1982 February 9

[MALACHTOS, J.]

ALEKOS KYRIACOU,

Plaintiff,

v.

C.N. SOURAS & CO. LTD.,

Defenaants.

(*Admiralty Action No.* 64/74).

Negligence—Unloading of ship—Neck of winch in an cblique direction and not vertically over sling—Which swang towards the plaintiff and injured him as soon as it was lifted up—Winchman or hatchman acted negligently.

Master and servant—Vicarious liability—Common law doctrine of common employment—Abolition—Master now liable for negligence of his servants towards their follow servants—Section 13(1) *of the Civil Wrongs Law, Cap.* 148.

Damages—General damages—Personal injuries—Tally clerk aged 45 *sustaining deep laceration of left lower leg—Moderate amount of pain and suffering—Out of work for* 41 *days—Injury healed but slight depreciation of the reserve muscle power could be entertained—Award of* £350.

Whilst the plaintiff was employed by the defendants as a tally clerk on board the ship "MARIA III", which was unloading general cargo at the port of Limassol, he was involved in an accident and sustained personal injuries. At the time of the accident the ship was unloading bundles of iron bars by using two winches. One winch was used to lift the sling up and the other winch was used to pull the sling sideways to the spot of unloading. At about noon a sling load of iron bars was hooked by the first winch in order to be lifted up, but as the neck of the winch was in an oblique direction and not vertically over the sling, as soon as it was lifted up, swang towards the plaintiff who was at the time standing on the twin deck at a

distance of about six metres away from it and hit him on the left leg. When plaintiff saw the load coming towards him he tried to avoid it by running away but he was unable to do so as the hatches of the lower deck were open and was thus obliged to stop to avoid falling in.

The plaintiff, who was 45 years of age at the time of the accident, sustained a deep laceration of the left lower leg and had to put up with moderate amount of pain and suffering initially which slowly diminished over the following months. The injury was well healed and there was no evidence of muscle hernia. Because of the reported muscle injury a slight depreciation of the reserve muscle power could be entertained. Plaintiff stayed out of work for 41 days.

In an action by the plaintiff for damages defendants adduced no evidence to substantiate the allegations contained in their answer and the case was decided on the evidence adduced by the plaintiff.

Held, (1) that it is clear from the evidence of the plaintiff, which it is accepted as true and correct, that the accident occurred due to the negligence of the winchman or the hatchman, who, presumably, were in the service of the defendants, who are entirely to blame and no contributory negligence can be attributed to the plaintiff; that since the abolition of the doctrine of common employment, a master is liable for the negligence of his servants to fellow servants; and that, therefore, the defendants as masters of the winchman or hatchman are liable towards the plaintiff for the negiglence of his fellow servants (see *Kezou* v. *Comarine Ltd.* (1978) 1 C.L.R. 334 and section 13(1) of the Civil Wrongs Law, Cap. 148).

(2) That taking into consideration the extent of the injury of the plaintiff, in the light of the medical evidence, his pain and suffering and all other relevant factors, an amount of £350 general damages will be reasonable; that, adding to the general damages an amount of £381.850 mils special damages, judgment will be given in favour of the plaintiff in the sum of £731.850 mils with costs.

Judgment for plaintiff for £731.850 mils with costs.

Cases referred to:

Kezou v. *Comarine Ltd.* (1978) 1 C.L.R. 334 at p. 336.

Admiralty Action.

Admiralty action for special and general damages in respect of injuries sustained by the plaintiff in an accident in the course of his employment with the defendants.

B. Vassiliades, for the plaintiff.

M. Papas, for the defendant.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The plaintiff in this Admiralty Action is a tally clerk in Limassol and the defendants are a shipping agency carrying on business also in Limassol.

On the 9th August, 1974, the plaintiff, while employed on board the ship "MARIA III" which was unloading general cargo at the port of Limassol, was involved in an accident as a result of which he sustained personal injuries. He instituted the present proceedings claiming special and general damages against the defendants as his employers and/or as agents of undisclosed principals and/or as charterers of the said ship.

In the petition, plaintiff alleges that the accident occurred as a result of the negligence and breach of statutory duty and/or breach of contract on the part of the defendants and/or their agents and servants.

On the other hand, the defendants in their answer, admit that the plaintiff was engaged by them as a tally clerk but in their capacity as agents of the owners and/or charterers of the ship "MARIA III". They deny the special and general damages claimed by the plaintiff and further allege that the accident occurred due to the negligence and/or contributory negligence of the plaintiff. Finally, they allege that the plaintiff voluntarily and freely with full knowledge of the nature of the risk he impliedly agreed to incur it by entering into the hatch and/or holds of the said ship contrary to the repeated and express instructions of the defendants though his duties were the checking of the cargo after the same passed the ship's rail and was landed.

As to how the accident occurred the plaintiff in giving evidence stated that on the 9th August, 1974, he was engaged by the defendant company, whom he considered at all times as his employers, as a tally clerk on board the said ship, which was

at the time of the accident unloading bundles of iron bars. Two winches were engaged in unloading these iron bars, the one winch was used to lift the sling up and the other winch was used to pull the sling sideways to the spot of unloading. At about noon a sling load of iron bars was hooked by the first winch in order to be lifted up, but as the neck of the winch was in an oblique direction and not vertically over the sling, as soon as it was lifted up, swang towards the plaintiff who was at the time standing on the twin deck at a distance of about six metres away from it and hit him on the left leg. He further stated that when he saw the load coming towards him he tried to avoid it by running away but he was unable to do so as the hatches of the lower deck were open and was thus obliged to stop to avoid falling in. Soon after the accident he was taken to the Limassol hospital where he received medical treatment, as an outpatient.

As a result of the accident he suffered considerable pain and stayed out of work for 41 days. In fact, he was given sick leave as from the 9th August, 1974 to 20th September, 1974. At the time of the accident the plaintiff was 45 years of age and his earnings were £250.—per month. He paid as hospital fees £4.700 mils, £20.500 mils for drugs, £5.—for the medical report from the hospital and £10.—for his travelling expenses.

In cross examination the plaintiff denied that when he was engaged by the defendants he knew that they were the agents of the shipowners or of the charterers. He also denied that he was given instructions not to enter the hold of the ship but, on the contrary, he stated that according to an agreement with the shipping association, tally clerks had to stand inside the hold when checking the cargo because in this way they can see the various marks on the merchandise and enter them in the manifest of the ship.

According to the two medical certificates, the one issued by the treating medical officer at the hospital and the other by a medical practitioner who examined the plaintiff on behalf of the defendants, his injury was reported to have been a large irregular deep laceration of the inner aspect of the lower third of the left leg, measuring 12 cm. in length with laceration of

he underlying muscles and fascia. The laceration was sutured and the leg bandaged. Because of the extent of the laceration and infection the wound took about three months to heal completely. On examination on October 2nd, 1976, the findings were the following:

1. Roughly 12x3 cm., irregular discolorated scar of the inner aspect of the lower third of the left leg. The scar was mostly soft and in one or two spots adherent to deeper structure.

2. No fascial defect was detected.

3. Hypoesthesia to the touch at the level of the scar.

4. No limitation of the range of movement of the left ankle, but the plaintiff was complaining of numbness of the injured leg after getting tired and of occasional itching of the scar.

According to the medical opinion the plaintiff sustained a deep laceration of the left lower leg in an accident at work about 26 months prior to the final examination and he had to put up with moderate amount of pain and suffering initially, slowly diminishing over the following months. The injury resulted in permanent scarring which constitutes a more vulnerable spot for injury. The injury to the fascia has well healed and there is no evidence of muscle hernia. Because of the reported muscle injury a slight depreciation of the reserve muscle power could be entertained.

No evidence was called on behalf of the defendants to substantiate the allegations contained in their answer and the case was left to be decided on the evidence already adduced by and on behalf of the plaintiff.

It is clear from the evidence of the plaintiff, which I accept as true and correct, that the accident occurred due to the negligence of the winchman or the hatchman, who, presumably, were in the service of the defendants, who are entirely to blame. No contributory negligence can be attributed to the plaintiff.

Since the abolition of the doctrine of common employment, a master is liable for the negligence of his servants to fellow

servants. In the case of *Kezou* v. *Comarine Ltd.* (1978) 1 C.L.R. 334, A. Loizou J., in dealing with the doctrine of common employment had this to say at page 336:

"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 this 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 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".

On the question of special damages, although the defendants in their answer deny them, not only, as I have already said, did not call evidence to substantiate their allegations, but even the plaintiff himself was not cross examined at all on this subject.

Taking into consideration the evidence of the plaintiff I assess the special damages in the amount of £381.850 mils.

As regards the question of general damages, taking into consideration the extent of the injury of the plaintiff, in the light of the medical evidence, his pain and suffering and all other relevant factors, I consider that an amount of £350.—in the case of the plaintiff will be a reasonable one.

For the reasons stated above, Judgment is given in favour of plaintiff in the sum of £731.850 mils with interest thereon at 4% per annum as from today to final payment, with costs to be assessed by the Registrar.

Judgment for plaintiff for £731.850 *mils with costs.*