1982 November 6

[PIKIS, J.]

GEORGHIOS TZIELLAS,

Plaintiff,

v.

1. THE SHIP "NADALENA H",
2. SEADOLL MARINE CO. LTD.,
3. LIMASHIP CO. LTD.,

Defendants.

(*Admiralty Action No.* 14/80).

Negligence—Master and servant—Stevedore employed by shipping agent—Injured on board ship whilst proceeding on instructions from his employers to take up stevedore's duties in the hold of the ship—Neither ownership of the ship nor mere occurrence of accident aboard the ship can attach liability either to the ship or her owners.

Negligence—Master and servant—Duty of master to ensure safety at work which includes safe passage from and to the actual site of work—Duty not limited to premises belonging to the employer —Loading of ship—Stevedore injured through fall from defective ladder, provided by foreman of employers, whilst going to his place of work—Foreman failing to inspect ladder and see whether it was in safe condition—Risk of accident in case ladder defective easily foreseeable and it could easily be avoided—Employers failed in the discharge of their common law duty to take reasonable precautions for safety of their employee—Liable in negligence —Employee not guilty of contributory negligence—He can presume, in the absence of any apparent indication to the contrary, that the means provided by his employers for access to the place of his work are safe.

Damages—General damages—Personal injuries—Loss of future earnings—Choice of multiplier—Principles applicable—Plaintiff aged 37 *at the trial—Multiplier of* 12 *adopted.*

Damages—General damages—Personal injuries—Stevedore aged 37 sustaining a depressed fracture of the second lumbar vertebrae —In hospital for 15 days—Underwent operation for removal of disc—His capacity to lift heavy objects and his ability to stand for long or walk over long distances considerably diminished —Aided by his colleagues in the discharge of his duties—Risk of developing post traumatic arthritis—Award of £5,000.

Costs—Bullock order—Principles applicable.

The plaintiff was one of a gang of stevedores employed by Limaship–defendants 3—a firm of shipping agents to load a cargo aboard the ship "Nadalena H"—defendant 1—owned by Seadoll Marine Co. Ltd.—defendant 2. The owners of the ship had nothing to do either with the loading or the running of the ship, then on charter, to third parties. The position was likewise with the boat herself. The only evidence tending to connect the ship with the accident was that it occurred aboard the ship. Defendants 3 had sole responsibility for the loading of the cargo, as well as the management of the operation. On 28.12.1979 whilst employed as above on the said ship plaintiff was instructed by the foreman of defendants to descend to the ship and proceed with the loading operation.

The foreman then placed a ladder to facilitate the stevedores climb down to the hold without subjecting it to any examination to see whether it was in a safe condition. Two of the fellow workers of the plaintiff climbed down before he attempted to do so; but when he attempted to do so and he descended two or three rungs of the ladder it broke down causing him to fall over a height of about 12 feet. The plaintiff who was aged 37 at the time of the trial sustained a depressed fracture of the second lumbar vertebrae. He remained hospitalised until 12.1.1980. Thereafter he had to rest at home but he had to undergo a course of physiotherapy. He was afflicted with severe pain and experienced numbness of the left leg. On 26.5.1980 he was admitted to the neurosurgery ward of the Nicosia General Hospital for intensive investigation. A myelography revealed lumbar disc protrusion at the L4–5 interval. The day following he was operated and the disc was removed. He made satisfactory progress thereafter. His capacity for work, particularly for heavy manual work, was seriously impaired as a result of

his injuries and the prognosis was none too good. He was totally incapacitated for work upto 15.9.1980. His capacity to lift heavy objects and the ability to stand for long or walk over long distances diminished considerably. There was near certainty that he will develop post traumatic arthritis in the region of the lumbar spine, a factor that would cause further deterioration in his condition. He complained of experiencing serious difficulties in lifting objects of any weight and transporting them over any distance. His ability to bend was also adversely affected. He was able to resume work on 22.9.1980 but, it was impossible to maintain his present level of earnings but for the comradeship of his colleagues who aided him in the discharge of his duties. He was unable to earn as much as he would have been earning had he been able to undertake heavy work. He missed between two to six working shifts a month on account of his condition, losing between £15.- to £25.- on each occasion.

In an action by plaintiff against the ship, her owners and the employers the following issues arose for consideration:

(a) The liability of the ship and her owners-defendants 1 and 2;

(b) That liability of defendants 3—hereafter referred to as "Limaship"—as employers of the plaintiff for the accident, and if found to be liable;

(c) The damage to which plaintiff is entitled.

Held, (1) that the evidence before the Court virtually uncontradicted, establishes that the accident, leading to the injuries of plaintiff, occurred while plaintiff was employed by Limaship at a time when he was engaged in the execution of his duties, that is, proceeding on instructions to take up stevedore's duties in the hold of the ship; that neither ownership of the ship nor the mere occurrence of an accident aboard the ship can attach liability either to the ship or her owners; that the case for the plaintiff was pleaded in essence on the basis of the common law duty of an employer to ensure the safety of his employees at work; that neither defendants 1 nor defendants 2 had any connection with his employment; that, therefore, the submission of counsel for defendants 1 and 2—that not an iota of evidence has been adduced to connect his clients with the accident—is

well founded; that equally sound, is the concurrence at the end of the day to the aforesaid proposition by counsel for the plaintiff; and that, consequently, the action against defendants 1 and 2 must be dismissed.

(2) That since Limaship were the employers of the plaintiff they were, like every employer, under the common law duty of care to their employees; that among the first duties of the employer is to ensure safety at work, so that the place of work is as safe as it may be reasonably rendered, that, in turn, includes safe passage from and to the actual site of work; that the duty of the employer to provide safety at work is not limited to premises belonging to the employer; that applying these principles to this case, it was the duty of Limaship to render the means of passage of plaintiff to the hold as safe as foresight might reasonably render them to be; that the irresistible inference from the evidence is that the ladder provided for the descent of plaintiff into the hold was unsafe, and the question to be answered is, whether the employers are answerable for the defective condition of the ladder; that the plaintiff, an employee of Limaship, was required to make use of the ladder at a time when it was in no condition to carry him to the hold; that by failing to make a proper inspection regarding its condition, defendants 3 exposed the plaintiff to a foreseeable risk; that the risk of accident in case the ladder was not strong enough to carry him was easily foreseeable and it could easily be avoided but yet the defendants did nothing about it; that, therefore, they failed in the discharge of their common law duty to take reasonable precautions for the safety of the plaintiff and are liable in negligence.

(3) That a worker can presume, in the absence of any apparent indication to the contrary, that the means provided by his employers for access to the place of his work are safe; that any other proposition would place an intolerable burden on workers who, ordinarily, have little choice in the shaping of their surroundings at work; that the position would be different if there was any outward indication that the ladder was defective; and that, therefore, the plaintiff did not contribute to the injuries he suffered by failing to take appropriate precautions for his safety.

(4) That in quantifying future loss of earnings the use of a multiplier though not inevitable is regarded as the most reliable process for such quantification; that the multiplier must be chosen by reference to the present age of the plaintiff who is 37 years old, though no hard and fast rule can be laid down with regard to the choice of a multiplier; that in all the circumstances of this case the Court will adopt a multiplier of 12; and that since the Court finds that the plaintiff presently loses £45.– per month as a result of his injuries future losses will be set at £540x12 yielding a sum of £6,480.

(5) That the prominent facts, with a distinct bearing on the estimate of general damages are the severe pain that plaintiff experienced as a result of his injuries, the loss of most amenities during the long periods of his total incapacitation, and more important still, the fact that his health has not been restored to its former level; that he will, for the rest of his life, experience grave difficulties in the discharge of his work, a matter of no little consequence for a man of his age; that not only at work, but in driving to work, he also experiences considerable discomfort; that the anticipated onset of osteo–arthritis cannot but worsen his condition, and the possibility of a future operation cannot be ruled out; that the extent to which plaintiff has to rely on the comradeship of his colleagues for assistance at work, cannot but compound his agony and, certainly, there will be a restriction in his out of work activities with a bearing on his needs for recreation; that a fair amount of compensation in all the circumstances of the case, by way of general damages, is £5,000.

(6) That a Bullock Order may be made whenever it appears to have been reasonable on the part of the plaintiff to join, in the first place, the successful defendants as parties in the proceedings; that in order to determine whether it was thus reasonable, the Court must examine whether the plaintiff could, with a reasonable effort, ascertain the facts relevant to liability; that judging from the evidence, the plaintiff was, in this case, from the outset, well aware of all facts relevant to the accident; that as indicated, not a shred of evidence was adduced to connect defendants 1 and 2 with the accident and this must have been within the knowledge of the plaintiff from the beginning; that, therefore, there is no room for exercising the Court's

discretion along the lines of a Bullock Order; and that as defendants 1 and 2 claim no costs against the plaintiff as between them, there shall be no order as to costs; accordingly judgment will be given for plaintiff against defendants 3 for £15,380.- with costs and the claim against defendants 1 and 2 will be dismissed with no order as to costs.

Judgment and order for costs as above.

Cases referred to:

Christodoulou v. *Angeli* (1968) 1 C.L.R. 338;

Athanassiou v. *A.-G.* (1969) 1 C.L.R. 160;

Foulder v. *Canadian Pacific Steamships* [1969] 1 All E.R. 283;

Kykon Ltd. v. *Demetriou and Another* (1982) 1 C.L.R. 453;

Vassiliko Cement Works v. *Stavrou* (1978) 1 C.L.R. 389;

McCafferty v. *Metropolitan Police Receiver* [1977] 2 All E.R. 756 (C.A.);

Wilson v. *Tyneside Window Cleaning Co.* [1958] 2 Q.B. 110;

Davie v. *New Merton Board Mills Ltd.* [1959] A.C. 604;

Elia v. *Progress Shipping and Others* (1978) 1 C.L.R. 332;

Emney v. *Chipperfields Circus and Zoo,* The Times, October 17, 1961;

Tsopanis v. *Avraam* (1978) 1 C.L.R. 27;

Services Europe Atlantique v. *Stockholmes* [1978] 2 All E.R. 764;

Fletcher v. *Autocar and Transporters Ltd.* [1968] 1 All E.R. 726;

Constantinou v. *Salachouris* (1969) 1 C.L.R. 416;

Joyce v. *Yeomans* [1981] 2 All E.R. 21 (C.A.);

Lim v. *Camden Health Authority* [1979] 2 All E.R. 910 (H.L.);

Cookson v. *Knowles* [1978] 2 All E.R. 604;

Dotts v. *Dotts* [1978] 2 All E.R. 539;

Taylor v. *O'Connor* [1971] 1 All E.R. 365 (H.L.);

Gavin v. *Wilmot Breeden Ltd.* [1973] 3 All E.R. 935 (C.A.);

Poullou v. *Constantinou* (1973) 1 C.L.R. 177;

Curium Palace v. *Eracleous* (1979) 1 C.L.R. 26;

Owens v. *Brimmell* [1976] 3 All E.R. 765;

Karaolis and Another v. *Charalambous* (1976) 1 C.L.R. 310;

Besterman v. *British Motor Cab Co.* [1914] 3 K.B. 181;

Hong v. *A. & R. Brown Ltd.* [1948] 1 K.B. 505 (C.A.).

Admiralty Action.

Admiralty action for damages for personal injuries suffered by plaintiff whilst engaged in a loading operation on board the ship "Nadalena H".

K. M. Hadjipieras with *T. Economou*, for the plaintiff.

Chr. Christofides on behalf of *L. Papaphilippou*, for defendants 1 and 2.

V. Tapakoudes, for defendants 3.

Cur. adv. vult.

PIKIS J. read the following judgment. Georghios Tziellas, the plaintiff, a stevedore at the port of Limassol, suffered grave injuries in an accident at work that happened on 28.12.79. The injuries he sustained, totally incapacitated him for a time, and kept him out of work until 22.9.80. It occurred aboard the ship "Nadalena H" - defendants 1 - owned at the time by Seadoll Marine Co. Ltd. - defendants 2 - while employed by Limaship Co. Ltd., at a time when he was engaged in the process of carrying out his work. Proceedings were instituted against all three parties because of their association with the place of plaintiff's work. At the end of the proceedings counsel for the plaintiff was constrained to admit that there is no evidence whatever to connect either of the first two defendants with the accident, therefore he subscribed to the view that the action must be dismissed against them. A like submission was made by counsel for defendants 1 and 2. This view is not shared by counsel for the third defendants who submitted that the occurrence of the accident on board the ship, coupled with the attending circumstances, attaches liability, small or large as the court may decide, to the said defendants. This is one of the issues to be resolved; the other two are:-

A) The liability of defendants 3 - hereafter referred to as "Limaship" - as employers of the plaintiff for the accident, and if found to be liable,

B) the damage to which plaintiff is entitled.

Plaintiff was one of a gang of stevedores employed by Limaship, a firm of shipping agents, to load a cargo aboard the ship "Nadalena H". The owners of the ship had nothing to do either with the loading or the running of the ship, then on char-

ter to third parties. The only association of the owners with the accident was that they were the owners of the boat at the time; nothing else. Likewise, with the boat herself. The only evidence tending to connect the ship with the accident, is that it occurred aboard the ship. Limaship had sole responsibility for the loading of the cargo, as well as the management of the operation.

Plaintiff was a member of a crew of stevedores employed through the prescribed channels to load cargo for Limaship on board "Nadalena H". Eleftherios Machlouzarides, alias Tringis, another stevedore, was employed by Limaship as foreman, charged with the duty to supervise the crew and oversee the carrying out of the work of Limaship. Tziellas and his colleagues, five or six of them, reported for duty aboard the ship and placed themselves at the disposal of the foreman. They were instructed to descend to the hold and proceed with the loading operation. The ship's ladder, leading from the deck to the hold, was blocked by goods stacked in the hold the previous day. So, Tringis asked the sailors of the ship to fetch a ladder that was on board, so that the workers might descend to the hold. A movable ladder was promptly fetched. Without more ado and without any inspection of the ladder, it was placed in position to facilitate the stevedores to climb down to the hold. The metallic ladder was made of two parts held together by two screws somewhere in the middle. Two of the fellow-workers of the plaintiff climbed down before plaintiff attempted to do so. When Tziellas proceeded to go down the ladder, two of his colleagues held it on either end to make the ladder secure for him to go down. When Tziellas descended two or three rungs of the ladder, it broke down, causing Tziellas to fall over a height of about 12 feet. He was badly injured, necessitating his removal to the hospital and subsequent confinement and treatment for a long time. His injuries and their after-effects are detailed in three medical reports produced by consent, implying thereby agreement of the parties on the nature of the injuries suffered and their implications (exhibits 1, 2 and 3). An account of the facts relevant to the accident was given both by the plaintiff and his fellow-stevedore, Alexis Potamos (P.W.1). Their account tallies. It is also confirmed by the foreman Tringis who testified for the first two defendants (D.W.1). The evidence of the afore-

said three witnesses is also to the same effect as respects the circumstances of their employment. These circumstances were verified by Mr. Ch. Charalambous, a director of Limaship, who testified for defendants 1 and 2 (D.W.2). In his final address, Mr. Tapakoudes, counsel for Limaship, brought to the notice of the Court the embarrassing position in which he found himself seeing a director of his clients contradicting on oath their pleaded case, confirming thereby the version of the plaintiff that they were his employers, solely responsible for the loading operation under way at the time of the accident. That does not, of course, diminish the effect of the evidence of Mr. Charalambous.

The evidence before me, virtually uncontradicted, establishes that the accident, leading to the injuries of plaintiff, occurred while plaintiff was employed by Limaship at a time when he was engaged in the execution of his duties, that is, proceeding on instructions to take up stevedore's duties in the hold of the ship. Neither ownership of the ship nor the mere occurrence of an accident aboard the ship can attach liability either to the ship or her owners. The case for the plaintiff was pleaded in essence on the basis of the common law duty of an employer to ensure the safety of his employees at work. Neither defendants 1 nor defendants 2 had any connection with his employment. Therefore, the submission of counsel for defendants 1 and 2—that not an iota of evidence has been adduced to connect his clients with the accident—is well founded. Equally sound, is the concurrence at the end of the day to the aforesaid proposition by counsel for the plaintiff. Consequently, the action against defendants 1 and 2 must be dismissed. The matter of costs will be debated later.

Limaship were the employers of the plaintiff and were, like every employer, under the common law duty of care to their employees. The extent of their duty and the extent of its discharge in this case, will be examined next.

Employer's duty of care for the safety of his employees:

Under the common law, an employer owes a duty to his employees not to expose them to unnecessary risk at work. A risk is unnecessary if foreseeable and reasonably avoidable

by taking appropriate precautions. The law reports abound with cases establishing the extent of the duty and illustrating its application. (See, *Yiangos Christodoulou* v. *Pantelis Angeli* (1968) 1 C.L.R. 338; *Athanassiou* v. *A-G* (1969) 1 C.L.R. 160; *Foulder* v. *Canadian Pacific Steamships* [1969] 1 All E.R. 283; *Kykon Ltd.* v. *Demetriou and Another* (1982) 1 C.L.R. 453).

As technology advances and safety devices and apparatus become available in increasing numbers, the easier it becomes to foresee risks and eliminate them. (See, *Vassiliko Cement Works* v. *Stavrou* (1978) 1 C.L.R. 389; *McCafferty* v. *Metropolitan Police Receiver* [1977] 2 All E.R. 756 (C.A.)). So, while the duty of the employer remains the same, the range of risks that are foreseeable increases, and the means of preventing multiply. Consequently, the employer is in fact expected to guard against a greater variety of risks.

Among the first duties of the employer is to ensure safety at work, so that the place of work is as safe as it may be reasonably rendered, that, in turn, includes safe passage from and to the actual site of work. Applying these principles to our case, it was the duty of Limaship to render the means of passage of plaintiff to the hold as safe as foresight might reasonably render them to be. The irresistible inference from the evidence is that the ladder provided for the descent of plaintiff into the hold was unsafe, and the question to be answered is, whether the employers are answerable for the defective condition of the ladder. The duty of the employer to provide safety at work is not limited to premises belonging to the employer. Arguments to the contrary were dismissed in *Wilson* v. *Tyneside Window Cleaning Co.* [1958] 2 Q.B. 110, and in *Davie* v. *New Merton Board Mills Ltd.* [1959] A.C. 604. The duty to take reasonable care for the safety of the worker remains unabated; but the performance of it will vary with the circumstances of each case. The duty of care extends to any system adopted to carry out the employer's work. It is not limited to the settled methods of doing the employer's work. (See, *Elia* v. *Progress Shipping and Others* (1978) 1 C.L.R. 332). Further, the duty of the employer extends to providing safe means of access to one's work within the place of employment, as well as getting to it. (See, *Charlesworth on Negligence*, 6th *ed.*, *para.* 1043, where the case-law on the subject is reviewed). In determining

whether the employers discharged their duties, relevant is the question of the individual safety requirements of workers in order to gain access to their place of work. (See, *Emney* v. *Chipperfields Circus and Zoo*, The Times, Oct. 17, 1961). The pertinent question is whether the employers are guilty of a breach of their duty to the plaintiff in failing to supply safe means of access to his work. We can safely draw the inference, as already stated, that the ladder was defective in view of its breakdown, in the absence of any interference with it. The plaintiff was required to approach the site of his work by the means of the defective ladder, by the foreman of Limaship. Therefore, he had little choice but to obey the instructions of his master. It is well settled that such instructions need not be issued by the master himself. The master will be held liable so long as the instructions are issued by a subordinate with ostensible authority to issue such instructions. (See, *Tsopanis* v. *Avraam* (1978) 1 C.L.R. 27).

The only evidence we have, as to how the ladder was brought on the boat and the circumstances surrounding its use, comes from Mr. Tringis, the foreman of Limaship. Mr. Tapakoudes invited me to disregard it, notwithstanding the fact that it remains uncontradicted and the absence of any indication that it is unreliable. I cannot uphold his submission. I accept Tringis' evidence. It is to this effect. On the afternoon of 27.12.1979 he concerned himself with the preparations necessary for the efficient loading of the boat the day following. As the ladder leading to the hold was blocked in the circumstances earlier described, he saw fit to take a ladder on the boat in order to make feasible the descent of the working crew into the hold. For the purpose, he took a ladder that he found lying on the mole, apparently unattended, and transported it on to the ship to be available for use the following day. He did not subject it to any examination to see whether it was in a safe condition, nor, as Mr. Tringis candidly stated, did he have the necessary expertise to carry out such inspection. And directions were given for its use without any other step being taken to ascertain whether its condition was such as to enable in safety members of the crew to descend to the hold, particularly the plaintiff, an obviously heavy man. Certainly, Mr. Tringis could not presume the ladder to be safe for the purpose it was destined

for use, nor did he make any inquiries on the subject. And as a result, the plaintiff, an employee of Limaship, was required to make use of it at a time when it was in no condition to carry him to the hold. By failing to make a proper inspection regarding its condition, defendants 3 exposed the plaintiff to a foreseeable risk. The risk of accident in case the ladder was not strong enough to carry him was easily foreseeable. The risk could easily be avoided but yet the defendants did nothing about it. In my judgment, they failed in the discharge of their common law duty to take reasonable precautions for the safety of the plaintiff, and are liable in negligence. Did the plaintiff contribute to the injuries he suffered by failing to take appropriate precautions for his safety, as alleged by defendants 3? The answer is, in my judgment, in the negative. A worker can presume, in the absence of any apparent indication to the contrary, that the means provided by his employers for access to the place of his work are safe. Any other proposition would place an intolerable burden on workers who, ordinarily, have little choice in the shaping of their surroundings at work. The position would be different if there was any outward indication that the ladder was defective. The evidence is that it was not so. His view as to the reliability of the ladder cannot but have been strengthened by the fact that two of his colleagues had, before him, made use of the ladder without problems.

In my judgment, defendants 3 are liable in negligence for the damages plaintiff suffered as a result of the accident on 28.12.1979. To their assessment we shall turn presently.

Damages: Tziellas, the plaintiff, sustained, as a result of the accident, serious injuries that necessitated hospitalisation for a time, physiotherapy after his release, and a subsequent spine operation for the removal of the lumbar disc. The nature of his injuries and their after-effects, as well as the treatment extended, are described in the three medical reports before us, issued, two by Mr. Spanos, a specialist neuro-surgeon, and the third by Mr. Andreou, an orthopaedic surgeon. The plaintiff suffered a depressed fracture of the second lumbar vertebrae. He remained bedstricken at the clinic of Dr. Andreou upto 12.1.1980, when he was released after a lumbo sacral support was provided. Thereafter, he had to rest at home. The support was removed some three months later. Thereafter,

he was required to undergo a course of physiotherapy. The plaintiff was afflicted, as he complained, with severe pain and experienced numbness of the left leg. On 9.4.1980, he consulted Dr. Spanos on whose advice he was admitted on 26.5.1980 to the neurosurgery ward of the Nicosia General Hospital for intensive investigation. A myelography revealed lumbar disc protrusion at the L4–5 interval. The day following he was operated and the disc was removed. He made satisfactory progress thereafter. His capacity for work, particularly for heavy manual work, was seriously impaired as a result of his injuries and the prognosis is none too good. He was totally incapacitated for work upto 15.9.1980. His capacity to lift heavy objects and the ability to stand for long or walk over long distances diminished considerably. There is near certainty in the opinion of Mr. Andreou that he will develop post traumatic arthritis in the region of the lumbar spine, a factor that will cause further deterioration in his condition.

Plaintiff complained in evidence of experiencing serious difficulties in lifting objects of any weight and transporting them over any distance. His ability to bend was also adversely affected. He was able to resume work on 22.9.1980 but, as he stated, he would find it impossible to maintain his present level of earnings but for the comradeship of his colleagues who aid him in a variety of ways in the discharge of his duties. Nevertheless, he is unable to earn as much as he would have been earning had he been able to undertake heavy work. He misses between two to six working shifts a month on account of his condition, losing between £15.– to £25.– on each occasion. There is ample evidence supporting the accuracy and veracity of his evidence on the point. Mr. Nicolaides (P.W.2), an employee of the Ministry of Labour in charge of the department for the employment of port workers at Limassol, confirmed that plaintiff is assigned duties only when the work to be carried out is light and that, in consequence, he misses between two to three shifts a month. His fellow-worker Costakis Flouri gave evidence to the same effect, putting the number of working days missed by plaintiff during a month between two to five.

Having sifted the evidence as well as I could, I find that as a result of his condition, plaintiff is, on average, missing three working days a month, suffering a loss of £15.– on each occasion.

I also accept that the ability of plaintiff to maintain his present level of earnings is, in part, dependent on the continued willingness of his colleagues to assist him in the discharge of his duties. Hopefully, he will have the co-operation of his colleagues in future but that is not a foregone conclusion and this uncertainty inevitably compounds the forecast of future loss, and the task of the Court in making an assessment of it.

There is an admission that plaintiff incurred £235.- medical expenses and spent £40.- for his transportation for medical attendance. Also, there is an implicit admission from the joint production of the medical reports, that plaintiff was totally incapacitated for work upto 15.9.1980. His earnings at the time of the accident were £10.- per working day. It is upon this basis that his loss during the period of total incapacitation must be calculated. The evidence of Andreas Savva, an employee of the Provident Fund of the port workers association furnishes a reliable guide to the assessment of the damage in this area (see exhibit 6). A fair estimate of this damage is a sum of £2,500.-.

The object of damages is to restore the plaintiff, so far as money can do, to the position he could be anticipated to enjoy but for the accident. The principles relevant to the assessment of damages are fairly well settled but their application may produce varying results as much as the facts of one case are apt to vary from those of another. Past awards offer guidance on the approach of the Court to different species of injury and provide for a degree of uniformity. But individual awards, helpful though they are, create no precedent in the sense of stare decisis, requiring the Court to award the same amount of damage for every similar type of injury. Any such principle would stultify the differing impact and implications of a similar injury on different individuals.

The implications of an injury may vary infinitely from person to person. It is in this vein that citations made by counsel, from the well known work of Kemp and Kemp on Personal Injuries must be approached and evaluated.

Justice and fairness are the guiding principles to the award of damages. (See, dicta of Geoffrey Lane, L.J., in *Services*

Europe Atlantique v. *Stockholmes* [1978] 2 All E.R. 764). A sum must be found in each case that does justice to the loss of the injured party but fair to the defendant as well, in the sense that it should not impose a socially unacceptable burden upon him. See *Fletcher* v. *Autocar and Transporters Ltd.* [1968] 1 All E.R. 726—*Constantinou* v. *Salahouris* (1969) 1 C.L.R. 416). Estimation of future loss inevitably imports a degree of uncertainty and presents distinct problems. Uncertainty is to a degree reduced if made on the basis of presently known facts and, the relevant date for the ascertainment of these facts is naturally the date of trial. My finding here is that plaintiff presently loses £45.– per month as a result of his injuries and is likely to suffer the same loss, or a greater loss, in the foreseeable future. The loss presently accruing is projected over years to come. A multiplier is the yardstick ordinarily employed to articulate this loss. It is a figure chosen by reference to plaintiff's expectation of life, on the one hand, and the vicissitudes of life generally, especially the hazards associated with the type of work and style of life of the plaintiff, on the other. This number is not co-extensive with the injured party's expectation of life. It is a lesser figure to take account of the uncertainties of life as well as the fact that future earnings are presently paid. The object of the exercise is to arrive at an amount that is fair in all the circumstances of the case. The use of a multiplier is not inevitable though, ordinarily, it is regarded as the most reliable process for the quantification of future loss. (See, *Joyce* v. *Yeomans* [1981] 2 All E.R. 21 (C.A.)). No provision should be made except in exceptional circumstances for countering future inflation, something that may be offset by an appropriate investment of the capital presently received. (*Lim* v. *Camden Health Authority* [1979] 2 All E.R. 910 (H.L.); *Cookson* v. *Knowles* [1978] 2 All E.R. 604).

Losses of earnings that have accrued by the date of trial are a known fact and should be awarded as such, as a type of special damage. Future uncertainties do not enter into it. (*Dodds* v. *Dodds* [1978] 2 All E.R. 539). In my judgment, the plaintiff is entitled to the sum of £1,125.– for the loss sustained during the period following 22.9.1980 when he resumed work.

The multiplier must be chosen by reference to his present age, 37 years old. No hard and fast rules can be laid down

with regard to the choice of the multiplier. (See, *Taylor* v. *O'Connor* [1971] 1 All E.R. 365 (H.L.); *Gavin* v. *Wilmot Breeden Ltd.* [1973] 3 All E.R. 935 (C.A.); *Poullou* v. *Constantinou* (1973) 1 C.L.R. 177).

Counsel for the plaintiff suggested that the multiplier should be fixed at 14. In the case of *Curium Palace* v. *Eracleous* (1979) 1 C.L.R. 26, a multiplier of 12 was chosen in the case of a man having approximately the age of the plaintiff. The plaintiff in that case was a mason who fell down from a ladder, as in this case, whilst in the employment of the defendants. A multiplier of 14 was adopted by Tasker Watkins, J., in *Owens* v. *Brimmell* [1976] 3 All E.R. 765, where the injured party was in his early twenties, whereas a multiplier of only 10 was adopted in the case of *Nicos Karaolis and Another* v. *Ioannis Charalambous* (1976) 1 C.L.R. 310.

In all the circumstances of the case, I am disposed to adopt a multiplier of 12, so, future losses are set at £540 x 12 yielding a sum of £6,480.–.

The prominent facts, with a distinct bearing on our estimate of general damages are the severe pain that plaintiff experienced as a result of his injuries, the loss of most amenities during the long periods of his total incapacitation, and more important still, the fact that his health has not been restored to its former level. He will, for the rest of his life, experience grave difficulties in the discharge of his work, a matter of no little consequence for a man of his age. Not only at work, but in driving to work, he also experiences considerable discomfort. The anticipated onset of osteo–arthritis cannot but worsen his condition, and the possibility of a future operation cannot be ruled out. The extent to which plaintiff has to rely on the comradeship of his colleagues for assistance at work, cannot but compound his agony and, certainly, there will be a restriction in his out of work activities with a bearing on his needs for recreation. A fair amount of compensation in all the circumstances of the case, by way of general damages, is £5,000.– to an overall figure of £15,380.–, which is, in my judgment, a just amount to compensate the plaintiff and fair to ask defendants 3 to shoulder it. The plaintiff is also entitled to his costs.

C o s t s: On behalf of defendants 1 and 2, I was invited to make,

what is known as a Bullock Order, and adjudge defendants 3 to pay their costs as well.

A Bullock Order may be made whenever it appears to have been reasonable on the part of the plaintiff to join, in the first place, the successful defendants as parties in the proceedings. In order to determine whether it was thus reasonable, the Court must examine whether the plaintiff could, with a reasonable effort, ascertain the facts relevant to liability. (See, *Besterman* v. *British Motor Cab Co.* [1914] 3 K.B. 181; *Hong* v. *A. & R. Brown Ltd.* [1948] 1 K.B. 505, C.A. — See also the *Annual Practice*, 1960, p. 1842).

Judging from the evidence, the plaintiff was, in this case, from the outset, well aware of all facts relevant to the accident. As indicated, not a shred of evidence was adduced to connect defendants 1 and 2 with the accident and this must have been within the knowledge of the defendants from the beginning. So, there is no room for exercising my discretion along the lines of a Bullock Order. And as defendants 1 and 2 claim no costs against the plaintiff as between them, there shall be no order as to costs.

In the result, judgment is given for the plaintiff against defendants 3, for £15,380.– with costs.

The claim against defendants 1 and 2 is dismissed, with no order as to costs.

Judgment for plaintiff against defendants 3 *for* £15,380.– *with costs.*