[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

CYPRUS TRADING CORPORATION LTD.,

Appellants-Defendants,

v.

COSTAS CHIMONAS,

Respondent-Plaintiff.

(Civil Appeal No. 5377).

Master and Servant—Safe system of work—Garage mechanic—Need to provide safety goggles—Injury to mechanic's eye by flying piece of metal while repairing heavy machinery—Similar accident to colleague previously—For work of a similar nature in another Company's garage goggles were worn in respect of all operations on heavy duty machinery—Finding of trial Court that defendants ought to have supplied their mechanics with safety goggles upheld in the circumstances of this case.

The respondent who was a motor-vehicles' mechanic in the employment of the appellants was injured in his eye by a flying piece of metal while hammering the cap of an excavator in the course of repairing it.

The main issue in the appeal was whether the appellants ought to have supplied the respondent with safety goggles to protect his eyes.

Appellants did not adduce any evidence on this issue. The only evidence in this respect was adduced by the respondent. Respondent's witness Georghios Stratis, the technical manager of the garage of the appellants, testified that the hammers in use had to be changed regularly because mechanics in the garage had repeatedly complained to him that whilst they were repairing excavators small pieces of metal had flown off and hit them. One of those hit was another witness called by the respondent, who testified that he had been hit on the nose by a flying piece of metal and stated, also, that the appellants had, actually, provided goggles, but as they were not of a suitable nature, because they were liable to break when struck by pieces of metal, they were not used by him and the other mechanics.

There was, also, before the Court below evidence that for work of a similar nature, in another company's garage, goggles were worn in respect of all operations on heavy duty machinery.

On the basis of the above evidence the trial Court reached the conclusion that the appellants should have foreseen that an accident similar to the one that happened to the respondent could have occurred and that as reasonably careful employers they ought to have supplied their mechanics, one of whom was the respondent, with safety goggles.

Held, (1) This is not a proper case in which to interfere on appeal with the finding of the trial Court as regards the issue of liability.

(2) We should, however, stress that we have dealt with this case in the light of its own circumstances, as appearing in the evidence and, thus, this judgment of ours is not to be taken as laying down that it is invariably the duty of those who run garages to provide, for all purposes, their mechanics with goggles.

Appeal dismissed with costs.

Cases referred to:

Winter v. *Cardiff Rural District Council* [1950] 1 All E.R. 819, at p. 822;

Paris v. *Stepney Borough Council* [1951] 1 All E.R. 42, at p. 55.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Demetriades, P.D.C. and Evangelides, Ag. D.J.) dated the 21st December, 1974, (Action No. 4857/73) whereby they were ordered to pay C£3,760.- damages to the plaintiff for the loss of the sight of his right eye due to injuries he sustained whilst in the employment of the defendants.

D. Liveras, for the appellants.

Ph. Clerides, for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court delivered by:

TRIANTAFYLLIDES, P.: This is an appeal against the

judgment of the District Court of Nicosia by means of which the appellants were ordered to pay C£3,760 damages to the respondent for the loss of the sight of his right eye. The quantum of damages has not been in issue as the total amount of C£3,760, as special and general damages, was agreed to between the parties. What was disputed is the liability of the appellants in respect of the accident in which the eye of the respondent was injured.

The facts of the case are stated in the judgment of the trial Court as follows :

"The plaintiff is a motor-vehicles' mechanic and was at the material time and still is employed by the defendants who are the agents in Cyprus of the Caterpillar excavators. The defendants run a garage at Nicosia where excavators and other vehicles are repaired.

On 27th January, 1972, the plaintiff together with Costas Ioannou, another employee of the defendants, left Nicosia for Ayios Epiktitos with express instructions to proceed there to repair a Caterpillar excavator. They took with them all the necessary tools and spare parts that they thought they would be requiring for repairing the excavator. The excavator was to be found at a site near Ayios Epiktitos as it was employed in the construction of the new Kyrenia - Klepini road.

On arriving at the location where the excavator was situated, they started work. As a result of the complaint made to the garage by the owner of the excavator, there appeared that the fault was in the final drive. They started to remove the screws that keep the cap of this part of the machinery. Ioannou removed the screws that were on the inside part and the plaintiff remained on the side unscrewing the other set of screws. When the unscrewing finished, the plaintiff took a hammer and hit the cap with the intention of removing it. He then felt his right eye watering and he started rubbing it with his hand. The other man, who was with him, noticed the plaintiff rubbing his eye, asked the plaintiff what was wrong and he then took him to Kyrenia Hospital. From there the plaintiff was transferred to the Nicosia General Hospital and on that day Dr. K.

Pierides, the specialist ophthalmologist, removed from the right eye of the plaintiff a small metallic foreign body that had penetrated the eye of the plaintiff, thus causing him traumatic cataract. As a result of the injury the plaintiff lost the sight of his right eye."

The trial Court had before it the evidence of respondent's witness Georghios Stratis, who was the technical manager of the garage of the appellants at the material time, and who has testified that the hammers in use had to be changed regularly, because mechanics employed in the garage had repeatedly complained to him that whilst they were repairing excavators small pieces of metal had flown off and hit them; on the basis of such evidence the trial Court reached the conclusion that the appellants should have foreseen that an accident similar to the one that happened to the respondent could have occurred and that as reasonably careful employers they ought to have supplied their mechanics, one of whom was the respondent, with safety goggles.

In relation to the duty of an employer to provide a safe system of work for his employees it is useful to quote the following passage from the judgment of Lord Porter in *Winter* v. *Cardiff Rural District Council*, [1950] 1 All E.R. 819, 822 :-

> "The duty cast on the master is, of course, not absolute, but only to do his best to fulfil the obligation imposed on him, though, indeed, a high standard is exacted. As the law stands, that duty must be considered in relation to the circumstances of each particular case, and the question to be answered is whether adequate provision was made for the carrying out of the job in hand under the general system of work adopted by the employer or under some special system adapted to meet the particular circumstances of the case."

In the present case the trial Court and this Court have been referred to, in particular, to the case of *Paris* v. *Stepney Borough Council*, [1951] 1 All E.R. 42, where it was in issue whether it was necessary, as a matter of reasonable care, to provide mechanics working

in a garage with protective goggles. Lord Normand stated the following in his judgment (at p. 47) :-

"The appellant's case is that for this sort of work the respondents ought to have supplied him with goggles to protect his eyes. The respondents supplied goggles with tinted glasses to protect the eyes of welders against excessive light and they supplied goggles for men working on grinding machines, but they supplied no goggles for men employed on the maintenance and repair of vehicles. There was evidence from each side on the question whether it was usual for employers to supply goggles to men employed in garages on that sort of work. The weight of the evidence is decidedly against the appellant on that point. On the other hand, there is proof that individual men working under a vehicle in the respondents' garage did occasionally take a pair of goggles from a cupboard in the garage and wear them to protect the eyes, and that it was known to the respondents' responsible officials that dirt did sometimes get into the men's eyes and also that when bolts were removed pieces of metal might sometimes fly."

It is to be noted that in the *Paris* case there was evidence adduced by both sides, as regards whether or not it was necessary for goggles to be supplied to the mechanics working in the garage concerned, and, in the end, it was held that the weight of such evidence was against the need for goggles. In the present case no evidence at all has been adduced in this respect by the appellants and the only evidence, on which the trial Court based its aforementioned conclusion, was that which was called by the respondent.

In the *Paris* case Lord MacDermott, though he shared the view that in that particular case the employers were not under a general obligation to provide their workmen with goggles, stated, also, the following in his judgment (at p. 55) :-

"..... it is clear that the wearing of goggles would not have hampered the work in question, and there is, I think, material from which it might reasonably

be inferred that, for men working underneath these vehicles and in close proximity to the parts they were stripping, the provision of suitable goggles would have been a sensible and obvious way of keeping falling dirt and flying particles out of their eyes. I incline to the view that a jury weighing these considerations would not be perverse in finding that it was the duty of the employers to make such provision."

In the present case there was the already mentioned evidence of the respondent's witness Stratis to the effect that small pieces of metal had flown off and hit mechanics while they were repairing excavators. One of those hit was another witness called by the respondent, who testified that he had been hit on the nose by a flying piece of metal and who stated, also, that the appellants had, actually, provided goggles, but as they were not of a suitable nature, because they were liable to break when struck by pieces of metal, they were not used by him and the other mechanics.

There was, also, before the Court below evidence that for work of a similar nature, in another company's garage, goggles were worn in respect of all operations on heavy duty machinery.

In the light of all the foregoing we have reached the conclusion that this is not the proper case in which to interfere on appeal with the finding of the trial Court as regards the issue of liability; we should, however, stress that we have dealt with this case in the light of its own circumstances, as appearing in the evidence on the record before us, and, thus, this judgment of ours is not to be taken as laying down that it is invariably the duty of those who run garages to provide, for all purposes, their mechanics with goggles.

It has been argued by counsel for the appellants that as the respondent had said in evidence that when a piece of metal flew off and injured his eye he was striking with a hammer a cap covering a particular part of the excavator, and as, according to counsel for the appellants, it was safer to try to remove it by pulling it by hand, the respondent ought to have been found guilty of contributory negligence.

The technical manager of the garage, witness Stratis, has stated that there was no special tool used to remove the cap in question and that the method used for the purpose was to hit it with a hammer—apparently to loosen it—though sometimes it would be removed by hand. We cannot, in view of such evidence, hold on appeal that hitting the cap with a hammer was conduct of the respondent so blameworthy as ought to have led the trial Court to find him guilty of contributory negligence.

For these reasons this appeal fails and it is dismissed with costs.

Appeal dismissed with costs.