



IN THE HIGH COURT OF SIERRA LEONE
INDUSTRIAL COURT DIVISION

IC20/17

JOHN ABDULAI

PLAINTIFF

AND

ALPHA LEBBIE

DEFENDANT

REPRESENTATION:

CHARLES A. BANGURA ESQ.

COUNSEL FOR THE PLAINTIFF

F.B. CONTEH

COUNSEL FOR THE DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU KOROMA JA.
PRESIDENT OF THE INDUSTRIAL COURT JUDGMENT DELIVERED
ON THE 23RD JANUARY, 2018

1. This matter was referred to the Industrial Court by the Ministry of Labour and Social Security pursuant to Section 35(1) of the Regulation of Wages and Industrial Relations Act. No. 18 of 1971 ("The Principal Act") and Rule 5 of High Court (Industrial Relations Procedural Rules, 2010.) ("The Rules")
2. According to Report of the Commissioner of Labour, the Complaint against the Defendant herein was for Unfair Labour Practice, to wit: failure to pay Industrial accident compensation in respect of an accident leading to the amputation of the Plaintiff's forearm below the elbow and also for failure to pay his end of service Benefits, leave rate, leave allowance and outstanding wages due him.
3. Consistent with the Provisions of the Principal Act, the defendant was invited to a meeting with the Plaintiff which he attended with his wife. At the meeting, the Defendant denied liability and argued that the accident was as the result of the Plaintiff's wilful conduct and therefore refused to pay any compensation.
4. As a result of the refusal of the Defendant to accept any form of liability, the Ministry Computed the Plaintiff's entitlements under the Transport Trade Group. This was forwarded to the Defendant for his comment but no response was received from him. The Ministry therefore sent a notification of the Ministry's intended Court Action to him dated 24th March, 2017 and subsequently referred the matter to this Court.
5. The trial commenced on the 15th November, 2017

EXAMINATION OF WITNESSES

6. PW₁ – John Abdulai. The witness was the Plaintiff in this matter. He testified that he was employed by the Defendant as a Driver and worked for him for a period of four years: He initially drove the defendant's private car and was paid Le 300, 000/00 Monthly; this was increased to Le 500, 000/00 when the minimum wage was fixed at that rate. When the Defendant acquired a Tipper vehicle, he transferred over to it as the driver. The said Tipper was used to provide hiring services.
7. He recalled the 22nd April, 2016 – the day of the alleged accident. On that day, the Tipper was hired to collect firewood by a customer. After packing the vehicle at Tawama Village in Bo, he went to the back and loaded firewood. While at the back of the tipper, he heard a sound and the vehicle reversed and crushed his hand on a wall. He was brought down to the Emergency Hospital in Freetown where he was admitted till May, 2017. On his return to Bo, he was receiving treatment from a Nurse and paying bills.
8. The Plaintiff further testified that the Defendant paid him for the Month of April, 2017 and later gave him Le 100, 000/00. Since that time, no payment had been made to him.
9. Under cross – examination, the Plaintiff stated that he had been a driver since 1961 and worked at the Ministry of Social Welfare. He agreed that the first vehicle he drove for the Defendant was a Toyota Forerunner Jeep Registration number AHZ 431 and later he was given a Tipper Registration number AKW 484 to drive for hiring services. The witness denied that his services were first terminated before he was given the Tipper to drive. He insisted that he was paid a Monthly Salary and not a percentage of income derived from the hiring services. The witness denied that he was authorised to transport only sand and not firewood and the first time he collected firewood was on the day of the accident.

10. PW 1 – denied packing the vehicle on top of a hill or on shopping ground
11. PW 2 – Jeremiah B. Ademokula. The witness was the Labour Officer at the Bo Office to the Ministry and investigated the matter. He gave evidence of its development from complaint Stage to the Court action. He tendered the computation of the entitlements of the Plaintiff and the covering note as Exhibit – A¹⁻³.
12. Under Cross – examination, PW 2 admitted recording the date of employment as 2012 based on information received from the Plaintiff without recourse to the defendant. This was the same position in respect of the date of termination.
13. In re-examination, PW 2 explained that under the workman's compensation Act, there was no need for a date of engagement. He did not cross check the date of employment and termination with the Defendant because he was unco-operative.
14. DW 1 – Alfred Modibo Lebbie. The witness was a Lecturer at Njala University College. He knew the Plaintiff when they both met at the NASSIT Bo Office to collect their pension.
15. DW 1 tendered the vehicle Registration Card of the Toyota Forerunner Jeep – AHZ 431 as Exhibit B: it was transferred to him on the 27th March, 2013 and was driven by one Ibrahim until May, 2014. He testified that he engaged the Plaintiff in October, 2014 for a period of about 10 Months and he was paid off. The Plaintiff was re - engage to drive the Tipper – AKW 484. DW 1 tendered the vehicle Registration Card of the said Tipper as "Exhibit B".
16. DW 1 testified that he informed the Plaintiff that he was to be paid on a commission basis and was to transport only building materials – stones, sand and bricks.

17. DW 1 tendered Exhibit B3, 4 and 5 – records of proceeds (payments made by the Plaintiff)
18. Mr. Lebbie explained that the Plaintiff did not inform him about going to collect firewood. After receiving information of the accident, he provided his vehicle to convey the Plaintiff to hospital.
19. DW 1 concluded that there was negligence on the part of the Plaintiff and did not agree with the computation.
20. Under cross – examination, the Defendant insisted that he employed the Plaintiff in October, 2014 and continued to be his driver when the Tipper arrived the Queen Elizabeth Quay before August, 2015. He admitted not reporting the accident to the Police.
21. On how PW 1 was terminated DW 1 replied that it when he put him to his election as to whether he should continue driving the Toyota Forerunner Jeep or take over the Tipper.
22. On Exhibit “B”, he agreed that it was not signed by the Plaintiff.
DW 2: Sallay Totangi. This was the only independent eye witness to testify in this matter. She recalled 22nd April, 2016 when the Plaintiff came in a Tipper and said he wanted to buy firewood. The tipper was packed at the top of a hill and the witness asked Plaintiff to put a stone before the tyre. The Plaintiff refused to do so and not long afterward saw the Tipper going down the hill with the Plaintiff hanging on it by the side. The back of the vehicle hit the wall of a house. The Plaintiff's hand was smashed. She helped tie up the damaged hand and got a bike to take him to the hospital.
23. DW 1 testified that the Plaintiff bought a bundle of wood and told her he was buying it because he had lost his mother – in – law.
24. Under cross – examination, DW 2 insisted that she asked the Plaintiff three times to put a block/stone before the front tyre. She answered that it was when the vehicle started moving down the hill that the Plaintiff hung on

it. She also answered that the Tipper did not hit the wall on the side the Plaintiff was hanging.

25. Before proceeding to determine this matter, it would be material to determine firstly, on objection raised by F. B. Conteh Esq. Counsel for the Defendant at the start of the matter that the Ministry had combined two separate actions – gratuity and termination on one hand and compensation on the other hand. He made reference to Section 3 of the workmen's compensation Act, 1960.
26. Section 3 of the workmen compensation Act, 1960 (the "Principal Act") made no reference to the issue raised here by Counsel for the Defendant. It is rather the interpretation section of the Act.
27. A distinction needs to be drawn here between gratuity and termination benefits and compensation. The former case are accrued right of the employee as a result of the contract of employment. The latter is payment to be made to an employee when he is injured in the course of his employment. The employment need not come to an end as in the former case. These are independent obligations an employer owes to his employee; as one cannot cancel the other. I therefore hold that the action is properly before this Court.
28. I listened to the witnesses and perused the exhibits tendered. After an assessment of their various testimonies, I am inclined to believe the evidence of DW 2 as to what happened on that day. The Court shall of course discontinue her interpretation of events. What is clear is that the Plaintiff Packed the Tipper at the top of a hill or sloppy area and it later went downhill with the Plaintiff hanging on it. The testimony of PW 1 that the Tipper was parked on flat ground and reversed, on its own is not convincing. Vehicles do not operate that way. On the other hand, the evidence of the DW 1 that the Plaintiff was on a frolic of his own and that he was responsible for the accident has no based on the facts herein.

29. Negligence for this purpose could be defined as a failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstance." In short, when someone fails to act in a reasonable manner to keep themselves or others from harm, they were negligent. However, contrary to what the Defendant was trying to prove that the Plaintiff was at fault, negligence by an employee is not a factor in determining entitlement to benefits under the Workmen's Compensation Act. Section 5 part II of the Workman's Compensation Act Cap 219 of the Laws of Sierra Leone, 1960 as amended by the Workman's Compensation (Amendment) Act, 1018 of 1969 – Section 4 (2) (1) thereof which provides as follows: -

"Any accident out of and in the course of the Workman's employment notwithstanding that the workman was at the time when the accident happened acting in contravention of any statutory or other rule applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if such work was done by the workman for the purpose of and in connection with his employer's trade or business". It can be gleaned from the forgoing provision that the only exception was when the accident occurred when the employees' act was not for the purpose of or in connection with his employers' trade of business. Looking at the evidence, it could be discovered that on that fateful day on the 22nd April, 2016, the Plaintiff was in lawful possession of the Tipper going about his employment. In his testimony, to DW 1, informed the Court that the Plaintiff was required to inform him by mobile telephone whenever he had a contract. This was contradicted by the Plaintiff, PW 1 who testified that he was only required to inform the Defendant when he had a trip out of Bo. I am inclined to believe the Plaintiff in this regard.

- 30.** In the circumstance, I hold that the Ministry was right in concluding that the Plaintiff was entitled to compensation under the Workmen's Compensation Act, Cap 219 of the Laws of Sierra Leone, 1960 (as amended).
- 31.** However, I do not agree with the computation of the compensation made under Section 6 (1) (a) of the Principal Act and Section "8 (8) of the Workmen's Compensation (Amendment) Act, 1969. In the first instance, Section 6 (1) (a) deals with compensation in fatal cases. This is clearly not a fatal case but one of either permanent total in capacity or permanent partial incapacity. For our present purposes, the incapacity here was permanent as the Plaintiff who had been a driver since 1961 had his right hand amputated. Secondly Section 8 (8) of the Amendment Act referred to does not exist. There is however a Section 8 (1) which repealed and replaced Section 32, of the Principal Act which deals with reimbursement of the expenses incurred by the employee during the course of this treatment. This was not included in the computation.
- 32.** As regards the computation of the entitlements of the Plaintiff in respect of gratuity and termination, leave allowances, outstanding salary and allowances, I also do not agree on the amount arrived at. This is because the Plaintiff in his testimony informed the court that he started working for the Defendant in 2012, driving his Toyota Forerunner Jeep. However, the vehicle owner Registration Card tendered as exhibit B¹ showed that the said vehicle was transferred to the Defendant on the 27th March, 2013. The Plaintiff could therefore not have started working for the Defendant in 2012. According to the Defendant, he engaged the Plaintiff in October, 2014 as the Toyota Forerunner was driven by one Ibrahim from March, 2013 to that date. This evidence was not controverted and since the Plaintiff had given an incorrect date of employment in his testimony, I am inclined to believe the Defendant on this aspect.

33. In the circumstance, final judgment cannot be given at this stage based on the computations made by the Ministry and I would therefore order as follows: -

1. That the commissioner of Labour recomputes the entitlement of the Plaintiff under Section 8 of the Workmen's Compensation Act, Cap 219 of the Laws of Sierra Leone, 1960 as amended by the Workmen's Compensation (Amendment) Act, No. 18 of 1969 Section 6 thereof.
2. That the Commissioner of Labour recomputes the end of service benefits and other entitlements of the Plaintiff based on October, 2014 the date of employment.
3. The matter is adjourned to Tuesday, 23rd October, 2018 for the Commissioner of Labour to tender the re-computations as at (1) and (2) above.

34. Thereafter, I shall make final Orders herein.

This is a continuation of the Judgment I started to deliver on the 18th January, 2018. Pursuant to the Order made by this Court on that date that the action herein be remitted to the Commissioner of Labour for the sole purpose of re-computing the Plaintiff's entitlements. On the 23rd January, 2018, the Labour Officer tendered the re-computed entitlements of the said Plaintiff. The evidence was not controverted.

35. Based on the foregoing. It is hereby Ordered that the Defendant pays the Plaintiff as follows:-

1. Gratuity on termination – Le2,727,272.00
2. Leave Rate - Le1,500,000.00
3. Outstanding salary and Allowances

- a) Outstanding salary for May, 2016 – Le500,000.00
- b) Transport Allowance for two (2) years – Le2,400,000.00
- c) Rent Allowance for two (2) years Le1,440,000.00
- d) Medical Allowance 75% of monthly wages and Allowance
Le375x24 Months – Le9, 000,000.00
- e) Industrial Accident (Compensation) Average of earning x56
months x percentage of disability Le1,035,000.00x
56x50/100 = **Le28,980.00**
Total = **Le45, 567,272.00**

- 4. Interest thereon at the rate of 5 percent per annum from 9th day of
October, 2017 to date of Judgment
- 5. Costs of Le4,000,000.00


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HON. MR. JUSTICE SENGU KOROMA JA.
PRESIDENT OF THE INDUSTRIAL COURT