

1981 August 14

(A. LOIZOU, J.)

ELIAS PHOTIOU,

*Plaintiff,*

v.

AZEVEDO AND GUIMARAES LTD.,

*Defendants.*

AND AS AMENDED BY ORDER OF THE COURT DATED  
24.6.78.

ELIAS PHOTIOU,

*Plaintiff,*

v.

1. AZEVEDO AND GUIMARAES LTD.,
2. PARTREDEREIT BECH IX WILH CHRISTOPHER  
BECH,
3. COMARINE LTD.,

*Defendants.*

(Admiralty Action No. 74/76).

---

*Negligence—Loading of ship—Pallet jerking and injuring stevedore  
when lifted suddenly by winchman—Usual method of lifting pallet  
a slow one—Accident occurring because of deviation from method  
used—Winchman negligent.*

- 5 *Principal and agent—Independent contractor—Vicarious liability—  
Injury to stevedore in the course of loading of ship due to negli-  
gence of fellow stevedore—Both stevedores employed by defen-  
dants 3 who undertook stevedoring at a lump sum—And signed  
and submitted the notification of the accident, under the Acci-  
10 dents and Occupational Diseases (Notification) Law, Cap. 176,*

*as employers—Fellow stevedore the employee of defendants 3 who acted all along as independent contractors—Defendants 3 vicariously liable.*

The plaintiff in this action was employed to work as a stevedore on m.v. "INGEBECK" which was discharging parcels of empty bottles wrapped in plastic sheets. These parcels were stacked on wooden pallets and the plaintiff's duty was to place the sling underneath such pallets, then hook it on the hook of the ship's winch which would lift same and lower it on lorries standing alongside the ship on the quay. The winch was operated by a fellow stevedore and on account of the winchman lifting suddenly the pallet, which jerked, the plaintiff was hit and injured whilst standing there. The usual method used for lifting the pallet was to lift it slowly so that the sling through such gradual process would be straightened and the pallet be lifted without any danger to those preparing the sling and holding it whilst it would have been slowly stretched for the eventual lifting of the pallet.

In an action for damages against the owners and charterers of the above vessel (defendants 1 and 2) and against defendants 3, the plaintiff maintained that defendants 3 acted all along as independent contractors and had undertaken themselves as such to do the unloading operation in this case, irrespective of their position as the ship's agents acting for defendants 1 or 2 for other matters. This contention was based on the fact that the notification of the accident under the Accidents and Occupational Diseases (Notification) Law, Cap. 176, was signed and submitted by defendants 3 as employers, and on the fact that defendants 3 undertook, by means of a telex, the stevedoring at a lump sum without reference to the amounts to be paid to the stevedores and the other expenses to be incurred.

*Held*, (1) that the accident occurred because of the deviation from the method used when lifting pallets with that kind of a load and which sudden lifting, as done by the winchman, in the circumstances amounted to negligence on his part inasmuch as the jerking of the pallet could have reasonably been foreseen and could have been prevented or guarded against

by proper measures, that is by lifting same by the expected slow process that in the circumstances was necessary.

5 (2) That the winchman in question whose negligence was the cause of the injuries of the plaintiff complained of, was an employee of defendants 3 who acted all along as independent contractors with regard to the stevedoring of this ship and the engagement of stevedores for that purpose and they are in law vicariously liable for his negligence ; that, therefore, there will be judgment for the plaintiff against defendants 3 for the full  
10 agreed amount of C£9,750.— with costs on that amount, there being no question of the plaintiff having contributed to this accident.

*Judgment for C£9,750.— against defendants  
3 with costs.*

15 **Admiralty action.**

Admiralty action for special and general damages for personal injuries suffered by plaintiff whilst employed on m.v. "INGEBECK" as a result of the negligence and/or breach of statutory duty by the defendants.

20 *A. Lemis* for the plaintiff.

*St. McBride* for defendants 1 and 2.

*Fr. Saveriades* for defendants 3.

*Cur. adv. vult.*

25 A. LOIZOU J. read the following judgment. This is an action for special and general damages for the personal injuries suffered by the plaintiff whilst employed on m.v. "INGEBECK" at the port of Limassol on account, as it is claimed, of the negligence and/or breach of statutory duty on the part of the defendants, their servants or agents and/or  
30 breach of contract.

The special and general damages have been agreed by all parties at C£9,750 on a full liability basis, which, however, was left to be determined by the Court on the evidence to be

adduced. For that purpose the plaintiff gave evidence himself and called two witnesses, whilst one witness was called by defendants 2 and three witnesses by defendants 3.

The latter have also issued a third party notice on defendants 1 claiming thereby to be indemnified from them against the plaintiff's claim and costs of the action and/or damages on the ground that they were their agents acting for and on their behalf. Directions for that purpose were made by consent and pleadings were exchanged. Although defendants 1, entered originally an appearance, they did not appear at the hearing of the case. 5 10

The facts of the case as appearing from the evidence adduced and accepted by me as true are as follows :

On the day in question the plaintiff was employed to work as a stevedore on the aforesaid motor vessel which was at the time discharging parcels of empty bottles wrapped in plastic sheets. These parcels were stacked on wooden pallets and the plaintiff's duty was to place the sling underneath such pallets, then hook it on the hook of the ship's winch which would lift same and then lower them on to lorries standing alongside the ship on the quay. The winch was operated by a certain Yiannis Krasias chosen from among the stevedores. There were two other stevedores engaged in the process of preparing each pallet with the load of parcels containing empty bottles, namely, Athos Chrysostomou and Loucas Tzelas, who both gave evidence on behalf of the plaintiff and supported his version as to the circumstances of the accident. 15 20 25

The work started at eight o'clock a.m. and about 40-50 pallets had already been discharged when the accident complained of occurred, on account of the winchman lifting suddenly the pallet which jerked and hit the plaintiff whilst standing there, instead of lifting the pallet slowly so that the sling through such gradual process would be straightened and the pallet be lifted without any danger to those preparing the sling and holding it whilst it would have been slowly stretched 30 35

for the eventual lifting of the pallet. In fact, the accident occurred because of this deviation from the method used when lifting pallets with that kind of a load and which sudden lifting, as done by the winchman, in the circumstances amounted to negligence on his part inasmuch as the jerking of the pallet could have reasonably been foreseen and could have been prevented or guarded against by proper measures, that is by lifting same by the expected slow process that in the circumstances was necessary.

That being so, it has to be examined as to which, if any, of the three defendants was the employer of the winchman and the stevedores, so that on the principle of vicarious liability the plaintiff can recover the agreed damages from him, or them. In that respect there is the evidence of the plaintiff and his two fellow stevedores who maintained that they were engaged by defendants 3, namely, Comarine Ltd., of Limassol. In support of that proposition a number of documents has been produced to which reference will be made in due course.

It is the case for the plaintiff that from the totality of the circumstances it could safely be concluded by the Court that defendants 3 acted all along as independent contractors and had undertaken themselves as such to do the unloading operation in this case, irrespective of their position as the ship's agents acting for defendants 1 or 2 for other matters.

The first document relied upon is the notification of the accident, exhibit "C", which was signed and submitted by defendants 3 under the Accidents and Occupational Diseases (Notification) Law Cap. 176, as employers of the plaintiff. In the relevant column of this notification under the title "employer", defendants 3 gave their own name and address as being the employers, in addition to having signed same as such. Then there are a number of telexes exchanged between defendants 3, and defendants 1, who were the charterers of the ship at the time and which have been produced as exhibits. In telex No. 1 of exhibit 'F' it is stated :

"WE ARE TODAY LOADING ABOUT 100 TONS/300

CBM PALLETISED EMPTY BOTTLES FOR LIMAS-  
 SOL ENABLING US TO CONSIDER WHETHER OUR  
 T/C VESSEL AGENCY SHOULD BE ENTRUSTED  
 YOUR COMPANY WOULD VERY MUCH LIKE TO  
 KNOW THE LOWEST POSSIBLE STEVEDORE  
 COSTS FOR DISCHARGING OF THE AM CARGO  
 PLUS SOME FIVE TONS GENERALS. PLEASE  
 REVERT STILL TODAY".

5

And defendants 3 by telex No. 2 in the same bundle replied :

" RE YOUR TODAY'S TELEX REGARDING STEVE-  
 DORING COSTS FOR DISCHARGING AT LIMAS-  
 SOL KINDLY NOTE THAT FOR 100 TONS/300 CBM  
 EMPTY BOTTLES STEVEDORING RATE IS CYPRUS  
 POUNDS TWO PER T/W INCLUSIVE DECK PER-  
 SONNEL AND OVERTIME BUT EXCLUSIVE  
 SUNDAYS FOR WHICH SEVENTY FIVE PER CENT  
 INCREASE. PLEASE ADVISE WHETHER VESSEL  
 ENTRUSTED TO US GIVING FURTHER DETAILS".

10

15

The reply is to be found in Telex No. 3 dated 6.2.1976  
 which reads as follows :

20

" GLAD TO APPOINT YOUR FIRM AGENTS AND  
 STEVEDORES FOR OUR AM T/C. WE HOPE YOU  
 WILL MAKE A QUICK DISPATCH FYG VESSEL  
 ETA YOURS 12/2 LATE EVENING".

In telex No. 5 dated 10.2.76 it is stated :

25

" FURTHER TO YOUR YESTERDAY'S TELEX  
 KINDLY NOTE THAT VESSEL'S EXPENSES IN-  
 CLUDING STEVEDORING ESTIMATED TO ABOUT  
 C£430 . . . . ."

The next piece of evidence are the documents exhibit "G"  
 the disbursement account submitted to defendants 1 by the

30

defendants 3 with a covering letter dated the 23rd February, 1978. In these accounts though details are given for every item paid, the stevedoring is given as a lump sum and without a reference to the exact amounts paid to stevedores and other expenses that were incurred, which is suggestive of a flat rate charged by the defendants 3 for stevedoring as undertaken by them in the aforementioned telexes.

10 Mr. Eraclis Nicolaidis, a Labour Officer working in the District Labour Office in Limassol, gave evidence regarding the procedure for the engagement of stevedores on board ships and produced several documents. One of these documents is a written request by defendants 3—signed by them as ship's agents—to the Labour Office for the supply to them of officers for overtime work, that is to say, for the purpose of their doing the allocation of stevedores before office hours. Their signing this document as ship's agents was invoked by 15 defendants 3 as evidence supporting their version that they acted only as agents for a disclosed principal and not in any other capacity with regard to the engagement of stevedores for work on the ship in question. I find that this document, 20 leaving aside the question of its admissibility, does not carry the case of these defendants anywhere as it is a document that related to the overtime work of civil servants and not to the legal relationship between the stevedores and their employer.

25 Considering, therefore, the evidence on its totality I have come to the conclusion that the winchman in question whose negligence was the cause of the injuries of the plaintiff complained of, was an employee of defendants 3 who acted all along as independent contractors with regard to the stevedoring of 30 this ship and the engagement of stevedores for that purpose and they are in law vicariously liable for his negligence.

For all the above reasons there will be judgment for the plaintiff against defendants 3 for the full amount of C£9,750 (nine thousand seven hundred and fifty Cyprus pounds) with 35 costs on that amount, there being no question of the plaintiff having contributed to this accident.

The action against defendants 1 and 2, as well as the Third Party Notice issued by defendants 3, are dismissed with costs.

*Judgment for C£9,750 against  
defendants 3 with costs. Action  
against defendants 1 and 2 5  
dismissed with costs.*