1970
April 3
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ERMIONI EVRIPIDOU
v.
CYPRUS PALESTINE PLANTATIONS CO. LTD.

[VASSILIADES, P., STAVRINIDES, LOIZOU, JJ.]

ERMIONI EVRIPIDOU,
Appellant-Plaintiff,
v.
CYPRUS PALESTINE PLANTATIONS CO. LTD.,
Respondents-Defendants.

(*Civil Appeal No.* 4848).

Master and Servant—Safe system of work—Duty of the employer to provide such system—Alleged breach not established—Labourer injured by falling off a ladder—Finding of trial Court that the fall was solely due to the labourer's (appellant's) own negligence, sustained.

Negligence—Supra.

Safe system of work—Duty—Supra.

Appeal—Findings of fact made by trial Courts—Approach of the Court of Appeal to such findings.

This is an appeal by the plaintiff against the judgment of the District Court of Limassol dismissing her action for damages in respect of personal injuries alleged to have been suffered by her as a result of her employers' negligence in providing a safe system of work. The finding of the trial Court was that the injuries sustained by the plaintiff (now appellant) were solely the result of her own carelessness.

After reviewing the evidence and dismissing the appeal, the Court :—

Held, (1). We have not been persuaded that there are sufficient reasons for disturbing the finding of the trial Court upon which the case was decided on the issue of negligence (see *Imam and HadjiPetri* cases *infra*).

(2) An employee must take reasonable care in doing his work ; and cannot saddle his employer with the consequences of his own carelessness in the performance of his duties.

(3) In the result the appeal is dismissed. No order as to costs.

Appeal dismissed. No order as to costs.

Cases referred to :

Imam v. *Papacostas* (1968) 1 C.L.R. 207 ;

HadjiPetri v. *HadjiGeorghou* (1969) 1 C.L.R. 326.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Malachtos, P.D.C. and Loris, D.J.) dated the 27th September, 1969 (Action No. 2906/68) dismissing her action for damages in respect of personal injuries she sustained by falling off a ladder while picking oranges for her employers.

A. Lemis, for the appellant.

S. G. McBride, for the respondent.

The judgment of the Court was delivered by :

VASSILIADES, P. : Notwithstanding the strenuous efforts of learned counsel for the appellant, we have not been persuaded that there are sufficient reasons for disturbing the finding of the trial Court upon which the case was decided on the issue of negligence. (*Imam* v. *Papacostas* (1968) 1 C.L.R. 207 ; *HadjiPetri* v. *HadjiGeorghou* (1969) 1 C.L.R. 326). If the appellant fails on this issue, her action fails.

The short facts of the case are that the plaintiff, an elderly woman labourer, aged 64, while picking oranges for her employers, fell off the ladder which she was using for her work and injured herself. The plaintiff was similarly employed by the respondents, the owners of a large citrus plantation, for about 18 years before the accident. On March 29, 1968, while on the small ladder used for the picking of oranges, with a harvesting-bag on her shoulder containing some 25 oranges, she felt, she said, the ladder suddenly moving forward and she fell off, injuring her left knee and leg. She described the fall in her evidence with the words "ἔγειρεν ἡ σκάλα καὶ ἔπεσα κάτω". She explained this sudden movement of the ladder as due to a branch either breaking or bending suddenly.

She was removed to hospital where she was kept as an in-patient for seven days ; then her injured leg was placed in plaster for 34 days. Thereafter she had to rest her leg, keeping off work, but continued receiving her full

wages so long as she could produce a medical certificate to the effect that her incapacity for work continued. This went on until the 18th August, 1968, *viz*. for nearly five months after the accident. Thereafter she did not draw wages but she still did not resume work apparently for some reason connected with her leg injury.

There are a number of alternative allegations of negligence in the statement of claim but we do not think that we need deal with them one by one. They are rather a matter of form than of substance. The negligence upon which appellant's case rests, as presented to us this morning by counsel on her behalf, is that the employers and their foreman were negligent in employing a woman of the age and physique of the appellant to do work for which she had to climb up a ladder. Learned counsel, however, conceded very properly in our opinion, that it cannot be said that the system of work which the employers operated at the material time, was unsafe in itself.

Assuming for the purposes of the judgment in this case, that the age and physique of the employee is one of the matters which the employer must take into consideration when engaging labourers for a particular job, and that if an employer employs for a certain work a person who is physically unfit to do it, he may be held to have acted negligently, we are prepared to accept the proposition that if in this particular case the employers' instructions to their foreman were to avoid employing labourers of the age and physique of the appellant, for the picking of oranges because of the danger involved, but the foreman, in spite of such instructions did employ the appellant, liability might, perhaps, attach to the employers, as their foreman would probably be acting within the scope of his authority in employing such a labourer. But here the finding of the trial Court is that the appellant fell off the ladder because it was not safely placed against the tree ; and not because of her age and physique. If anything, appellant's age and experience in the picking of oranges in the employers' groves, would seem to present an advantage rather than a disadvantage. A young and inexperienced labourer would be more likely to place the ladder unsafely against the tree, than an experienced labourer with a long practice in doing that particular work.

The finding of the trial Court was that appellant's fall was due to the unsafe way in which she placed the ladder against the tree. This finding was certainly open to the trial Court, on the evidence before them ; and should

not be disturbed. The fall was the result of appellant's own negligence ; and the consequences must fall entitely upon her. We cannot see how for this unsafe placing of the ladder against the tree one can blame the employers ; or connect the matter with the age and physique of the appellant. An employee must take reasonable care in doing his work ; and cannot saddle his employer with the consequences of his own negligence in the performance of his duties.

In the course of the hearing of the appeal, learned counsel referred to the fact that owing to an omission on the part of the employee in pursuing her claim for benefits under the Social Insurance Fund she (the appellant) now finds such benefits beyond reach. This is a matter which cannot be connected with the claim in the present action. We understand that the employers would be willing to consider it purely on the humanitarian aspect of the whole case, after the conclusion of these proceedings. This would certainly go to their credit ; same as the fact that they make no claim for costs in the appeal.

In the result the appeal fails and is dismissed without any order for costs.

Appeal dismissed ; no order as to costs.