1978 April 24

[A. LOIZOU, J.]

EPIPHANIOS ELIA,

Plaintiff,

v.

1. PROGRESS SHIPPING CO. MONROVIA
2. NAVIGATION TRANSOCEANIQUE S.A.
3. HULL BLYTH, ARAOUZOS LTD.,

Defendants.

(*Admiralty Action No.* 23/75).

Negligence—Unloading of ship—Glass demijohns with plastic cover—Stevedores having to stand on them in order to do the unloading—Stevedore stepping on broken demijohn, losing his balance and falling—Fragile nature of a glass demijohn and the possibility of same constituting a danger that was concealed by its plastic cover a matter that had to be within the foresight of a reasonable man—Failure to take precautions against such a situation amounts to negligence.

Master and servant—Safe system of work—Duty of employer to provide a safe system of work not an absolute but a relevant one.

Damages—General damages—Special damages—Personal injuries—Stevedore aged 45 *sustaining a deep lacerated wound on his left hand between his thump and index—Out of work for* 30 *days—Award of* £267.300 *mils special damages and* £250 *general damages.*

Admiralty Action—Hearing of—Possible at Court building of any main town—Section 3 *of Law* 72 *of* 1977 *amending section* 14 *of the Administration of Justice (Miscellaneous Provisions) Law,* 1964 (*Law* 33 *of* 1964).

The plaintiff in this action* claimed damages for personal injuries which he sustained whilst he was engaged as a stevedore

* Editor's note: The hearing of this action was held in the building of the District Court of Limassol by virtue of the recent amendment of section 14 of Law No. 33 of 1964 by section 3 of Law No. 72 of 1977.

for the discharge of the S/S "Progress" which was under a time charter to defendants 2*, who were thereunder solely responsible for its loading and discharge. The cargo on board the said ship consisted of empty demijohns stack in the hold and covering the whole of its floor-space in such a manner that the stevedores in order to do their work had to stand on them. At a particular moment when the plaintiff stepped on one of the demijohns he lost his balance, as the demijohn was broken, and fell and hit his left arm on the broken neck of another demijohn and suffered a "deep lacerated wound at the dorsum of the carpus proximal to the second metacarpophalangeal joint."

The plaintiff was aged 45, he was regularly employed as a stevedore and was earning an average of £8.- per day every day of the month. He was forced to stay out of work for 30 days and he incurred £25 medical expenses and £2.400 mils travelling expenses.

Held (*after dealing with the duty of the employer to provide a safe system of work—vide pp.* 331-32 *post*) (1) that no safety planks, ladders or other appliances were used to protect the plaintiff from eventualities like the one that caused the accident; that the fragile nature of a glass demijohn and the possibility of same constituting a danger that was concealed by the plastic cover, was a matter that had to be within the foresight of a reasonable man and the failure to take precautions against such a situation amounts to negligence.

(2) That there should be a reasonable care to avoid such a situation which one would reasonably foresee and which would likely endanger a workman stepping and working on the demijohn; that though it was not necessary that the precise nature in which the accident happened should have been foreseeable it was enough that the general nature of the danger could be foreseen; and that, accordingly, the omission to use such skill or take such care in the carrying out of the unloading, as a reasonable prudent person qualified to exercise same would, in the circumstances, use or take, constitutes negligence and that defendants 2 are liable for the injuries suffered by the plaintiff.

* The action against defendants 1 and 3 was discontinued and judgment was given in default of appearance against defendant 2—See p. 330 *post*.

(3) The special damages are assessed at £267.300 mils. Bearing in mind the injuries suffered by the plaintiff, the pain and suffering, the discomfort and all relevant factors the general damages are assessed at £250.

5 *Judgment for plaintiff against defendant 2 as above.*

Cases referred to:

Pericleous v. *Comarine Ltd. & Another* (1977) 9-10 J.S.C. 1452 at p. 1456 (to be reported in (1977) 1 C.L.R.);

10 *Roberts* v. *Dorman Long & Co. Ltd.* [1953] 2 All E.R. 428;

General Cleaning Contractors Ltd. v. *Christmas* [1953] A.C. 180;

Speed v. *Swift (Thomas) & Co. Ltd.*, [1943] 1 All E.R. 539 at p. 542.

Admiralty Action.

15 Admiralty action for damages in respect of injuries sustained by plaintiff, due to the negligence of the defendants, whilst unloading the ship s/s " Progress".

Ant. Lemis, for the plaintiff.

Y. Agapiou, for defendant 1.

20 No appearance for defendant 2.

St. McBride for *A. Miltiadou*, for defendant 3.

A. Loizou J. gave the following judgment. The hearing by me in the District Court of Limassol of this Admiralty Action which is one within the original exclusive jurisdiction vested in 25 the Supreme Court under section 19 of the Courts of Justice Law, 1960 (Law No. 14 of 1960) has become possible by the recent amendment of section 14 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964), by section 3 of Law 72 of 1977 whereby the sittings of the Supreme 30 Court which, until then could only be held in Nicosia, may now be held in the court building of any District main town for the purpose of hearing of any case by a judge, in the exercise of his original or revisional jurisdiction. I must say, I made the necessary direction with much pleasure, as I would be returning 35 to the Court with which I had close links at the beginning of my legal career.

The claim which is one for damages for personal injuries

was, originally, against the three defendants, but it reached this final stage of judgment in default of appearance against defendant 2, as same was discontinued and dismissed against defendants 1 and 3, after Nicos Lofitis (P.W.1) testified to the effect that the S/S "PROGRESS" on board of which the accident complained of occurred, was under a time charter to defendants 2 who were thereunder solely responsible for its loading and discharge, and the plaintiff had been engaged by defendants 3, the agents of the ship in Cyprus, for and on behalf of defendants 2.

The facts of the case are briefly as follows: On the 21st June, 1972, the plaintiff was engaged as a stevedore for the discharge of the said ship that was anchored at Limassol roads. Her cargo consisted of empty demijohns stack in the hold and covering the whole of its floor-space in a manner that stevedores in order to do their work, had to stand on them. The unloading was done by means of a net sling which was spread on a ply-wood plank and in which, net, the stevedores were placing the demijohns; at a particular moment when the plaintiff stepped on one of them, he lost his balance, as same was broken, fell and hit his left arm on the broken neck of another demijohn and suffered a "deep lacerated wound at the dorsum of the carpus proximal to the second metacarpophalangeal joint". To put it in more simple words, he had a cut wound on the part of his hand between the left thumb and the index. There was bleeding, the plaintiff was given first aid and taken to the Limassol Hospital where his wound was stitched.

Thereafter, he was treated by Dr. Zambarloukos whose certificate regarding the condition of the plaintiff, the treatment and his opinion as to the present situation, was admitted and produced as *Exhibit* 1 under rule 116 of the Cyprus Admiralty Jurisdiction Order, 1893 upon direction of this Court to the effect that this particular piece of evidence might be proved by such a certificate and otherwise than by oral examination of the witness, in order to save expense.

With regard to the issue of liability, the claim is based on the duty of the employer "to take all reasonable precautions for the safety of the plaintiff while he was engaged upon the said work not to expose the plaintiff to a risk of damage or injury of which they knew or ought to have known and to provide

and/or maintain a safe place of work and a safe and proper system of working". It is their contention that the demijohns in question were covered by plastic nets in such a way that in the ordinary circumstances, one might not be reasonably expected to notice that the glass was broken.

In the case of *Pericleous* v. *Comarine Ltd. & Another* (1977) 9-10 J.S.C. p. 1452 at p. 1456*, Malachtos, J. dealt with the duty of the employer to provide a safe system of work and referred therein to a number of English authorities, *inter alia*, *Roberts* v. *Dorman Long & Co. Ltd.* [1953] 2 All E.R. 428 and the *General Cleaning Contractors Ltd.* v. *Christmas* [1953] A.C. 180. I fully agree with his approach to this issue. The duty of the employer to provide a safe system of work is not an absolute one, but a relevant one; he is not bound to provide a system as safe as it can possibly be made, but a reasonably safe system and the precautions taken must be proportionate to the risk involved; "his duty is to take reasonable steps to provide a system which will be reasonably safe, having regard to the dangers necessarily inherent in the operation".

In *Speed* v. *Swift* (*Thomas*) *& Co. Ltd.*, [1943] 1 All E.R. 539 at p. 542, Lord Greene, M.R., said:

> " I do not venture to suggest a definition of what is meant by system. But it .... may include .... the physical lay-out of the job—the setting of the stage, so to speak—the sequence in which the work is to be carried out, the provision in proper cases of warnings and notices and the issue of special instructions. A system may be adequate for the whole course of the job or it may have to be modified or improved to meet circumstances which arise; such modifications or improvements appear to me equally to fall under the head of system".

The question of providing a safe system of work is not confined to cases where the work is of a settled and permanent character, but it extends to instances where it varies from time to time or, as pointed out in the Employer's Liability by Munkman, 8th Edition, at p. 133,

> " .... possibly even for a single isolated task: .... But, in all cases alike, the issue is 'whether adequate provi-

* To be reported in (1977) 1 C.L.R.

sion 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' per Lord Porter, in *Winter* v. *Cardiff Rural District Council*, [1950] 1 All E.R. 819 at p. 822". 5

Moreover it extends to industries where the nature of the task varies from day to day. In Munkman's (*supra*) at p. 143 it is stated:

" There are many important occupations where the nature 10 of the task to be performed is constantly varying. This is the case, for example, in the building trade, in constructional engineering, in shipbuilding yards, and, most of all in the loading and unloading of ships. In *Speed* v. *Swift*, *supra*, the Court of Appeal held that in industries of this 15 kind it is the employer's duty to establish a proper system for each new task. Lord Greene said:

' But in many kinds of work there is no ...... regularity or uniformity, and what is a safe system can only be determined in the light of the actual situation on the 20 *spot at the relevant time* .... It *is the master's* duty to decide what the layout of the job shall be and in doing so he must pay proper regard to the safety of his men.' "

In the present case, no safety planks, ladders or other appli- 25 ances were used to protect the plaintiff from eventualities like the one that caused the accident. The fragile nature of a glass demijohn and the possibility of same constituting a danger that was concealed by the plastic cover, was a matter that had to be within the foresight of a reasonable man and the failure 30 to take precautions against such a situation, amounts to negligence. There should be a reasonable care to avoid such a situation which one would reasonably foresee and which would likely endanger a workman stepping and working on them. It was not, of course, necessary that the precise nature in which 35 the accident happened, should have been foreseeable; it is enough that the general nature of the danger could be foreseen. The omission to use such skill or take such care in the carrying out of the unloading, as a reasonable prudent person qualified

to exercise same would, in the circumstances use or take, constitutes negligence.

In the circumstances, defendants 2 are found liable for the injuries suffered by the plaintiff.

5 I turn now to matters relating to the special and general damages. The plaintiff, aged 45, was a regularly employed stevedore, on List A of the Port Regulations, and was earning, at the time, an average of £8.- per day, every day of the month. According to the medical certificate, on account of the injuries
10 received, he was forced to stay out of work for 30 days, which brings his loss of earnings to £240. He incurred £25.- medical expenses and £2.400 mils travelling, which makes the special damages suffered by plaintiff at £267.300 mils.

It remains now to assess the general damages. Bearing in
15 mind the injuries suffered by the plaintiff, the pain and suffering, the discomfort and all relevant factors, I assess the amount of general damages at £250.

In the result, there will be judgment for plaintiff against defendants 2 in the round figure of £517, with legal interest
20 and costs on that amount.

Judgment and order for costs as above.