[TRIANTAFYLLIDES, STAVRINIDES, HADJIANASTASSIOU, JJ.]

CHRISTOS LOUCA,

Appellant-Plaintiff,

v.

CYPRUS MINES CORPORATION,

Respondents-Defendants.

(*Civil Appeal No.* 4815).

Negligence—Breach of statutory duty—Absolute liability—Master and servant—Duty of the master to provide safe system of work—Failure on his part to provide such system—Negligence—Dangerous machinery—Statutory duty to fence—Accident to workman through contact with unfenced dangerous part of machinery—Factory owner in breach of his statutory duty—Sections 25 *and* 26 (1) *of the Factories Law, Cap.* 134—*Cf. section* 14 *of the English Factories Act,* 1961—*See further* infra.

Contributory negligence—Accident to workman through master's breach of strict statutory duty to fence (supra)—*Workman still can be held in law guilty of contributory negligence—No matter that his master's liability to the workman is an absolute one—Cf.* infra.

Apportionment of liability—In cases of negligence and contributory negligence—Principles upon which an Appellate Court will intervene—Apportionment in the instant case left undisturbed in application of the aforesaid well settled principles—Apportionment made by the trial Court neither wrong in principle nor based on a misapprehension of facts or otherwise clearly wrong.

General damages—In personal injuries cases—Assessment—Principles governing the approach of the Appellate Court to such awards—Applying these principles the Supreme Court increased the amount of general damages awarded by the Court of first instance—Right-handed workman of forty-five losing use of his right thumb—Pain and suffering due to two operations—His worth as a workman considerably reduced.

Factory—The Factories Law, Cap. 134 *sections* 25 *and* 26 (1)—*See* supra passim.

Master and Servant—Duty of the master to provide safe system of work—Statutory duty—Breach of—Contributory negligence—See supra passim.

Civil wrongs—Negligence—Breach of statutory duty—See supra passim.

Appeal—Apportionment of liability—Approach of the Court of Appeal thereto—See supra.

Appeal—General damages—Quantum of—Principles upon which awards of general damages in personal injuries cases will be disturbed on appeal—See supra.

In this case the appellant-plaintiff sustained personal injuries as a result of an accident in the course of his employment as workman in the service of the respondents. As a consequence of this accident the appellant was injured in a manner incapacitating practically in full his right thumb. The trial Court held that the respondents-defendants were negligent in that they laid down a system of work which in the circumstances was unsafe ; the trial Court held, also, that the respondents committed a breach of their statutory duty, contrary to sections 25 and 26 (1) of the Factories Law, Cap. 134, in that they failed to properly fence the machinery which caused the injuries in question. On the other hand, the trial Court found that the workman-plaintiff (now appellant) was also to be blamed for this accident to the extent of 20% and, eventually, awarded to the plaintiff the sum of £450 general damages.

The plaintiff-workman now appeals against that part of the trial Court's judgment which relates (*a*) to the contributory negligence and the relevant apportionment of liability ; and (*b*) to the assessment of the general damages.

The respondents-defendants cross-appealed, claiming that they should be absolved of all liability for the accident, or, at least, that the appellant should be held to blame much more for the accident than as found by the trial Court.

Allowing in part the appeal (as regards only the quantum of the general damages) and dismissing the cross-appeal, the Court :—

Held, I. Regarding the issue of liability (negligence, breach of statutory duty) :

(1) We are in agreement with the trial Court that the respondents were negligent in that they laid down a system of work which was unsafe in the circumstances of this case.

(2) Moreover, we are of the opinion that the trial Court was correct in holding that the respondent, through not accurately fencing the whole width of the pulley in question, committed a breach of statutory duty, contrary to section 25 of the Factories Law, Cap. 134, which required the machinery concerned to be fenced in any case, in view of its being transmission machinery, as well as a breach of section 26 (1) of the same Law, in that it was clearly foreseeable that the said pulley was a dangerous part of machinery and it had to be securely fenced in order to avoid the likelihood of injury to a workman in the position of the appellant (see *inter alia* the case *Millard* v. *Serck Tubes, Ltd.* [1969] 1 All E.R. 598, decided in relation to section 14 of the English Factories Act, 1961, which corresponds to section 26 of our Factories Law, Cap. 134 *supra*).

(3) (*a*) In relation to the breach of statutory duty imposed by virtue of section 26 (1) of the said Law, counsel for the respondents submitted that no such breach had occurred because the duty to fence under the said provisions was a duty to fence against contact of the operator with dangerous parts of machinery and that this duty does not include a duty to fence against a tool, which the operator was using coming into contant with such dangerous parts ; counsel relied in this respect on the Sparrow case (*infra*).

(*b*) In our view, the position in the present case is clearly distinguishable from that in the case *Sparrow* v. *Fairey Aviation Co. Ltd.* [1964] A.C. 1 ; in the present instance the appellant workman was injured due to the fact that his own hand came into contact with an unfenced dangerous part of machinery, without the tool which he was using having contributed to this happening, whereas in the *Sparrow* case the workman received injury only as a consequence of the fact that his implement came into contact with the dangerous part of the machinery.

Held, II. Regarding counsel's for the appellant submission that, once the respondents were found to have contravened their strict duty to fence the machinery in question, no question of contributory negligence on the part of the appellant could in law arise :

(1) Counsel for the appellant submitted that once the respondents were found to have contravened their strict and absolute duty to fence securely the transmission machinery, which injured the appellant's hand, no question of

contributory negligence on the part of the appellant could in law, arise. We cannot uphold such contention as being a valid one ; in this respect the authorities establish that the defence of contributory negligence was available in law to the respondents in the present case (see *Caswell* v. *Powell Duffryn Associated Collieries, Ltd.* [1940] A.C. 152, in particular the judgment of Lord Atkin at p. 164 ; *Lewis* v. *Denye* [1940] A.C. 921, the judgment of Lord Simon L.C. at p. 929; *Sparks* v. *Edward Ash Ltd.* [1943] 1 K.B. 223 and *London Passenger Transport Board* v. *Upson and Another* [1949] 1 All E.R. 60 the judgment of Lord Wright at p. 67).

(2) This being so, we do agree that on the facts as found by the trial Court, the appellant was rightly held guilty of contributory negligence. It is true he had to improvise his own system of work because of the unsafe system of work laid down by his employers—the respondents—but, the system which he adopted was, as correctly pointed out in the judgment appealed from, a risky one, too.

Held, III. Regarding the apportionment of liability :

The principles governing the exercise of the powers of an Appellate Court in relation to the apportionment of liability made by trial Courts have often been stated and need not be gone into in detail ; it suffices to mention the very recent case of *Kyriakou* v. *Aristotelous*, reported in this Part at p. 172 *ante*, in which the relevant case law has been referred to. In the present case, and applying the said principles, we have decided not to interfere with the apportionment of liability made by the trial Court (viz. the appellant being at fault to an extent of 20% and the respondents to an extent of 80%), because we have not been convinced that such apportionment is either wrong in principle or based on a misapprehension of facts or otherwise clearly wrong (see, also the judgment of Lord Denning M.R. in *Kerry* v. *Carter* [1969] 3 All E.R. 723, at p. 726).

Held, IV. Regarding the quantum of general damages awarded :

(1) On this question we have reached the conclusion, bearing in mind the principles of law applicable, as they have often been reiterated in decisions of this Court (see, *inter alia*, *Andronikou* v. *Kitsiou*, reported in this Part at p. 8 *ante*), that such amount (i.e. £450) is so law that we should

intervene and increase it to £800, so that the appellant should get £640 on the basis of £80% liability on the part of the respondents (*supra*).

(2) In taking this view we have been particularly influenced by the factors that the appellant, who is a workman about forty five years old, has lost the use of his *right* thumb and he is a *right-handed* man, he has had to suffer considerable pain and suffering due to two surgical operations on this thumb, and, even though he has not for the time being lost his job, his incapacity in question has reduced considerably his worth as a workman.

Held, V. Conclusion :

In the result this appeal is allowed in part and the order made by the Court below will be varied so that there will be judgment in favour of the appellant for £640 damages on the basis of 80% of liability on the part of the respondent. The cross-appeal is dismissed. We award two-thirds of the costs of the appeal in favour of the appellant ; the order made in respect of the costs of the trial will not be disturbed.

Appeal allowed in part. Cross-appeal dismissed. Order for costs as above.

Cases referred to :

Millard v. *Serck Tubes, Ltd.* [1969] 1 All E.R. 598 ;

Sparrow v. *Fairey Aviation Co. Ltd.* [1964] A.C. 1 ;

Caswell v. *Powell Duffryn Associated Collieries, Ltd.* [1940] A.C. 152 ; in particular the judgment of Lord Atkin at p. 164 ;

Lewis v. *Denye* [1940] A.C. 921 ; in particular the judgment of Lord Simon L.C. at p. 929 ;

Sparks v. *Edward Ash, Ltd.* [1943] 1 K.B. 223 ;

London Passenger Transport Board v. *Upson and Another* [1949] 1 All E.R. 60 H.L. ; in particular the judgment of Lord Wright at p. 67 ;

Kerry v. *Carter* [1969] 3 All E.R. 723 at p. 726 per Lord Denning, M.R. ;

Kyriakou v. *Aristotelous*, reported in this Part at p. 172 *ante* ;

Andronikou v. *Kitsiou*, reported in this Part at p. 8 *ante*.

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CHRISTOS LOUCA
v.
CYPRUS MINES CORPORATION

Appeal and cross-appeal.

Appeal and cross-appeal against the judgment of the District Court of Nicosia (A. Loizou, P.D.C. and Stavrinakis, D.J.) dated 21st April 1969 (Action No. 1477/66) whereby the defendant was adjudged to pay £360.– to plaintiff as damages for injuries he sustained in an accident in the course of his employment by the defendants.

G. Ladas, for the appellant.

Chr. Artemides, for the respondent.

The judgment of the Court was delivered by :

TRIANTAFYLLIDES, J.: In this case the appellant-plaintiff appeals against that part of the decision of a Full District Court in Nicosia, in Civil Action No. 1477/66, by means of which he was found responsible, through negligence, to an extent of 20%, for the occurrence of an accident in the course of his employment by the respondents-defendants ; as a result of such accident he was injured in a manner incapacitating practically in full his right thumb. He appeals, also, in relation to the amount of general damages assessed in respect of his injury, contending that it is inadequate.

There is a cross-appeal by the respondents by which they claim that either the decision of the Court below should be set aside, so that they should be absolved of all liability for the accident, or, at least, that such decision should be varied so that the appellant shall be held to blame much more for the accident than as found by the said Court.

The relevant facts are set out fully in the painstakingly prepared judgment of the learned trial judges and we need not repeat them at length. If suffices to say that the appellant had been assigned the duty of obtaining samples of ore, in the works of the respondents, while the ore was carried along a conveyor belt ; he was given certain instructions as to how to do it, but such instructions were considered by him to be an unsafe system of work and, as a result, he improvised his own method of taking the samples ; in the course of following such method he got himself injured, through his thumb being caught by an unfenced part of machinery.

Regarding the liability for the accident, we have not been convinced, by their counsel, that no part of it at all should have been found to rest with the respondents.

We are, in this respect, in agreement with the Court below that the respondents were negligent in that they laid down a system of work which was unsafe, especially when there are taken into account the tool with which the appellant had been ordered to obtain samples of the ore from the conveyor belt, the confined space within which he had to carry out such task, the obstruction carried by pipes around which he had to place his hands in doing so, and the protruding and unguarded part of the pulley to be found under that part of the conveyor belt wherefrom the samples of the ore were to be obtained by him.

Moreover, we are of the opinion that the trial Court judges were correct in holding that the respondents, through not securely fencing the whole width of the pulley in question, committed a breach of statutory duty, contrary to section 25 of the Factories Law, Cap. 134, which required the machinery concerned to be fenced in any case, in view of its being transmission machinery, as well as a breach of section 26 (1) of the same Law, in that it was clearly foreseeable that the said pulley was a dangerous part of machinery and it had to be securely fenced in order to avoid the likelihood of injury to a workman in the position of the appellant (see, *inter alia*, in this connection, the case of *Millard* v. *Serck Tubes, Ltd.* [1969] 1 All E.R. 598, decided in relation to section 14 of the Factories Act 1961, in England, which corresponds to section 26 of our own Cap. 134).

In relation to the breach of statutory duty imposed by virtue of section 26 (1), counsel for the respondents submitted that no such breach had occurred because the duty to fence under the said provision was a duty to fence against contact of the operator with dangerous parts of machinery and that this duty did not include a duty to fence against a tool, which the operator was using, coming into contact with such dangerous parts ; he relied in this respect on the case of *Sparrow* v. *Fairey Aviation Co. Ltd.* [1964] A.C. 1–19. In our view the situation in this case is clearly distinguishable from that in *Sparrow* case, because in the present instance the appellant was injured due to the fact that his own hand came into contact with an unfenced dangerous part of machinery, without the tool which he was using having contributed to this happening, by getting caught in the dangerous part and flinging the appellant's hand against the said part, as in the *Sparrow* case (*supra*), in which, the position, as described by Lord Morris of Borth-y-Gest in his judgment (at p. 1050) was as follows : " On the facts as found the appellant did not therefore

receive injury because he came into contact with a dangerous part. He received injury only as a consequence of the fact that his implement came into contact with a dangerous part ".

Regarding, next, the issue of contributory negligence we shall deal, first, with the contention of counsel for appellant that once the respondents were found to have contravened their strict and absolute duty to fence securely the transmission machinery, which injured the hand of the appellant, no question of contributory negligence on the part of the appellant could, in law, arise. We cannot uphold such contention as being a valid one; in this respect the case of *Caswell* v. *Powell Duffryn Associated Collieries, Ltd.* [1940] A.C. 152 (see, in particular, the judgment of Lord Atkin at p. 164), as well as the cases of *Lewis* v. *Denye* [1940] A.C. 921 (see the judgment of Viscount Simon L.C. at p. 929), *Sparks* v. *Edward Ash, Ltd.* [1943] 1 K.B. 223 and *London Passenger Transport Board* v. *Upson and Another* [1949] 1 All E.R. 60 (see the judgment of Lord Wright at p. 67) establish that the defence of contributory negligence was available in law to the respondents in the present case. This being so, we do agree that, on the facts as found by the trial Court, the appellant was rightly held guilty of contributory negligence. It is true that he had to improvise his own system of work because of the unsafe system of work laid down by his employers– the respondents– but the system which he adopted was, as correctly pointed out in the judgment appealed from, a risky one, too.

Both parties to this appeal have challenged as erroneous the apportionment of liability for the accident, as made by the Court below, *viz.* the appellant being at fault to an extent of 20% and the respondents to an extent of 80%.

The principles governing the exercise of the powers of an appellate tribunal in relation to such a matter have often been stated and need not be gone into in detail ; it suffices, we think, to mention the very recent case of *Kyriacou* v. *Aristotelous*, (reported in this Part at p. 172 *ante*), in which relevant case-law has been referred to. In the present case, and applying the said principles, we have decided not to interfere with the apportionment of liability as made by the trial Court because we have not been convinced that such apportionment is either wrong in principle or based on a misapprehension of facts or otherwise clearly wrong (see, also, the judgment of Lord Denning, M.R. in *Kerry* v. *Carter* [1969] 3 All E.R. 723 at p. 726).

On the question of the amount of £450 assessed as general damages in respect of the injury suffered by the appellant, we have reached the conclusion, bearing in mind the principles of law applicable, as they have often been reiterated in decisions of this Court (see, *inter alia*, *Andronikou* v. *Kitsiou*, reported in this Part at p. 8 *ante*), that such amount is so low that we should intervene and increase it to £800. In taking this view we have been particularly influenced by the factors that the appellant, who is a workman about forty-five years old, has lost the use of his *right* thumb and he is a *right-handed* person, he has had to suffer considerable pain and suffering due to two surgical operations on his thumb, and, even though he has not, for the time being, lost his job, his incapacity in question has reduced considerably his worth as a workman.

In the result this appeal is allowed in part and the order made by the Court below is varied so that there will be judgment in favour of the appellant for £640 damages, on the basis of 80% liability on the part of the respondents.

The part of the order of the trial Court regarding the refund of 1/3 of the total of social insurance benefits received by the appellant remains undisturbed, as being correctly based on the relevant legislative provisions.

The cross-appeal is dismissed.

Before concluding we wish to place on record our appreciation for the assistance which learned counsel appearing for the parties have so diligently rendered to us in the course of the proceedings before us.

We award two-thirds of the costs of the appeal in favour of the appellant ; and we have decided not to disturb the order made in respect of the costs of the trial.

Appeal allowed in part. Cross-appeal dismissed. Order for costs as above.