IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2017

CORAM: ADINYIRA, JSC (PRESIDING)
YEBOAH, JSC
GBADEGBE, JSC
AKOTO-BAMFO, JSC
BENIN, JSC

CIVIL APPEAL
NO. J4/29/2016

13TH DECEMBER, 2017

MIDAS APAABEY ……. PLAINTIFF/RESPONDENT/RESPONDENT

VRS

KGM INDUSTRIES LTD ……. DEFENDANT/APPELLANT/APPELLANT

J U D G M E N T

ADINYIRA, JSC:-

Midas Apaabey the Plaintiff / Respondent / Respondent (Plaintiff) began work at a factory of the defendant/Appellant/Appellant (Defendant) on 2nd February 2008. The said factory produced plastic goods for sale. He was trained to work on an injection machine. Then on 15 March 2008 he was assigned to work on a blow machine for which he had received no training on how to operate it. The Plaintiff's right hand was caught up in the blow machine and lost four fingers. He was offered a cheque for GH¢2,081.00 for his loss in full settlement of the damage done him which he rejected.

The Plaintiff issued a writ of summons on 18/11/2008 at the High Court, Industrial/Labour Division, Accra, and claimed as follows:

a. Plaintiff claims from the defendant Company Damages in the sum of (Gh¢50,000) for the loss of four fingers on his right hand chopped off by Defendant's machine in the course of his work for the Defendant company which failed to protect him in breach of its common law and statutory duties towards Plaintiff as its workman or alternatively the Defendant failed as the occupier of a factory to ensure the safety of a workman in breach of the employer's obligation under statutes and common law which confer such protection on the workman.
b. Plaintiff further claims damages for his wrongful dismissal from Defendant's company following his claim for compensation for the loss of his 4 fingers in the course of his employment.
c. Interest on the said sums at the current bank rate till date of final payment.

The trial Court gave judgment to the Plaintiff and awarded him the sum of GHC 50,000.00 as general damages for the loss of the use of his four fingers, pain and suffering and loss of future earnings and costs of GHC 2,000.00; and dismissed the claim for wrongful dismissal, for want of proof.

The Defendant being dissatisfied pursued an appeal to the Court of Appeal which was dismissed. The Defendant being aggrieved filed a notice of appeal at the Supreme Court on the following grounds:

a. That the Honourable Court of Appeal misdirected itself on the law and therefore fell into an error as the trial High Court did resulting in a miscarriage of justice to the **Defendant/Appellant/Appellant** herein, when it failed to appreciate the fact that the claim of the **Plaintiff/Respondent/Respondent** for damages/compensation for the injuries and incapacity suffered during and in the course of his employment with the **Defendant/Appellant/Appellant** on **15/3/2008** falls within the purview of the Workmen's Compensation Laws of Ghana i.e. **Workmen's Compensation Act, 1987 (Act 187)** and can only be determined in accordance with or with reference to the said statute.

b. That the Honourable Court of Appeal misdirected itself on the law and fell into an error as the trial High Court did resulting in a miscarriage of justice to the **Defendant/Appellant/Appellant** herein, when it failed to appreciate the fact that the **Workmen's Compensation Act, 1987 (Act 187)** which is the relevant law applicable to this case has by itself provided the formula for computing compensation/damages due and payable to the **Plaintiff/Respondent/Respondent**; an injured workman as a result of his

injuries and incapacity suffered on 15/3/2008 and in the course of his employment with **Defendant/Appellant/Appellant**.

c. That the Honourable Court of Appeal misdirected itself on the law and fell into an error as the trial High Court did resulting in a miscarriage of justice to the **Defendant/Appellant/Appellant** herein, by failing to appreciate that by virtue of Sections 19, 20, 21 and 38 of the **Workmen's Compensation Act, 1987 (Act 187)** the trial High Court lacked the requisite jurisdiction to hear and determine the **Plaintiff/Respondent/Respondent's** claim and therefore the trial High Court's judgment dated 2/2/2010 was null and void and could not be affirmed.

d. That the Honourable Court of Appeal misdirected itself on the law and fell into an error as the trial High Court did resulting in a miscarriage of justice to the **Defendant/Appellant/Appellant** herein, when it failed to appreciate the position of the law that whether an injured workman make his/her claim for damages/injuries under the **Workmen's Compensation Act, 1987 (Act 187)** or under the Common Law, there should not be much disparity between the quantum of damages/compensation to be awarded under either of the applicable laws.

e. That the Honourable Court of Appeal misdirected itself on the law and fell into an error as the trial High Court did resulting in a miscarriage of justice to the **Defendant/Appellant/Appellant** herein, by affirming the quantum of damages/compensation for injuries sustained by the **Plaintiff/Respondent/Respondent** which was so inordinately high that it was wholly erroneous estimate of the damages/compensation due him.

f. That the Honourable Court of Appeal misdirected itself on the law and fell into an error as the trial High Court did resulting in a miscarriage of justice to the **Defendant/Appellant/Appellant** herein, by holding the **Defendant/Appellant/Appellant** personally liable for the injuries sustained by the **Plaintiff/Respondent/Respondent** on the said **15/3/2008** during and in the course of his employment with the **Defendant/Appellant/Appellant**.

g. That the Honourable Court of Appeal misdirected itself on the law and fell into an error as the trial High Court did resulting in a miscarriage of justice to the **Defendant/Appellant/Appellant** herein, by failing to appreciate the position of the law that the provisions of **Workmen's Compensation Act, 1987 (Act 187)** is an exception to the common law position which required an injured workman to establish, to the satisfaction of the court, the negligence of duty or breach of statutory duty on the part of the employer to warrant the award of damages/compensation.

h. That the Honourable Court of Appeal misdirected itself on the law and fell into an error as the trial High Court did resulting in a miscarriage of justice to the **Defendant/Appellant/Appellant** herein, when it failed to appreciate the position of the law both at the common law and under the **Workmen's Compensation act, 1987 (Act 187)** that if a workman suffers an injury during and in the course of his employment, the sky should not be the limit for an award of damages/compensation. In other words, the award of damages/compensation to an injured workman should be just enough to compensate him for the injury suffered during and in the course of his employment but not to collapse the business of the employer by award of inordinately high or excessive damages/compensation as was done in this case.

i. That the Honourable Court of Appeal misdirected itself on the law and fell into an error as the trial High Court did resulting in a miscarriage of justice to the **Defendant/Appellant/Appellant** herein, when it failed to appreciate the position of the law that the **Workmen's Compensation Act, 1987 (Act 187)** by **Sections 5 and 9** provide the formula for the computation of the damages/compensation payable in the event of a workman sustaining an injury and which formula cannot be ignored.

j. That the Honourable Court of Appeal misdirected itself on the law and fell into an error as the trial High Court did resulting in a miscarriage of justice to the **Defendant/Appellant/Appellant** herein, when it failed to appreciate the position of the law that even under the common law, under which it purported to make the award of damages/compensation in the inordinate sum of **Gh¢50,000.00** to the **Plaintiff/Respondent/Respondent** herein, there was the need for the injured workman/claimant to prove negligence or a breach of a statutory duty on the part of the employer.

k. That the judgment is against the weight of evidence.

The crux of the Defendant's appeal was that the Plaintiff's claim for damages for the injuries and incapacity suffered during and in the course of his employment with the Defendant, fell within the ambit of the Workmen's Compensation Act, 1987, (Act 187) and not by a civil action as there was no evidence of negligence on the part of the Defendant.

Section 24 of the Act provides:

> "Where the injury was caused by personal negligence or willful act of the employer or any other person for whose act or default the employer s

responsible, this Act shall not prevent proceedings to recover damages being instituted against the employer in a Civil Court independently of this Act."

Counsel submits that the Plaintiff cannot maintain an action under section 24 as he neither pleaded nor led evidence that the injury he suffered was as a result of the Defendant's negligence. He submits further that as the trial court did not find the defendant negligent in any way; both the trial judge and the Court of Appeal erred in upholding the Plaintiff's claim.

This submission is untenable. There was evidence that the Plaintiff was employed on 2 February 2008 in the Defendant's factory and was trained to work on an injection machine; but then on 15 March 2008 he was assigned to work on the blow machine for which he had received no training and without supervision. This was in clear breach of section 36 of Act 328 that requires that:

36. Training and supervision

A person shall not be employed at a machine or in a process liable to cause bodily injury, unless

(a) that person has been fully instructed as to the dangers likely to arise in connection with the machine or process and the precautions to be observed, and

(b) that person has received sufficient training in work at the machine or in the process, or is under adequate supervision by a person who has a thorough knowledge and experience of the machine or process.

Furthermore, although the switch button itself could not be described as a dangerous part of the machinery, yet there was the evidence of DW1 and DW2 that the workers of the defendant's factory tie the safety button on the blow machine to make it operate automatically, which made the machine unsafe. The management knew the employees were using unorthodox method to make the machine work automatically to speed up production and meet deadlines of manufacturing 240 pieces of the plastic product per day; but no attempt was made to stop it either by proper supervision, or to provide a device to prevent the workers from tying the switch down.

In our opinion, the Defendant should have foreseen the danger erupting from the circumstances; consequently its liability is not in doubt. The duty of an employer to provide for his employee proper or safe equipment and safe system of work is a standard required under both common law and statute. Section 9 of the Labour Act, 2003, Act 651, provides that:

9. Duties of employers

(a) provide work and appropriate raw materials, machinery, equipment and tools;

(c) take practicable steps to ensure that the worker is free from risk of personal injury or damage to health during and in the course of the worker's employment or while lawfully on the employer's premises

Similarly, section 38 of the Factory Act requires that

38. Fencing of dangerous machinery

(1) The dangerous part of a machinery shall be securely fenced unless it is in a position or of a construction that is safe to a person employed or working in the premises as it would be if securely fenced.

(2) Where the safety of a dangerous part of a machinery cannot by reason of the nature of the operation be secured by means of a fixed guard, a device shall be provided which in the opinion of an inspector satisfactorily prevents the operator from coming into contact with that part.

This duty is absolute and the highest standard is required of occupiers of factories to fence securely any part of dangerous machinery. Our section 38 (1) and (2) is very similar to the English Factories Act, 1937 and in ***Carr v Mercantile Produce Co Ltd [1949] 2 K.B. 601,*** Staple J stated that:

> "The Factory Acts are there, not merely to protect the careful, the vigilant and conscientious workman, but human nature being what it is, the careless, the indolent, the inadvertent, the weary, and even perhaps in some cases, the disobedient."

Similarly in the case of ***Callow (FE.) (Engineers) v Johnson [1970]3 All ER 639,*** *Lord Halsham* ***LC at 647-648*** said:

> ":.. the danger to be foreseen includes danger not only to workmen who are prudent, alert and skilled and intent on their task but also danger to the careless, inattentive worker whose inadvertent or indolent conduct may expose him to risk of injury or death from the unguarded part."

Following from above we hold that there was cogent evidence from which it was reasonable to conclude that the Defendant was negligent and in breach of both his common law and statutory duties under the Factories, Offices and Shops Act, 1970, (Act 328) and the Labour Act, 2003, (Act 651), by failing to provide safe machinery, training and supervision of the Plaintiff at the workplace.

We therefore affirm the decision of the appellate court that there was evidence of dereliction of the employer's duty under sections 36 and 38 of the Factories, Offices and Shops Act, 1970, Act 328 and section 9 the Labour Act, 2003, Act 651. The dereliction of duty makes the Defendant liable for the claims as found by the trial Court.

Related to this submission is another contention that the High Court has no jurisdiction to hear the matter as by the combined effect of sections, 19, 20, 21 and 38 of Act 187 the competent court or forum for initiating claims of workmen compensation is either the District Court or the Circuit Court. This is a hollow argument which can sufficiently be disposed of with a single sentence that those sections refer specifically to "any questions to be investigated or determined under the Act", and not to an action initiated independently of the Act.

On the quantum of damages, Counsel for the Defendant submits that the Act itself provides the formula for the computation of the damages payable in the event of a workman sustaining an injury and the trial court was bound to follow that formula. Counsel contends further that if the trial court was of the view that the amount computed by the Labour Officer was inadequate, their lordships could have enhanced the said figure to about GHC 5,200.00 and not to ignore same and award GHC 50,000.00 to the Plaintiff which award was arbitrary and excessive in view of the injury and incapacity suffered by the Plaintiff as a result of the said industrial accident.

This submission is without merit as we keep repeating that the provisions of the Act 187 were not applicable to an action initiated independently of the Act. Further the general principle of law is that assessment of damages is peculiarly the province of the trial court and as a rule, an appellate court will not interfere unless the finding is out of all proportion to the facts.

In considering the question of adequacy or otherwise of the damages awarded by the trial court, we refer to the dictum of Greer L. J. in the case of ***Flint v Lovell*** [1935] 1K.B. 345 C.A. at 359 to 360:

> I should like to add a few words about the jurisdiction of this Court in appeals when the only contention, or one of the contentions, is that the damages awarded by a judge… is excessive… I think it right to say that this Court will be disinclined to reverse the finding of a trial judge, as to the amount of damages merely because they think that if they had tried the case they would have given a lesser sum. In order to justify reversing the trial judge on the question of damages it will generally be necessary that this Court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled."

The trial judge in assessing damages took into account (a) the prospective loss of earning, (b) pain and suffering and loss of amenities of life; (d) the economic factors of the day and the purchasing power of money into consideration. In our view the trial judge did not act upon any wrong principles of law nor wrongly exercised his discretion in the assessment of damages.

We affirm the holding by the Court of Appeal to the effect that:

> "On the submission that the award was excessive we have considered the unchallenged evidence that the [Plaintiff] was a young man of only 22 years old which gave him about 40 years purchase. There was also the admitted fact the [Plaintiff] was a right handed man who had four of his five fingers cut off thus rendering his right hand impotent for the rest of his life. These in addition to the award of pain and suffering, loss of future

earnings and damages for the injuries itself by the trial judge does not make the award excessive but conservative in present day times."

We have examined the grounds of appeal and we find no merit in any of them. The appeal fails and is therefore dismissed.

The judgment of the Court of Appeal is affirmed.

The amount due is subject to interest at the prevailing bank rate calculated at simple interest from the date of judgment of the High Court to the date of final payment.

S. O. A. ADINYIRA (MRS)
(JUSTICE OF THE SUPREME COURT)

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(JUSTICE OF THE SUPREME COURT)

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