
A Newsletter on Labour Law and Emerging Trends



Perchstone & Graeys
SOLICITORS, ADVOCATES & ARBITRATORS

THE BATON OF COMPENSATION - MY INJURY, WHOSE PAIN?

Employees are generally engaged based on their representation of competence and ability to safely and effectively execute assigned tasks. Owing to the diverse duties in the workplace, some employees such as factory/construction workers do not have the liberty of spending their day in airconditioned offices, away from the dangers prevalent in core industrial activities. While an employee is expected to execute his tasks in a manner that is not injurious to himself, there is the risk of an employee being injured by the acts or omissions of another employee.

The doctrine of common employment has stood as a defense by employers in cases where the injury suffered by an employee was occasioned by another employee. In the view of employers, the fact that another employee caused the injury restricted the rights of the victim to sue for compensation from the employer. Employers have in the past relied on the '*doctrine of common employment*' to escape liability where an employee is injured by another employee who is engaged in a common/similar employment with him. Under this doctrine, the safety of one employee in the ordinary course of things depends on the care and skill of the others. However, this position has changed, as employers are now being held liable for the conduct of its employees, subject to the satisfaction of certain conditions.

The Courts have now extended the obligations of the employer by stating that an employer who fails to take such steps for the safety of an employee as a reasonable employer would render him/herself liable in damages to the injured employee. This means therefore that an employer can be held vicariously liable for the negligence of his/her employee which has caused injury to another employee. The onus is however on the injured employee to prove that in the circumstance, the employer had a duty which it breached. The right to claim, therefore, is not automatic, but one tied to proof. The National Industrial Court (the '*Court*'/NIC) had an opinion on this in the recent case of ***Mr. Ibrahim Yakubu v HITECH Construction Company Limited***.

FACTS

Mr. Yakubu was employed as a casual labourer by Hitech Construction Company Limited (*Hitech*) in July 2014 and posted to one of the Hitech's construction site in Alimosho area of Lagos state. Sometime in August of that year, in the course of carrying out his duties, Mr. Yakubu was struck by a crane being used by a fellow employee to carry heavy equipment. Hitech directed him to a hospital in Lagos to receive medical care. Mr. Yakubu claimed that he received 'shabby' medical care at the hospital and suffered excruciating pain which affected his ability to work thereafter. Upon making complaints to some of the officers at work, a memo was issued directing that Mr. Yakubu only be allowed to engage in 'light work'. As his health continued to degenerate, Mr. Yakubu stopped work altogether sometime in February of 2015 and sought better medical care at a different hospital in Kogi state until he was discharged in April 2015.

According to Mr. Yakubu, the Defendant only paid his salary up till February 2015 and thereafter refused to pay his arrears of salary, medical expenses and compensation to enable him carry out further treatment and find suitable work in view of his health challenges. However, according to the Hitech, Mr. Yakubu's employment was terminated at the time because it was downsizing as a result of redundancy; Hitech declared 101 employees including Mr. Yakubu redundant in 2015. Aggrieved by the termination of his employment and the conduct of Hitech, Mr. Yakubu instituted an action against Hitech at NIC, seeking the following reliefs:

1. An Order of the Honourable Court mandating Hitech to pay ₦96,855.00 hospital expenses incurred by Mr. Yakubu in treatment of the injury sustained in the course of his employment between March and October 2015.
2. An Order of the Honourable Court mandating Hitech to pay Mr. Yakubu ₦410,000.00 being the arrears of salaries owed Mr. Yakubu by Hitech from March to December 2015.
3. An Order of the Honourable Court mandating Hitech to pay Mr. Yakubu ₦20,000,000.00 as compensation for the life threatening injury he sustained while in the employment of Hitech.
4. An Order of the Honourable Court directing Hitech to pay an interest of 25% on the ₦410,000.00 being the unpaid ten months' salary of Mr. Yakubu from August 2014 till Judgment is delivered, and thereafter 15% interest on the sum till finally liquidated.

FINDING/DECISION

The court approached the issues under the following subheads thus:

1. **Proof of Negligence:** In order to succeed in action for negligence, the claimant must prove that: the defendant owed a duty of care to the claimant; the duty of care was breached and; the claimant suffered damages as a result of such breach. All three elements must be proved before a claimant can be entitled to damages. Thus, a mere occurrence of an accident does not serve as proof of negligence, neither is negligence proved simply because a person sustained injury in the course of his employment. In this case, Mr. Yakubu failed to lead sufficient evidence that the injury he sustained was caused by the crane being negligently operated by the other employee to entitle him to a claim for damages.
2. **Duty of an employer to ensure the safety of an employee:** It is the duty of an employer, acting personally or through his servants or agents, to take reasonable care for the safety of his workmen and other employees in the course of their employment. This duty extends in particular to the safety of the workplace, the plant and machinery and the method and conduct of work. The existence of an employment relationship is a prima facie evidence of the employer's duty of care to the employee.
3. **An employee's right to compensation at the incidence of an injury:** Compensation is a monetary award for the infringement of legal rights and is not awarded based on the mere existence of that legal right. The existence of the legal right, the breach of same by the employer and the entitlement to compensation must be proved. Having failed to successfully establish that his injury was as a result of the company and/or its employee's negligence, there was no basis upon which the Court could have awarded compensation to Mr. Yakubu.
4. **Entitlement to salaries:** Before an employee can be entitled to an order for payment of salaries, the employee must prove that he/she worked for the period in question. In this case, the Court found that since Mr. Yakubu



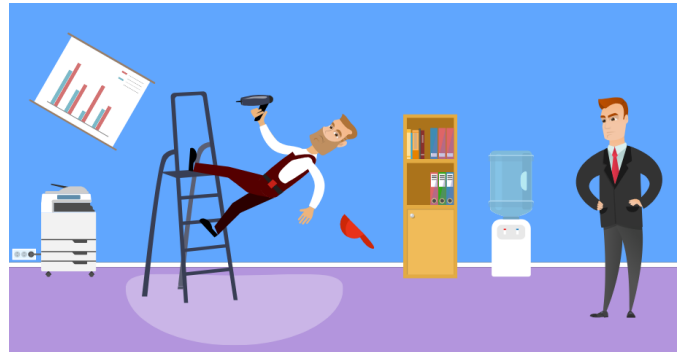
did not work beyond February 2015, he was not entitled to be paid any arrears of salaries for March to December 2015. This is because doing so would amount ordering payment of salaries for services not rendered.

CONCLUSION

From the above decision, it can be surmised that an employer owes a duty of care to its employees to ensure that the workplace is safe. Accordingly, employees have the right to claim for compensation and damages if they suffer injuries as a result of the negligence of the employer, or a fellow employee. While it is clear that employees can claim compensation and damages from their employers where they suffer injuries in the course of carrying out their duties, it is however important that, in order to make such a claim, the employee is able to establish the employer's duty of care and a breach of such duty; this Mr. Yakubu failed to do. In recognizing the general obligation of the employer to identify with an injured employee by compensating such employee, the law also notes that the employee's claim to an award of compensation and damages must be founded on the employer's specific obligation and a breach thereof to sway the court to grant such a compensation and award.

Mr. Yakubu could possibly have succeeded with his claim where he had, for example, established the negligence of his fellow employee in the way he drove the crane, as well as the breach of Hitech's duty by providing safety gadget to guard against any injury reasonably contemplated by Hitech. Perhaps a chance also lay in him seeking to, instead, enforce the provisions of the Employee Compensation Act (ECA), 2010. Hitech, in turn and in defense, would also have needed to prove that it has done all expected of it to ensure working conditions are safe, and had carried out all its obligations under the Employee Compensation Act, 2010; the ECA requires a monthly contribution of 1% of the total monthly payroll into a fund and employers to report any case of injury to the board and seek compensation on behalf of the injured employee. By Section 7, any employee, whether or not in a workplace, who suffers any disabling injury arising out of or in the course of employment, shall be entitled to payment of compensation in accordance with the provisions of the Act. Thus, it would seem that all that needs to be shown for the employee to be entitled to compensation is that the accident or injury arose in the course of employment.

In all, the law imposes an obligation on the employer to ensure the safety of its employees. As such, while the employee is required to prove that the employer erred in this duty, there is a corresponding duty on the employer to show that it did all that was necessary to ensure that the workplace is safe for the employees. It is no longer enough for an employer to stand as an onlooker in injury cases. It must be in a position to say that it has done everything expected of it to ensure full safety of its employees, and proper compensation should this fail.



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