IN THE HIGH COURT OF SIERRA LEONE

COMMERCIAL AND ADMIRALTY DIVISION

FAST TRACK COMMERCIAL COURT

OFF WALLACE JOHNSON STREET-GOVERNMENT WHARF

FTCC 022/16

IBRAHIM KARGBO — PLAINTIFF

AND

SIERRA LEONE GUOJI INVESTMENT & DEV. CO. — DEFENDANT

REPRESENTATION:

JOSEPH KONUWA LANSANA . — COUNSEL FOR THE DEFENDANT

GEVAO & ASSOCIATES CO. — COUNSEL FOR THE PLAINTIFF

BEFORE THE HON. MR. JUSTICE SENGU KOROMA J. JUDGMENT DELIVERED ON THE 16th JUNE, 2016.

1. The Plaintiff/Applicant (hereinafter referred to as "the Plaintiff") herein issues a Writ of Summons on the 26th January, 2016 against the Defendant /Respondent (hereinafter referred to as "the Defendant") claiming the following:
    1. Damages for negligence in the sum of Le1,000,000,000.00 to include damages for the pain suffered by the Plaintiff and loss of amenity
    2. Special damages in the sum of Le285,000,000.00
    3. Costs
    4. Any further Orders that this Honourable Court may deem fit.
2. The Plaintiff provided particulars of negligence, particulars of injury, Nursing and domestic attention needed, Details of Medical Report. He also claimed special damages.
3. The Defendants entered appearance on the 1st February, 2016 and filed a defence on the 12th February, 2016. In the said defence, the Defendant did not deny that the accident occurred and that the Plaintiff was entitled to some form of compensation. They however averred that they assisted the Plaintiff in the following ways:
    i. Took care of the Plaintiff's personal welfare from the date of the accident on the 7th July, 2015 to the 4th December, 2015 when the Plaintiff through his solicitors wrote to the Defendant suggesting other ways settling the matter out of Court.
    ii. That the Managing Director of the Defendant Company personally donated two units i.e. 400 CC of blood to save the Plaintiff 's life
    iii. That the Defendant bought a "false leg" (using their own words) at a cost of Le Le1, 000,000,000.00 for the Plaintiff.

4. The Defendant further averred that the Defendants through their solicitors by a letter the 4th December, 2015 made the following offers to the Plaintiff.

   i. Re-engage the Plaintiff as a "sitting worker" throughout the company's operations in Sierra Leone until his retirement whichever occurs earlier.

   ii. That the Plaintiff's salary will be increased to Le**550, 000.00 (Five Hundred and Fifty Thousand Leones)** monthly. I note that at the time of his employment, he was earning **Le285, 000.00(Two Hundred and Eighty Five Thousand Leones)** monthly.

   iii. That the Plaintiff will receive monthly food allowance from the Defendants at an amount to be negotiated.

   iv. That the Plaintiff will be provided with a small house on the Defendants' factory site to stay in together with one (1) person.

   v. That the Defendant to build a house for the Plaintiff at a modest cost in the Western Area or provinces of Sierra Leone

   vi. That the Defendants to pay service benefits due the Plaintiff to his next- of-kin or beneficiaries which shall be doubted in case the Plaintiff dies before a 15 years period.

   vii. That the Plaintiff and the Defendants enter into a written agreement incorporating the foregoing terms.

5. H. M. Ngevao Esq. acting for the Plaintiff filed a judge's summons dated the 15th day of February, 2016 praying for the following Orders:-

   1. That Judgment be entered for the Plaintiff herein against the Defendants pursuant to the provisions of the Order 16 Rule 1 of the High Court Rules, 2007 for the following reliefs:-

a) Damages for negligence in the sum of **1,000,000,000.00 (One Million Leones)** to include damages for pains suffered by the Plaintiff and loss of amenity

b) Special damages in the sum of **Le285,000.000,00 (Two Hundred and Eighty Five millions Leones)**

c) Any further relief (s) that this Honourable Court may deem fit.

d) Cost

6. The application came up for hearing on the 23rd day of May, 2016. The Plaintiff's solicitor however did not proceed with the application as on that date, Counsel on both sides decided to argue on the issue of compensation as a way of settling the matter out of Court. Mr. H. M. Ngevao acting for the Plaintiff informed the Court that his client was willing to accept Le350, 000,000.00 **(Three Hundred and Million Leones)** as compensation and Le50, 000,000.00(Fifty Million Leones) as solicitor's cost. Mr. J. K. Lansana, Counsel for the Defendants on the other hand contended that the compensation requested was on the high side and applied for an adjournment to consult with his clients. The matter was adjourned to the 25th May, 2016

7. On the 25th May, 2016, Mr. J. K. Lansana informed the Court that his clients were still insisting that the quantum of compensation requested and costs were on the high side and they were prepared to oppose the Summons. Mr. Ngevao was therefore allowed to move his application.

SUBMISSIONS OF COUNSEL

The Counsel for the Plaintiff relied on and used the affidavit of Ibrahim Kargbo sworn to on the 23rd February, 2016 together with the exhibit attached thereto. Mr. Ibrahim Kargbo deposed as follows:

1. That he was employed as a "factory Hand" by the Defendants effective 5th April, 2014 – Exhibit I.K. 3.

2. That on the 7th day of July, 2015 whilst in the course of his employment unloading a container full of Zinc, one roll of Zinc rolled over and descended on his left leg and sustained compound fracture.
3. That he was rushed to the Emergency Hospital where he was anesthetized and woke up later to discover that his left leg had been amputated. This was done without his consent or that of his relatives. He was discharged on the 16th July, 2015. Discharged chart marked Exhibit I.K. 4
4. That as a result of sleeplessness nights, pains, inability to do any job and permanent loss of his left leg, he resigned his job at the Defendant 's Company on the 2nd November, 2015 – Exhibit I.K. 5
5. That on the 5th December, 2015, the orthopedic clinician, Dr. Bambino Suma wrote to the Defendants confirming that the Plaintiff had been rendered permanently disabled as a result of the injury sustained in the course of his employment "Exhibit I.K 6".
6. That on the 4th December, 201, the Solicitor for the Defendants wrote to him acknowledging his permanent disability caused as a result of the negligence of his clients and made unfavorable offers which he declined" – Exhibit 1.K. 7. (The deponent concluded by averring that the Defendants had no defence to the action.

8. Mr. Ngevao submitted that the Defendants owed a duty of care to the Plaintiff as their employee. It was the duty of the Defendants' to provide protective gear for the Plaintiff. Mr. Ngevao also submitted that though it was full of Zinc, the Defendants' vehicle was parked in a slanted form on a sloppy surface which was very risky.

9. Mr. Ngevao concluded that the failure of the Defendants to provide an ideal working environment for their employees engaged in dangerous work means that the requisite standard of care was not applied leading to the Plaintiff sustaining injury to his left leg.

10. Mr. J.K. Lansana, Counsel for the Defendants in his submission relied and used the affidavit of Tommy Sam, the Human Resource Manager of the Defendants sworn to on the 15th March, 2016 together with the Exhibits attached thereto.

The deponent swore to the following:-

i. That the Defendants have filed a defence to the action on the 12th February, 2016 – Exhibit "C"

ii. That the Defendant adopt the allegations of fact contained in paragraphs 4 and 5 of the Plaintiff's affidavit in support of the Notice of Motion dated the 23rd February, 2016

iii. That the Defendants were contesting the allegation that the Plaintiff's leg was amputated without his consent as a document of consent was signed

iv. That the allegation contained in the paragraph 8 and 9 of the affidavit in support were contested to the extent that the Defendant did not any stage accept liability for negligence for injury to the Plaintiff.

v. That the accident itself was an "Act of God" which in itself is a "whole defence in the (words of the deponent).

vi. That the claims of **Le1,000,000,000.00** as damages for negligence and Le285,000,000.00 as special damages claimed by the Plaintiff were untenable and without credence and profit.

vii. That there were triable issues in the matter and that opportunity be given to the Defendant to be heard based on the principle of "Audi alteram patem".

11. I consider it my duty to correct the Defendant on this point. Audi alteram patem is a principle of natural justice which means that the Defendant should be given an opportunity to explain his own side in any cause or matter. In the instant case, the Defendant has filed an affidavit

in opposition to the Plaintiff's affidavit in support: the Defendant has therefore been heard, thus the principle does not apply.

12. Counsel for the Defendant further submitted that an interlocutory Judgment will not suffice in this matter. Again, I should point out to Counsel that in an application under Order 16 (1) of the High Court Rules, 2007 is for summary Judgment and any order given in favour of the Plaintiff finally disposes of the matter. An interlocutory Order however does not finally dispose of the case except in very limited circumstances for example, passing – off actions. If the Plaintiff's prayers are granted, the matter will finally be disposed of.

13. Counsel for the Defendant finally submitted that the issue of liability cannot be properly and fully disposed of without a full trial.

14. The first issue for determination herein is whether the Plaintiff can apply for Summary Judgment in a personal injury matter.

The purpose of Summary Judgment is to avoid unnecessary trials. This is a procedural device to promptly and expeditiously dispose dispute of a case without material facts of the case and the Plaintiff is entitled to Judgment as a matter of law. The Court may however dismiss the application if the Defendant satisfies the Court with respect to the claim or part of a claim, to which the application relates, that there is an issue or question in dispute which ought to be tried or that there ought for some reason to be trial of that claim or part (see Order 16 Rule 3 sub rule 1 of the High Court Rules, 2007.) I am of the view that if the foregoing conditions are met and the Plaintiff has complied with the procedural requirements of Order 16, a Court might grant summary judgment in a personal injury matter. It might for example grant a partial summary Judgment on the issue of liability. A trial would however be held to assess damages. In any event, personal Injury claims do not fall within actions

listed in Orders 16 Rule 1 sub rule 2 to which summary Judgment will not apply.

15. Having held that Summary Judgment could be granted in a Personal Injury matter, I shall now proceed to examine the claims of the Plaintiff.

A) Damages for Negligence.

It is not disputed that at all relevant times, the Plaintiff was an employee of the Defendants and was injured in the course of his employment on the premises of the said Defendants.

16. What are the general principles governing an employer's liability at common law for the safety of his servant. The Sierra Leone Court of Appeal in the case of ALLEGEMEINE BAU UNION, CIV APP 12/79 per NAVO JA (as then was) had this to say on this point:

> "The Law has at all times imposed on obligation on the master to take proper and fitting care to ensure that servants who are jointly engaged with him in carrying on his work or industry shall not suffer any injury, either in consequence of his personal negligence or through his failure to properly superintend and coured 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".

17. CLERK AND LINDSELL on TORTS, 18th Edition, paragraph 7 – 217 describes the scope of the Employers duty as extending to the provision of safe fellow – employees, safe equipment, safe place of work and access to it, and a safe system of work. The exposition of this is to be found in the speeches of Lord Wight and Lord Maugham in Wilsons and CLYDE COAL LIMITED – V- ENGLISH (1938) A C 57 and 78 and 86. The duty is peculiar to Master – servant relationship. The duty extends to matters that are reasonably incidental to the employment.

18. Ancillary to the foregoing is the requirement that the Employer should provide 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 steps to provide a system which will be reasonably safe, having regard to the dangers inherent in the operation.

19. In the instant case, the role of the Plaintiff in the Defendant Company at the material time was to help unload a container full of Zinc. In the course of doing so on the 7th July, 2015, a roll of Zinc rolled over and fell on his left leg wherein he sustained compound fracture. He was rushed to the Emergency Hospital where he was anesthetized and when he woke up found out that his left leg had amputated. The Plaintiff swore in his affidavit that neither he nor his relatives consented to the amputation. He spent about (8) eight days at the Hospital and was discharged on the 17th July, 201.

20. In Exhibit 1 K1 attached to the affidavit in support, the Plaintiff gave the particulars of negligence as follows, amongst others:-

a) Parking the container truck on a sloppy ground when they knew or ought to have known that the rolls of Zinc might roll over or hit someone.

b) Failure to put any measure in place to prevent the Zinc from rolling over.

c) Failure to provide protective gear for the Plaintiff in the course of his work.

The Solicitor for the Plaintiff concluded that the negligence of the Defendant was the direct cause of the Plaintiff injury.

21. I have already referred to the Defendant's affidavit in opposition at paragraph 12 herein. To my mind, the issues he traversed are not relevant to the allegations made by the Plaintiff: he did not canvass any of the well known defences in negligence matters but rather referred to the accident as "as an act God" which it clearly was not. Counsel for the Defendant in his submission contended that the amputation was done with the consent of the Plaintiff. This is irrelevant to the issue of liability. The amputation was done because of the state of the Plaintiff's left leg when he arrived at the Hospital; a condition which the Plaintiff is alleging was caused by the Defendants' negligence. To this allegation, the Defendant has not provided any satisfactory rebuttal.

22. This matter turns on two issues; Liability and Damages. I shall first address the issue of liability.

The Plaintiff is claiming damages for negligence. For a claimant to succeed in proving their claim in common Law negligence, they must first of all prove that a duty of care was owed by the Defendant. In deciding whether the Defendant owes a duty of care, the courts adopts a three stage test. Is there a relationship of proximity between the parties? Was the injury to the claimant foreseeable? And is it fair, just and reasonable to impose a duty.

23. In the instant case, it is not disputed that the Plaintiff was an Employee of the Defendant as a factory hand. Exhibit IK3 attached to the affidavit of in support is an Employment contract between the Plaintiff and the Defendants. The injury to the Plaintiff took place, on the Defendant's premises carrying out his usual duties as a factory hand loading Zinc from a container. The work by its nature is risky considering the nature of Zinc. It is therefore only but fair, just and reasonable to impose a duty of care on the Defendants.

24. Having determined that a common Law duty of case exists between the Plaintiff and the Defendant, the next stage would be to find out whether that duty has been breached. The Defendants were aware that the Plaintiff was unloading bundles of Zinc which were very sharp. He had not provided protective gear for the Plaintiff. The standard of care expected of an Employer is very high. A reasonable man would have thought about the extent of the potential risk to the Plaintiff and the seriousness of any likely injury. The Defendants failed to provide a safe system of work. The Defendant can be held to have breached its duty of care to the Plaintiff.

26. The next stage is to determine whether the breach caused injury to the Plaintiff. The issue for the Court is whether the chain of causation was broken by an intervening act or event. It is clear that there was no intervening act and the Defendant's negligence was the real and effective cause of the Plaintiff's injury.

27. The final question would be whether the injury and subsequent amputation of the Plaintiff's left-leg was foreseeable. There are serious risks involved in manually unloading bundles of zinc from a container truck. It could cause serious injury to any part of the human body. 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.

28. Based on the foregoing analysis of the facts and law, I find the Defendant liable for damages for negligence.

29. I am however constrained to summarily assess and award damages at this stage. It is only fair and just that the parties proceed to trial on the question of damages.

30. In the circumstances, I Order as follows:-

1. That the Defendant is liable to the Plaintiff for damages for negligence to be assessed.
2. That the Defendant is liable to the Plaintiff for special damages to be assessed.
3. Costs of Le 10,000,000.00 in favour of the Plaintiff to be borne by the Defendant.
4. Matter adjourned to Tuesday, 21st June, 2016.

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Hon. Mr. Justice Sengu Koroma (J.A.)