1982 October 26

[MALACHTOS, J.]

ANASTASSIS STAVROU,

Plaintiff,

v.

ORFANIDES AND MURAT AND OTHERS,

Defendants.

(*Admiralty Action No.* 110/77).

Agent—Principal and agent—Loading of ship—Labour office allocating stevedores to shipping agency on its application—Stevelores paid by agency and their work supervised by the regular foreman of agency—No evidence indicating that they had undertaken loading of ship for someone else—Therefore they undertook loading either as independent contractors or as agents for an undisclosed principal.

Negligence—Master and servant—Safe system of work—Duty of the employer 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 deciding what is reasonable long established practice in the trade, although not necessarily conclusive, is generally regarded as strong evidence in respect of reasonableness—Loading of rolls of iron strips on ship—Stevedore sustaining a crushing injury of his palm when his right hand was caught between two of the rolls.—Winch used for the loading not of the required capacity and its hook had no safety catch on it—Accident happened because winch defective—Employers negligent because they did not engage a bigger winch—Plaintiff not guilty of contributory negligence in the circumstances of this case—Doctrine of volenti non fit injuria not applicable.

The plaintiff, a stevedore who was engaged on board the ship "Graziella" in loading rolls of iron strips sustained a crushing injury of his palm when his right hand was caught between two of the said rolls. The accident occurred whilst they were loading the offshore side of the ship which presented some difficulty because due to the fact that the neck of the winch

was not of the required capacity and could not reach that side of the ship, the stevedores were obliged to use the method of "alesta" i.e. they had to swing the load to and from in order to be able to place it in its correct position. At the time of the accident they were loading a roll at the end of the off shore side of the ship and after employing the process of "alesta" it was placed in a semi vertical position instead of a horizontal one. At the same time the one loop of the wire rope was unhooked from the hook of the winch, there being no safety catch thereon, and the wire rope at that side became curly and went underneath the middle of the roll. The plaintiff with other stevedores tried to bring the roll into position by means of a lever but they could not move it. So, it was decided to hook again the loop of the wire rope on the hook of the winch in order to lift it up and place it in the right position. The foreman tried to get hold of the wire rope that curled into the centre of the roll from the upper side but he was unable to do it. Then the plaintiff tried to do so from the other side and put his right hand under the roll in order to pull the wire out but as soon as he did that the roll fell and his hand was caught between the two rolls and so his right palm was crushed sustaining as a result a very serious injury.

The stevedores complained to the foreman of the defendants about the capacity of the winch and asked him that a larger one should be supplied but they were told by him that although Lefkaritis Bros. had a larger one with a longer neck, it was not available at the time as it was engaged in another work.

Portworkers and stevedores are engaged to work on a ship after been allocated to the employer Shipping Agency by the Labour Office and upon an application for the purpose by the Agency; no port workers are allocated to aliens. In this case the plaintiff and other stevedores were allocated to work on the above ship on the application of the defendants. The foreman was the regular foreman of the defendants.

In an action by the plaintiff for damages against the defendants, as his employers, the latter contended*, inter alia, that at the material time they employed the plaintiff as agents of the charterer and/or the consignor and that further or in the alternative

* See particulars of their defence at pp. 666-668 post.

plaintiff was himself responsible wholly or in part for the accident through his own negligence.

Held, (1) that it is not in dispute that on the application of the defendants seven port workers, including the plaintiff, were allocated to them by the Labour Office to work on the ship Graziella; that these port workers were paid by them and the regular foreman of the defendants was supervising the carrying out of the work on the ship in question; that there is nothing in the evidence adduced by the defendants to indicate that they had undertaken the loading of the said ship for someone else; that, therefore, the defendants undertook the loading of the said ship either as independent contractors or as agents for an undisclosed principal and, consequently, the plaintiff was at the time of the accident, in their employment.

(2) That the winch used for the work was defective and that this defect was the cause of the accident; that it was not of the required capacity and its hook had no safety catch on it; that if a winch of a higher capacity with a longer neck was used, then the method of "alesta" would have been avoided and surely the accident would have never happened; that, therefore, defendants were negligent in not engaging a bigger winch and is immaterial that the bigger winch of Lefkaritis Bros. was not available at that time; that taking into consideration the facts and circumstances of this case no contributory negligence can be attributed to the plaintiff, as no appreciable danger was existing at the time the plaintiff tried to pull the wire rope since shortly before the iron roll could not be moved even by the use of a lever; that there is no merit in the submission of counsel for the defendants that the doctrine of volenti non fit injuria has any application to the facts of the present case; accordingly judgment is given in favour of plaintiff against the defendants for the sum of £9,200 agreed damages with costs.

Judgment for plaintiff as above.

Cases referred to:

Pericleous v. *Comarine Ltd. and Another* (1977) 1 C.L.R. 315 at p. 321.

Admiralty Action.

Admiralty action for special and general damages for injuries

sustained by plaintiff, a stevedore, whilst engaged in loading rolls of iron strips on the ship "Graziella".

M. Kyriakides, for the plaintiff.

C. HadjiIoannou, for the defendants.

Cur. adv. vult.

MALACHTOS J. read the following judgment. This case arose out of an accident that occurred on board the ship "Graziella" on the 28th of August, 1976, which was berthed at the time in the port of Larnaca. As a result of this accident the plaintiff, who is a stevedore and was engaged at the time in loading rolls of iron strips on the said ship, sustained a crushing injury of his palm when his right hand was caught between two of the said rolls.

He instituted the present proceedings in this court, in its Admiralty Jurisdiction, against the defendants as his employers, defendant No. 1 being a partnership and defendants 2 to 6 its partners, claiming special and general damages for negligence and/or breach of statutory duty.

The defendants in their answer admit that the plaintiff was injured while on board the said ship in the course of his employment when he put his hand under a diagonally placed roll of iron strip which fell and crushed his palm, but disclaim liability and, particularly, in paragraphs 4, 5, 6 and 7 thereof, alleged the following:

"4. The Defendants allege that no responsibility can be attached to them for the accident for the reasons hereinbelow stated namely:

(a) The accident occurred while the Plaintiff was on board the ship after the cranes hook had been disengaged from the roll and owing to the owners and/or occupiers of the ship failure to secure the roll from falling and/or

(b) The accident occurred while the Plaintiff was acting in a manner inconsistent with his system of work and/or under the instructions of an officer and/or the Master of the ship and/or

(c) In any event the accident did not happen during the loading of the roll onto the ship and/or

(d) The defendants at the material time employed the Plaintiff in their capacity as agents of the charterer and/or the consignor and/or the ship and the system of loading and/or stowing was devised and/or adopted by them.

5. Further or in the alternative and without prejudice to the above it is alleged that the Plaintiff knowing of the risk of the roll falling and accepting and/or consenting to it voluntarily put his hand under it thereby suffering injury when it fell.

In the premises the Defendants will rely on the maxim volenti non fit injuria.

6. Further or in the alternative and without prejudice to the above the defendants deny that they were guilty of the alleged or any negligence or breach of statutory duty and in particular they stress that:-

(a) The equipment used i.e. shore crane etc were the appropriate in the circumstances and

(b) The system of work used was properly safe and further was the normal and usual in the circumstances and

(c) The provision of extra wire rope would not have avoided the accident.

7. Further or alternatively and without prejudice to the above it is alleged that the Plaintiff was himself responsible wholly or in part for the accident through his own negligence.

PARTICULARS OF NEGLIGENCE

I) Failed to place the roll properly in the first place

II) Negligently put his hand under the roll

III) Failed to use the proper method in the circumstances which was to put his hand through the hold in the middle of the roll and not under it.

IV) Failed to secure the roll from falling by putting the iron bars–which he and his co-workers used–under the roll before putting his hand there.

V) Failed to ask for the help of his co-workers

VI) Failed to follow the instructions of his foreman

VII) Failed to ask for instructions from his foreman

VIII) Failed to take care for his own safety in all the circumstances".

Before the commencement of the hearing of the case the question of damages was agreed between the parties on a full liability basis at £9,200.- being £7,500.- general and £1,700.- special and so the only issue that remained to be determined by the court was the question of liability.

As to how the accident occurred the plaintiff in giving evidence stated that on the 28th day of August, 1976, he was employed with five other stevedores to load 39 rolls of iron strips on the ship "Graziella". These rolls are very heavy objects weighing about two tons each having a round hole in the middle through which a wire rope was passed at the two ends of which were loops. These loops were hooked on the hook of a shore mobile winch which lifted the rolls from the track on which they were loaded and stowed them in a horizontal position into the second hold of the ship which was berthed alongside the quay. The loading of the ship commenced by placing these rolls first starting from the shore side of the ship and proceeding towards the offshore side. The loading of the offshore side of the ship presented some difficulty because due to the fact that the neck of the winch could not reach the side of the ship, the stevedores were obliged to use the method of "alesta" i.e. they had to swing the load to and fro in order to be able to place it in its correct position. At the time of the accident they were loading a roll at the end of the offshore side of the ship and after employing the process of "alesta" it was placed in a semi vertical position instead of a horizontal one. At the same time the one loop of the wire rope was unhooked from the hook of the winch, there being no safety catch thereon, and the wire rope at that side became curly and went underneath the middle of the roll. The plaintiff with other stevedores tried to bring the roll into position by means of a lever but they could not move it. So, it was decided to hook against the loop of the wire rope on the hook of the winch in order to lift it up and place it in the right position. The foreman tried to get hold

of the wire rope that curled into the centre of the roll from the upper side but he was unable to do it. Then the plaintiff tried to do so from the other side and put his right hand under the roll in order to pull the wire out but as soon as he did that the roll fell and his hand was caught between the two rolls and so his right palm was crushed sustaining as a result a very serious injury. He attributed the fall of the roll to the vibration created by a passing by tug boat. The plaintiff further stated that the foreman, who was supervising and directing the operations did not suggest any safety measures to be taken so as to ensure that the roll would not move at the time he placed his hand under it.

It must be noted here that the foreman was not provided by the Labour Office to the defendants but he is a man who is working for them regularly. Furthermore, the shore mobile winch was hired by the defendants from Lefkaritis Bros. from Larnaca. The plaintiff also stated that the stevedores complained to the foreman of the defendants about the capacity of the winch and asked him that a larger one should be supplied but they were told by him that although Lefkaritis Bros. had a larger one with a longer neck, it was not available at the time as it was engaged in another work. In cross-examination the plaintiff contended that the port workers could not refuse to do a job because it might be dangerous. He characteristically said that the work was obliging them to do it.

The evidence of the plaintiff on all material points is supported by plaintiff's witness No. 2, Demetrakis Varnava, a fellow port worker.

As to how the port workers and stevedores are engaged, Phidias Panayides, an employee of the Larnaca District Labour Office, in charge of the port section, gave evidence as P.W.1. According to this witness the employer shipping agency applies to the Labour Office Port section beforehand requesting a specific number of port workers who are allocated to them to work on a particular ship. Only registered port workers can be employed and are allocated according to the order they are registered. No port workers are allocated to aliens. This witness further stated that port workers are paid daily by the representative of the agency. He also stated that the foreman commonly known as "kappos", is engaged directly by the

agency. In the present case the foreman was Georghios Apostolides who was the regular foreman of the defendants. Georghios Dinglis, an employee of the defendants attached to the shipping section, in giving evidence as D.W.1, stated that he was the man on whose application seven port workers, including the winchman, were allocated by the Labour Office to work on the ship in question, and was supervising the work carried out thereon for which he was responsible. He further stated that no complaint by the port workers was made to him as regards the winch. The method of "alesta" was used not because the winch was not of the required capacity, but because the hatch cover was obstructing the wire rope of the winch to proceed further towards the side of the hold. The evidence of this witness on this point, however, is contradicted by the evidence of D.W.2 Georghios Apostolides, the foreman of the defendants, who, after describing how the accident occurred, stated that the method of "alesta" was only used when the offshore side of the hold was loaded. Although this witness stated that he did not remember if any complaint was made to him about the capacity of the winch, he admitted that he and his employers asked for a bigger one but at that time the bigger one was not available and so they were obliged to hire the one in question.

The first question to be answered in the present case is whether the plaintiff was at the time of the accident, in the service of the defendants. If this is answered in the affirmative, then the remaining question is whether the system of work was defective. It is not in dispute that on the application of the defendants seven port workers, including the plaintiff, were allocated to them by the Labour Office to work on the ship Graziella. These port workers were paid by them and the regular foreman of the defendants was supervising the carrying out of the work on the ship in question. There is nothing in the evidence adduced by the defendants to indicate that they had undertaken the loading of the said ship for someone else. Therefore, the defendants undertook the loading of the said ship either as independent contractors or as agents for an undisclosed principal and, consequently, the plaintiff was at the time of the accident, in their employment.

Having found that the plaintiff was at the time of the accident in the service of the defendants the next question, as I have

already said, that falls for consideration, is as to whether the system of work was defective. The duty of the employer to provide a safe system of work is a common law duty or a statutory one.

In the case of *Christos Pericleous* v. *Comarine Ltd. and Another* (1977) 1 C.L.R. 315 at page 321, the following is stated:

> "When the operation to be carried out is one specifically dealt with by statute or statutory regulation non compliance with the statutory requirements renders the employer liable for negligence. Compliance of the employer with the statutory requirement is evidence, although not conclusive, that the common law duty has been fulfilled. (*Caulfield* v. *Pickup Ltd.* [1941] 2 All E.R. 510 and *Roberts* v. *Dorman Long & Co.* [1953] 2 All E.R. 428 at page 436). However, in the present case we are only concerned with the common law duty of the employer to provide a safe system of work. The duty of the employer to prescribe a safe system of work is not an absolute duty but a relative one in that he is not bound to provide a system as safe as it can be possibly made, but reasonably safe. The precautions taken must be proportionate to the risk involved. Where some commercial necessity requires that an employer will expose a workman to some risks, he may avoid liability for his failure to guard against such dangers. 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 deciding what is reasonable, long established practice in the trade, although not necessarily conclusive, is generally regarded as strong evidence in respect of reasonableness. In the case of *General Cleaning Contractors Ltd.* v. *Christmas* [1953] A.C. 180, a House of Lords case, Lord Tucker at page 194 had this to say:
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> > 'This form of action is frequently spoken of as being based on 'a failure to provide a safe system of work', but this language is misleading since it omits what is an essential element in the cause of action, viz. negligence. Window cleaning is obviously a hazardous operation and—except in the case of the absolute obligations imposed in certain circumstances under the Factory

> Acts—there is no absolute obligation upon employers to device a system for their employees which will be free of risk. Their only 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 deciding what is reasonable, long-established practice in the trade, although not necessarily conclusive, is generally regarded as strong evidence in support of reasonableness.
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> It was said by Goddard L.J. in the Court of Appeal and by Viscount Simon in this House in the case of *Colfar* v. *Coggins & Griffith (Liverpool) Ltd.* [1943] 76 Ll.L.Rep. 1, 4 (C.A.); [1945] A.C. 197, 203 that in these cases the plaintiff must allege and prove specifically what is the defect in the system of which he complains. In other words, it is not sufficient that the system adopted was in fact unsafe, he must show something which could reasonably have been done or omitted which would have made the system reasonably safe and that this failure was the cause of his accident' ".

In the present case, it is clear from the evidence adduced on behalf of the plaintiff, which I accept as true, that the winch used for the work was defective and that this defect was the cause of the accident. It was not of the required capacity and its hook had no safety catch on it. If a winch of a higher capacity with a longer neck was used, then the method of "alesta" would have been avoided and surely the accident would have never happened.

It should be noted here that the evidence of the plaintiff and his fellow worker is corroborated in material particulars by the evidence of the foreman of the defendants. The defendants, therefore, were negligent in not engaging a bigger winch and is immaterial that the bigger winch of Lefkaritis Bros. was not available at that time.

Taking into consideration the facts and circumstances of this case no contributory negligence can be attributed to the plaintiff, as no appreciable danger was existing at the time the plaintiff tried to pull the wire rope since shortly before the iron roll could not be moved even by the use of a lever.

Before concluding my judgment, I must say that I find no merit in the submission of counsel for the defendants that the doctrine of volenti non fit injuria has any application to the facts of the present case.

For the reasons stated above, judgment is given in favour of the plaintiff against the defendants joinly and severally for the sum of £9,200.- with legal interest thereon as from today to final payment, with costs to be assessed by the Registrar.

Judgment for £9,200.- *with costs.*