not referred to the particulars of claim herein because there is an application for Summary Judgment before me to determine; the affidavit in support of which will deals with all issues relating thereto.
4. On the 26th May, 2018, Counsel for the Defendants, A. Showers Esq. informs the court that his clients are considering settling the matter out of court. He proposes the payment of Le 51 million as compensation with regards to the injuries sustained by the Plaintiff and Le 59 million as end of service benefits.
5. The proposal is unacceptable to the Plaintiff and his Counsel, Emmanuel S. Abdulai Esq. who informs the court that they want compensation for:
 - i. Disability;
 - ii. Training;
 - iii. Unutilized period of employment;
 - iv. Long term medical treatment; and
 - v. Solicitor's costs.
6. In view of the failure of the parties to agree on a settlement, I ordered that the Plaintiff's Counsel move his application on the next adjourned date.
7. On the 30th May, 2018, Mr. Abdulai moves the application in which the Plaintiff prays for the following Orders:-

1. That this Honourable Court do order the Plaintiff/Applicant to enter Summary Judgment against the 1st and 2nd Defendant/Respondents on the reliefs claimed in the Writ of Summons dated 9th December, 2017 pursuant to Order 16 (1) of the High Court Rules 2007
2. Special damages in the sum of Le1,094,151,776.00
3. Damages for breach of duty of care.
4. Interest rate at 35% per annum.
5. An order that the Plaintiff be flown to Indian for his second medical treatment at the expense of the 2nd Defendant.
6. That the cost of this application be borne by the Defendant/Respondents
8. The application is supported by the affidavit of Alpha Salieu Ndolleh sworn to on the 25th day of April, 2018 together with the exhibits attached thereto. In the said affidavit, the deponent avers that there is an employer/employee relationship between the parties-Exhibits "ASN₁"
9. In paragraph 3, the deponent avers that in the course of his employment, the Plaintiff was attacked by bees and fell down from the pole of the Defendants.
10. The deponent further avers as follows:
 - i. Paragraph 5-That on the 28th day of June, 2016 Dr. Williams prognosed that the Plaintiff's right knee had dislocated and recommended certain actions including flying him overseas for treatment.
 - ii. Paragraph 6-That the medical treatment was initially done by a Doctor in India, who only did part of it. The medical report is exhibited and marked "ASN 2".
 - iii. Paragraph 7-That the Plaintiff has been rendered incapable to do any work:-
 - Can no longer walk without the help of clutches
 - His left leg is overburdened by his weight

- He is no longer able to carry on his trade

iv. Paragraph 10-That the Doctor in India recommended that knee replacement be done on the Plaintiff six months after the initial treatment but the Defendants refused to finance the trip. The said recommendation is exhibited and marked "ASN 3".

v. Paragraph 12-That it is clear from the defence filed that the Defendants have no defence on the merit.

11. In his oral submission, Mr. Abdulai argues that the Plaintiff is no longer able to do the job he used to do. At the age of 34 years, the Plaintiff is 26 years short of the retirement age and so in his claim, his future earning was computed up to the date of retirement.
12. He submits that the Defendants cannot rely on the Workmen's Compensation Act, Cap 19 of the Laws of Sierra Leone, 1960. In his view, that Act is not applicable to matters commenced in the High Court as Section 23 thereof only gives this court an appellate jurisdiction.
13. Counsel for the Plaintiff in addition relies on the following cases:-
 - i. NATIONAL PARKS & WILDLIFE SERVICES -V- STABLE PERISHERS (1990) NSWLR
 - ii. MOSES J. WILL -V- CHINA RAILWAY 7TH GROUP.
 - iii. GIBRILLA BANGURA -V- HENAN CONSTRUCTION COMPANY LTD
14. Mr. Abdulai concludes by reminding the court of the need for equity and good conscience to prevail as what the Defendants are offering is grossly inadequate.
15. The application is opposed by the Defendants and their Counsel, Adewale Showers Esq. relies on an affidavit sworn to on the 11th May, 2018. In paragraph 4 of the said affidavit, the deponent avers that on the 26th June, 2015, the Plaintiff herein had an accident whilst working for the 2nd Defendant: that he had to unhook the protective harness in order to release himself and flee from the attack of bees. He exhibits "AF1 A"-Accident

report of the Engineer in charge and "AF1 B-Evidence of PPE (Personal Protective Equipment) supplied to the Plaintiff

(16. Andrew Fatorma the deponent also avers that:

i. Paragraph 5-That the Plaintiff was given medical attention at the Emergency Hospital, Godrich, where he was admitted until the 6th October, 2015.

ii. Paragraph 6- That at the request of the Plaintiff, he was given Le 4, 500,000/00 to seek medical treatment from a native bone doctor/specialist. He exhibits the said letter of request dated 7th October, 2015 and receipt of payment of medical bills of the native doctor as Exhibits "AF 2 A& B

iii. Paragraph 7- That after a period of 7 months-that is about May- July, 2016, the Plaintiff approached some officials of the 2nd Defendant regarding his condition. He was first sent to Dr. Williams and on the 17th June, 2016, he went to see a bone specialist, Dr. Baimba Bayoh at the King Herman Road, Hospital. The medical report of Dr. Bayoh is exhibited and marked "AF 3".

iv. Paragraph 8-That the Plaintiff was later sent to Dr. M. Harding (an Orthopedic specialist) to seek a second opinion. The said opinion is exhibited and marked "AF 4".

v. Paragraph 8-That consequent on "AF 4", the Plaintiff was flown to India where he underwent an operation. All the medical expenses were undertaken by the 2nd Defendant for the Plaintiff and his brother who accompanied him to India and also paid a stipend of \$50.00 a day to cover personal and miscellaneous expenses-copies of receipt of National passport, ticket and medical bills for medical expenses is now shown to me and marked "AF A-L".

vi. Paragraph 6- That contrary to paragraph of the affidavit in support, the operation in India was successful save that it is the opinion of Dr. Rakesh Bhansali and that of Dr. Harding that the knee replacement could not be done immediately but on the attainment of age 60. (A Photostat copy of the letter dated 10th February, 2018 is exhibited as "AF 6".

- vii. Paragraph 11-That contrary to paragraph 8 of the affidavit in support, the Plaintiff suffered 35 percent disability which means he is not permanently disabled and he could do some other work and indeed the Defendant made such an offer. Letters to the Plaintiff requesting him to resume work are exhibited as "AF A-C".
- viii. Paragraphs 12 and 13: Dr. R. R. Bhansali in his letter dated 10th February, 2018-Exhibit "AF 6" stated that the Plaintiff need not travel all the way of India for follow-up treatment as nothing special needs to be done for very many years to come."
- ix. Paragraph 15: That the computed compensation for his permanent partial incapacity in the sum of Le 51,480.933 being 35 percent of his monthly earnings was communicated to him by exhibited "AF 8".
17. Mr. Fatorma concludes by deposing that the Defendant do have a defence to the action.
18. In his oral submissions, Mr. Showers argues that the defence filed discloses triable issues which would warrant a trial.
19. Mr. Showers admits that the substance of the application centres around the issue of compensation. He submits that the Defendant is not averse to pay compensation to the Plaintiff but the area of divergence is the legal framework to be used in determining same. To him, the legal framework should be the Workmen's Compensation (Amendment) Act, 1969-Section 6 thereof.
20. On the submission of Mr. Abdulai that Section 21 of Cap 219 deprives the High Court of jurisdiction to try this matter; Mr. Showers argues that the said section provides that all the powers and jurisdiction exercisable by the Magistrate Court shall apply *mutatis mutandis*.
21. Mr. Showers further submits that the Defendants were not negligent as the accident was not foreseeable and that the Plaintiff was given protective gear-Exhibit AF 1A.
22. In reply, A.S Ndolleh Esq. deputing Mr. Abdulai submits that the application before this court is not based on Cap 219. The computation

done by the Defendants referencing that section is grossly inadequate. Instead they are relying on the common law duty to act with equity and good conscience. For this he cites the case of NORTHERN COLLIERY EMPLOYEES FEDERATION -V- NORTHERN COLLIERY PROPRIETORS ASSOC. (1904). Mr. Ndolleh concludes on this point by submitting that when the injuries suffered by the Plaintiff are taken into consideration, the compensation offered by Cap 219 would be against equity and good conscience.

23. Mr. Ndolleh finally concludes by submitting that the affidavit in support should be discountenanced as there are no triable issues.
24. After reading the affidavits in support and opposition, my first conclusion is that the Defendants are not disputing liability but are insisting that Cap 219 and the amendment thereto should form the basis of any compensation to be paid to the Plaintiff.
25. It should however be noted that compensation under Cap 219 do not require negligence on the part of the Defendant. What is important is that there is an employer/employee relationship and the Plaintiff has suffered injury in the course of his employment.
26. The Plaintiff on the other hand is claiming that the Court acting in good conscience and equity should use the common law rules of negligence to determine the extent of compensation payable to the Plaintiff. On this point, the Defendants are saying that assuming that they are negligent, the Plaintiff is contributorily responsible for his injury.

ISSUES FOR DETERMINATION

27. The first issue for determination is which legal framework should be used in computing the compensation to be paid to the Plaintiff. If it is Cap 219, the court will straight away decide on the said compensation. If it on the other hand decides that it should be under the common law of negligence, then the Plaintiff must prove duty of care was owed by the Defendants to the Plaintiff and they were in breach of that case.

28. The second issue would be to determine the compensation payable in the event that negligence is proved.
- (29. As with most laws and legal principles in Sierra Leone, compensation for injury in the workplace is greatly influence by the law and practice in England.
30. The principle is that an employee injured at work is able to claim not only no fault compensation under the Workmen's Compensation Act, but also damages from the employer if liability in tort can be established. Use of one system of compensation, to my mind, does not lead to exclusion from the other; there is no employer privilege preventing an employee claiming from both Workmen's Compensation and tort. Entitlement to compensation under each regime is grounded upon very different bases. In general, whereas Cap 219 requires only proof of a work related injury irrespective of how it occurs, the tort claim is usually grounded upon proof of another's wrong doing.
31. However, when comparing the benefits offered, the differences become more apparent. The Workmen's Compensation provides full compensation. A major difference is that Cap 219 does not compensate for financial losses such as loss earnings or the costs of care. However, it is only the tort system that aims to return the Plaintiff as far as possible to the position he was in before the injury and only tort is able to compensate for financial loss. In awarding this full compensation, tort pays damages in the form of a lump sum.
32. Having said this, I turn to an issue raised by Mr. Abdulai that the High Court lacks original jurisdiction in matters relating to Cap 219. This was controverted by Mr. Showers. In determining this issue, I have looked at the interpretation section (section 3) of cap 219. Section 3 (1) provides that "Court" means "Magistrates Court". Section 22 gives the High Court the power to decide on any question of law submitted to it by the Magistrate's Court and Section 23 (1) gives the High Court an appellate jurisdiction. Based on the foregoing analysis, I agree with Mr. Abdulai that the High

Court lacks original jurisdiction to determine matters under Cap 219 and I so rule. In the circumstances this matter will be determined under the tort of negligence. Of course this ruling throws out critical aspects of the defence filed herein warranting this court to determine this matter under Order 16 (1) of the High Court Rules, 2007.

33. I have taken into consideration that the Defendant is not averse to compensating the Plaintiff but merely insisting that the legal regime should be Cap 219. This contention has been disposed of when I held that this Court lacks original Jurisdiction and so the matter will be determined under the tort of negligence. In so doing, I shall examine the claims of the Plaintiff as follows

A) Damages for breach of duty.

34. It is not in dispute that at all material times, the Plaintiff was an employee of the Defendants and was injured in the course of his employment.

35. Before proceeding further on the point, it is important to state the general principles governing an employer's liability for the safety of his servant. The Court of Appeal of Sierra Leone in the case of ALLEGEMEINE BAU UNION (ABU) -V- BAI KAMARA (CIV.APP 12/79) (Unreported) Per NAVO JA. (as then was) had this to say "The Law has at all times imposed an obligation on the master to take proper and fitting care to ensure that servants ... do not suffer any injury, either in consequence of his personal negligence or through his failure to properly superintend and secure the undertaking in which he and they are jointly engaged. A breach of this obligation or duty has always given the servant a right of action for reparation".

36. The duty is peculiar to Master-Servant relationship. This duty according to CLERK AND LINDSELL ON TORTS, 18TH EDITION, and paragraph 7-217 includes a safe system of work. An employer does not warrant that the equipment or process is unattended by danger, but he is under a duty to see that a safe system of work and supervision are provided. This could be done

by taking reasonable care, having regard to the dangers inherent in the operation.

37. In the instant case, the Plaintiff was employed by the 2nd Defendant as a Technician Rigger. On the 26th June, 2015 the Plaintiff was attacked by bees while working on the 2nd Defendant's pole which caused him to fall down causing serious injuries. According to the Plaintiff, he was not provided with protective gear but this was controverted by the Defendants; evidence was provided to prove the Plaintiff was indeed supplied with Personal Protective Equipment. According to paragraph 4 of the affidavit in opposition, the accident occurred when the Plaintiff unhooked the protective harness in order to release himself and flee from the attack of bees. This act according to the Defendants' Counsel rendered the Plaintiff contributorily negligent

38. My understanding of the use of the protective harness is to prevent the climber from falling. The question here is, was the Plaintiff provided with protection against the attack of bees as this is reasonably foreseeable? Do the Defendants expect the Plaintiff to stay hooked to the pole in the face of attack by the bees? The answer is, of course, no... The Plaintiff did what any reasonable person could have done in the circumstance – it was an instinctive reaction to the attack.

39. From the foregoing, I hold that a duty of care exists between the Plaintiff and the Defendant and that duty has been breached by the 2nd Defendant. The next question is whether injury was foreseeable. As I have already stated, attacks from bees is mostly likely in trees, poles etc. The principle here is that it is not necessary to show that the Defendant should have foreseen precisely what happened. It is enough if the injury is of a type that could have been foreseen even if it came about in an unexpected way. I therefore hold that the injury was reasonably foreseeable.

40. It is my conclusion that based on fact and law, I find the 2nd Defendant liable for damages for negligence.

41. The question now is the quantum of damages payable. The Plaintiff has claimed damages for breach of duty (which I shall treat as general damages) and special damages.

42. I shall first deal with general damages. The principles governing the assessment of damages in a personal injury matter was clearly laid down by LIVERSEY –LUKE C.J in the case of IDRISSA CONTEH V- ABDUL J. KAMARA (1980) S.C. CIVAPP2/79 (Unreported) which was applied by the Court of Appeal in MANKA S. KANU –V- HAWA FULLAH –CIV.APP 2/79 delivered on the 29th May, 1980, per Marcus-Cole JA. in the Idrissa Conteh case, Livesey Luke C.J. had this to say “the most important principle applicable is that general damages must be fair and reasonable compensation for damages suffered and that perfect compensation is not possible or permissible. The Judge making the assessment must do their best to arrive at a fair and reasonable estimate and for this purpose he may use certain aids by considering the award of damages under various heads of damages.”

43. His Lordship continued “the accepted heads are the injuries sustained, the pain and suffering endured, past, present and future loss of amenities, loss of expectation of life and present and future financial loss. But the Judge is not obliged to state the amount awarded under each head. His duty is to satisfy himself that at the end of the day, the total of the sums awarded under the various heads is fair and reasonable”.

44. A similar view was expressed by Lord Denning MR in FLETCHER –V- AUTO CAR & TRANSPORTATION LIMITED (1968) 2 WLR 743, CA. and Marcus JA in the MANKA S. KANU case where he stated that “there is a considerable risk in just adding up the items. There will be the risk of overlapping”.

45. I have taken into consideration the nature of the injury suffered by the Plaintiff which caused 35 percent disability, the fact that he endured pain and had to be hospitalised for about 4 months, his inability to continue to do the work he was trained for there by occasioning loss of earnings. The

Plaintiff is now restricted to the use of clutches. I note that notwithstanding this action, the Plaintiff may still be entitled to compensation under the Workmen's Compensation Act, Cap 219. More significantly, I have taken into account the expenses already undertaken by the Defendants on behalf of the Plaintiff which I believe was done under the medical scheme of the 2nd Defendant.

In the circumstance taking all of the foregoing into consideration, I shall award general damages of Le400million.

46. As regards special damages, these are easily quantifiable –loss of earning, medical expenses, taxi fares and lost wages. These are expenses incurred as a result of the accident. Special Damages must be averred and proved, and, if proved will be awarded. In other words, special damages are such as the law will not infer from the nature of the act. They do not follow in ordinary course. They are exceptional in their character and, therefore, they must be claimed specifically and strictly proved – my conclusion on this point is that liability depends upon the existence of special damage, and the action will fail if special damage is not pleaded.

47. I have perused the Writ of Summons and it is my view that the Plaintiff has pleaded special damages.

48. This category will involve, as I have already stated, medical expenses (past and future); lost wages and loss of earning capacity. It could also include end of service benefits if the Plaintiff will no longer work

49. I shall now proceed to examine the claim for special damages

A. MEDICAL EXPENSES.

50. The Plaintiff is claiming the sum of Le239, 065,022.00 under this head.

I note however that the entire claim is for the Plaintiff to travel to India for medical treatment. It will be in the interest of the Plaintiff if the third claim in the statement of claim is granted for the Plaintiff to travel to India for second medical treatment instead of awarding this sum, unless otherwise.

B. FUTURE EARNING

51. This has been computed at Le853, 112,604. This covers the monthly earning of the Plaintiff at Le2, 451,473.00 for a period of 29 years.
52. I have note that the disability of the Plaintiff is measured at 35%. This means the Plaintiff can do some other work and therefore not entitled to the entire sum.

In the circumstance, I will order payment of 35 percent of the sum claimed

C. PENSION

53. This I will refer to as end of service benefits as the NASSIT Scheme takes care of pension. This has been computed by the Defendants at Le59million which was not controverted by the Plaintiff.

I will accordingly allow it.

54. In consequence of the foregoing, I will order as follows:
- The 2nd Defendant is liable to the Plaintiff in negligence and shall pay the Plaintiff as follows:
- a) The sum of Le400 million as general damages
 - b) 35% of the sum of Le853, 112.604 as special damages.
 - c) The sum of Le59Million as end of service benefits
 - d) That the 2nd Defendant takes immediate steps to fly the Plaintiff for his second medical treatment or alternatively pays the Plaintiff the sum of Le239,065,022.00 in that behalf.
 - e) Cost of Le30, 000,000.00 to be borne by the 2nd Defendant to the Plaintiff.



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Hon. Mr. Justice Sengu Koroma J.A.