1979 April 18

[A. Loizou, J.]

GEORGHIOS GEORGHIOU,

Plaintiff,

v.

PLANET SHIPPING CO., LTD.,

Defendants.

(Admiralty Action No. 398/78).

Master and servant—Duty of master to take reasonable care and so carry on his operations so as not to subject servants to unnecessary risks—And duty to provide proper appliances and maintain them in good and safe condition—Injury to ship engineer from piece of metal, which was detached from the engine, whilst he was trying it to set it in motion—Detachment of a piece of metal a risk which could reasonably be foreseen and could have been prevented against by simple measures—Employers fully to blame for the accident.

Damages—General damages—Personal injuries—Loss of vision in one eye—Not resulting to any continuing loss of earning capacity—But increased vulnerability of blindness, if the other eye should be injured, taken into consideration—General damages assessed by reference to comparable awards in comparable cases in England—And after making the necessary adjustments regarding the difference in the rate of exchange and other reasonable adaptations to the circumstances of this case including the change in the value of money—Award of £3,500.

The plaintiff was engaged as a third engineer on the motor vessel "Zaharoulla", owned by the defendants. Whilst trying, in the course of his employment, to start the engine, by setting its generator in motion, a piece of metal was detached, and hit his left eye and as a result he lost the sight of that eye. He was initially treated in Greece and later underwent an operation in Ireland. He stayed out of work, for the purpose of medical treatment, for four months.

(I) *On the question of liability:*

Held, that employers have a duty to take reasonable care and so carry on their operations as not to subject those employed by them to unnecessary risks; that they have a duty to provide proper appliances and maintain them in good and safe condition; that the detachment of a piece of metal was a risk which could reasonably be foreseen and could have been prevented or guarded against by simple measures, that is by checking their condition because it is not in the nature of same to have metals chipped off unless their condition is defective; and that, accordingly, the defendants-employers are fully to blame for the accident.

(II) *On the question of damages:*

Held, (1) (*after awarding* £2,070 *as special damages for loss of earnings, transport and medical expenses and after stating the principles governing assessment of general damages—vide p.* 192 *post*) that this case relates to an injury affecting the loss of vision in one eye and there is nothing in the evidence other than what the plaintiff himself stated, which has not been found convincing, that the said injury would result to any continuing loss of earning capacity; that, therefore, in assessing general damages any loss of future earnings will not be included, but the increased vulnerability of blindness if the other eye should by injured will be taken into consideration.

(2) That considering that some parts of making up the award of general damages, other than loss of future earnings, are not capable of being estimated in terms of money and they have to be assessed by reference to comparable awards in comparable cases, this Court would follow the trend emanating from other awards for the loss of one eye (see the cases cited in Kemp and Kemp, Quantum of Damages, vol. 2, 4th ed. p. 5001; and see, also, Munkman's Damages for personal Injuries and Death, 5th ed. pp. 223-226); and that after making the necessary adjustments with regard to the difference in the rate of exchange and all other reasonable adaptations to the circumstances of the present case, including the changes in the value of money (see (*Theofanous* v. *Markides* (1975) 1 C.L.R. 199) an amount of £3,500 will be awarded by way of general damages.

Judgment for plaintiff in the sum of £5,570 *with costs.*

Cases referred to:

Harris v. *Bright's Contractors, Ltd.* [1953] 1 All E.R. 395 at p. 397;

Athanassiou v. *The Attorney-General of the Republic* (1969) 1 C.L.R. 160;

Wharton v. *Sweeney* [1961] C.A. No. 321;

Theofanous v. *Markides* [1975] 1 C.L.R. 199.

Admiralty Action.

Admiralty action for damages in respect of injuries sustained by the plaintiff as a result of an accident that occurred at his place of work on board M/V "Zaharoulla" owned by the defendants.

P. Sarris, for the plaintiff.

Defendants absent.

Cur. adv. vult.

A. Loizou J. read the following judgment. The plaintiff's claim is for special and general damages for personal injuries he received as a result of an accident that occurred at his place of work, *i.e.* on board the motor-vessel "Zaharoulla", owned by the defendant Company and registered in the Cyprus Register of Ships, on which he was engaged as a third engineer.

On the 18th February, 1978, whilst in the course of his employment, trying to start the engine by setting its generator in motion, a piece of metal was detached, because of its defective condition, hit his left eye, as a result of which he lost the sight of that eye. He was initially treated in Greece, as shown from the medical certificates produced by leave of the Court under rule 116 of the Cyprus Admiralty Jurisdiction Order 1893, and later underwent an operation at the Regional Eye Department of Ardkeen, Hospital, Waterford, Ireland and he was further examined by specialists in Israel.

On the issue of liability I have no difficulty in concluding that the defendant employers are fully to blame. Employers have a duty to take reasonable care and so carry on their operations as not to subject those employed by them to unnecessary risks. They have a duty to provide proper appliances and maintain them in good and safe condition. The detachment of a piece of metal was a risk which could reasonably be foreseen

and could have been prevented or guarded against by, I may say, simple measures, that is by checking their condition because it is not in the nature of same to have metals chipped off unless their condition is defective.

In *Harris* v. *Bright's Contractors Ltd.*, [1953] 1 All E.R. page 395 at page 397, Slade J., had this to say:-

> " In *Wilsons & Clyde Coal Co. Ltd.*, v. *English*, Lord Wright cites ([1937] 3 All E.R. 641) this passage from Lord Herschell's opinion in *Smith* v. *Baker & Sons*:-
>
> > 'It is quite clear that the contract between employer and employee involves on the part of the former the duty of taking reasonable care to provide proper appliances, and to maintain them in a proper condition and so to carry on his operations as not to subject those employed by him to unnecessary risk.'
>
> In case there is any doubt about the meaning of the word 'unnecessary', I would take the duty as being a duty not to subject the employee to any risk which the employer can reasonably foresee, or, to put it slightly lower, not to subject the employee to any risk that the employer can reasonably foresee and against which he can guard by any measures, the convenience and expense of which are not entirely disproportionate to the risk involved. I am prepared to approach this case on whichever of those definitions imposes the lowest duty on the defendants."

These well established principles were adopted by this Court in the case of *Athanassiou* v. *The Attorney General of the Republic* (1969) 1 C.L.R. p. 160.

I turn now to the question of damages. The plaintiff claims by way of special damages the sum of £2,570 for six months loss of earnings at £250 per month, £550 medical treatment, £120 medicines and £400 transport expenses. From all those items the only one that has to be examined more closely is that of the loss of earnings. As it appears from the medical evidence the period during which the plaintiff stayed out of work for the purpose of medical treatment was four months and I allow £1,000, which brings the total of special damages to £2,070-.

In assessing general damages the Court has to consider the

nature of injuries received by the plaintiff, the length of treatment, the pain and suffering, the discomfort and loss of amenities of life, loss and injury which may develop at a future date as well as the possibility of future loss of earnings or profits. In other words in deciding the sum of money which has to be awarded a Court should arrive at such a sum as to put the injured person in the same position as he would have been had he not sustained the injury.

In the present case we are concerned with an injury affecting the loss of vision in one eye and there is nothing in the evidence other than what the plaintiff himself stated, which I have not found convincing, that the said injury would result to any continuing loss of earning capacity.

In assessing therefore general damages I will not include any loss of future earnings, but I shall take into consideration the increased vulnerability of blindness if the other eye should be injured.

The position with regard to injuries affecting sight is aptly summed up in the introductory note to the relevant section in Kemp and Kemp, Quantum of Damages, volume 2, 4th edition page 5001:

> " Injuries affecting sight are quite frequently isolated from other injuries. As a result, apart from cases where there is some special factor such as substantial loss of future earnings, awards for this class of injury have tended to fall into a more regular pattern than those for most other injuries. In 1971 the appropriate sum for the loss of sight of one eye was stated to be about £3,000, possibly as much as £4,000: per Salmon and Sachs L. JJ. obiter in *Watson* v. *Heslop* [1971] C.A. No. 93 (1971) 115 S.J. 308). See also per Sachs L.J. in *Francies* v. *Creasey* [1971] C.A. No. 113. '..... As regards the loss of an eye .... I would be surprised if awards were not currently, whilst between £3,000 and £4,000 creeping up to the latter figure."

As the current levels of damages in comparable cases constitute some guide to the kind of figure which is appropriate, reference may also be made to the awards for the loss of the sight of one eye, set out in *Munkman's Damages for Personal Injuries and Death* 5th edition pp. 223–226, where £3,000 appears

to be the average amount for the loss of one eye or the sight of one eye.

These appear to be the right approach with regard to awards for this class of injury, considering that some parts making up the award of general damages other than loss of future earnings are not capable of being estimated in terms of money and therefore Courts have to proceed on assessing them, by reference to comparable awards in comparable cases. In view of this I would follow the trend emanating from the aforesaid awards for the loss of one eye and after making the necessary adjustments with regard to the difference in the rate of exchange and all other reasonable adaptations to the circumstances of the present case including the changes in the value of money (see *Wharton* v. *Sweeney* [1961] C.A. No. 321; and *Theophanous* v. *Markides* (1975) 1 C.L.R. p. 199), I award the amount of £3,500 by way of general damages.

For all the above reasons there will be judgment for the plaintiff for £5,570 with costs on that amount.

Judgment and order for costs as above.