1978 May 20

[A. LOIZOU, J.]

MICHAEL P. KEZOU,

Plaintiff,

v.

COMARINE LTD.,

Defendants.

(*Admiralty Action No.* 80/75).

Negligence—Unloading of ship—Winch-operator lifting sling so abruptly that it broke loose—Causing cargo to fall and injuring plaintiff—Winch-operator acted negligently.

Master and servant—Vicarious liability—Common Law doctrine of common employment—Abolition—A master is now liable for the negligence of his servants towards another in the same way as he is liable for their negligence towards third parties, provided that the negligence occurs in the course of their employment—Section 13 (1) *of the Civil Wrongs Law, Cap.* 148.

Damages—General damages—Special damages—Stevedore aged 27 *sustaining injury to his right foot—Moderate amount of pain and suffering—Out of work for* 22 *days—Award of* £209.- *special damages and award of* £150 *general damages.*

The plaintiff was engaged by the defendant Company as a stevedore on S/S "Tania" and was injured whilst discharging, together with fellow employees, a cargo of paper rolls which were in the hold of the said vessel. The plaintiff and his colleagues were spreading the sling on iron beams which were, also, in the hold, and after putting the rolls of paper on the sling it was hooked; then upon giving the proper signal to the winch-operator, who was a labourer in the employment of the defendants, he would lift the so loaded sling.

On the occasion complained of the winch-operator lifted the sling so abruptly that it broke loose and the rolls of paper fell and injured the foot of the plaintiff.

The plaintiff was aged 27 at the time of the trial. He sustained an injury to his right foot which had swollen and was very painful but there was no bone injury. There was satisfactory recovery 15 days after the accident but plaintiff complained of occasional pains and some swelling after prolonged standing and walking. According to the medical evidence the severe contusion sustained by plaintiff entailed a moderate amount of pain and suffering initially but gradually subsided over a period of three to four weeks and plaintiff's complaints would eventually disappear. He was granted sick leave for 22 days. The plaintiff was a stevedore on List 'B' and he was not in regular employment.

Held, (1) that the sudden jerk that brought about the burst and fall of the rolls was, unquestionably a negligent act, in the circumstances, on the part of the fellow-employee of the plaintiff, the winch-operator.

(2) That as the doctrine of common employment has been abolished (see now section 13 (1) of the Civil Wrongs Law Cap. 148) an employer is now liable for the negligence of his servants towards one another in the same way as he is liable for their negligence towards third parties; that an employer is so liable if the negligence occurs in the course of their employment and this is the situation in the present case; and that, accordingly, the defendant company is liable to the plaintiff for the injuries he suffered.

(3) That the special damages suffered by plaintiff amount to £209; that an amount for general damages has to be added for the pain and suffering and discomfort suffered by him which, in the circumstances, it is assessed at £150.

Judgment for plaintiff against the defendant company in the sum of £359 *with costs.*

Admiralty action.

Admiralty action for damages for personal injuries suffered by plaintiff while in the employment of the defendants on account of negligence and/or breach of statutory duty on the part of the defendants, their servants or agents.

B. Vassiliades, for the plaintiff.

Fr. Saveriades, for the defendants.

Cur. adv. vult.

A. Loizou J. read the following judgment. The plaintiff's claim against the Defendant Company is for damages for personal injuries suffered by him on account of the alleged negligence and/or breach of statutory duty on their part, their servants or agents.

The plaintiff comes from Paralimni village and is 27 years of age. He was until the summer of 1974 employed as a stevedore in the Famagusta port, but after the tragic events of that year, he and his colleagues had to seek employment in the remaining free ports of Cyprus.

On the 4th November, 1975 he was engaged through the Labour Office of the port at Limassol by the Defendant Co. for work as a stevedore on S/S " TANIA" together with other labourers, including Vrasidas Nicolaou (P.W.2) and Georghios Theocharous (P.W.3), under the control of a foreman. Their work was to discharge cargo of paper rolls, each weighing about 250–300 okes and which were in the hold of the said vessel in which there was also at the bottom a cargo of iron beams that made the surface of the cargo uneven. The mode of work was simple. They were first spreading the sling on these beams and then they were putting on it the rolls of paper and the sling was hooked. Upon giving then the proper signal to the winch operator, who was another labourer in the employment of the defendant Company, he would lift the so loaded sling. On the occasion complained of the winch–operator lifted the sling so abruptly that it broke loose, the rolls of paper fell and injured the foot of the plaintiff. The sudden jerk that brought about the burst and fall of the rolls was, unquestionably, a negligent act, in the circumstances, on the part of the fellow-employee of the plaintiff, namely, the winch–operator.

In the past, under the common law doctrine of common employment, the employer would not be liable where one servant was injured as a result of the negligence of a fellow servant. That common law principle was incorporated in paragraph (a) of the proviso to section 13 (1) of the Civil Wrongs Law, Cap. 9 of the 1949 edition of the Statute Laws of Cyprus. It provided that "subject to the provisions of any enactment as to workman's compensation or employer's liability a master shall not be liable to one of his servants for any civil wrong committed against such servant by another of his servants

unless the master shall have authorised or ratified such civil wrong". The radical changes brought about in this field of the Law in 1953, abolished also the doctrine of common employment. Section 13 was amended by section 6 of Law 38 of 1953 and the aforesaid paragraph (a) of the proviso, was deleted.

Section 13 (1) in so far as relevant now reads:

" .. .. a master shall be liable for any act committed by his servant.....

(a) .....

(b) which was committed by his servant in the course of his employment:

Provided that a master shall not be liable for any act committed by any person, not being another of his servants, to whom his servant shall, without his authority, express or implied, have delegated his duty".

The deletion of the previous paragraph and the wording of the new section, leave no room for doubt that the doctrine of common employment was abolished in Cyprus as it was abolished by section 1 (1) of the Law Reform (Personal Injuries) Act, of 1948 a few years earlier in England.

An employer, therefore, is now liable for the negligence of his servants towards one another in the same way as he is liable for their negligence towards third parties. He is, however, so liable, if the negligence occurs in the course of their employment, and this is the situation in the present case. Consequently, the defendant Company is liable to the plaintiff for the injuries he suffered as a result.

The plaintiff when injured, was first taken to the Limassol Hospital and then treated by Dr. Andreou whose findings, treatment and opinion were recorded in a certificate produced, by consent, as *Exhibit* 1. According to it, the plaintiff sustained an injury to his right foot which had swollen and which was very painful. The X-Rays taken revealed no bone injury, his foot was supported in a bandage and he was given analgesic tablets. An assessment made by the doctor of the condition of the plaintiff on the 19th November, 1975 revealed satisfactory recovery, but complaints of occasional pain and some swelling after prolonged standing and walking remained.

According to the doctor, the severe contusion of the right foot sustained by the plaintiff, entailed a moderate amount of pain and suffering initially, but gradually subsided over a period of three to four weeks, and his complaints would eventually disappear. He was granted sick-leave from the 4th to the 25th November, 1975.

According to the plaintiff, his foot is now completely well, but when it is cold he still feels some pain. His earnings, including the insentive method of payment, were claimed to be, at the time, between £5-£25 per day, making a total of upto £400.- per month, but the average according to himself being £250-£300 per month, depending on the days of work they could secure.

With regard to the regularity of employment of the plaintiff, Mr. Nicolaides (D.W.1) an officer of the Labour Office of Limassol, was called on behalf of the defendant Company and gave evidence to that effect. According to the table produced by him (*Exhibit* 2) the plaintiff started work in the port of Limassol in July, 1975 and he was engaged in all, 12 days in that month, six days in August, none in September, 13 days in October, three days in November, until the accident happened and in December, 11 days. It is also useful to mention that as from the 11th November, 1975, port workers from Famagusta were engaged in alternate weeks in the ports of Limassol and Larnaca. No other evidence exists as to the employment of the plaintiff in the port of Larnaca, except what he himself stated, but it appears from the days recorded for employment in the port of Limassol that he was in December employed there four days on one week, no record exists for the following week which must be taken to be work at Larnaca, five days on the subsequent week and two days on the last week of the month. It was also stated by this witness that the work in the ports started increasing as from October, and this is obvious from the table he produced.

The plaintiff is a stevedore on List 'B' which means that stevedores on that list are recruited after those on List 'A' are engaged. It is not easy to assess the wages lost through his staying out of work between the 4th and the 25th November, but on average, and using as criterion the graph of employment revealed by the table produced, 18 working days for that

period would not be unreasonable. At an average of £10 per day it comes to £180. The plaintiff also paid £20 medical expenses, £7 for transport and £2 for medicines, which brings the special damages suffered by him to £209. To this amount an amount for general damages has to be added for the pain and suffering and discomfort suffered by him, which, in the circumstances, I assess at £150. Therefore, judgment is given for the plaintiff against the defendant Company for the sum of £359.– with costs on that scale.

Judgment and order for costs as above.