1983 March 16

[A. Loizou, J.]

GEORGHIOS CHARALAMBOUS,

Plaintiff

v.

1. SHOHAM (CYPRUS) LTD.
2. CYPRUS PORTS AUTHORITY,

Defendants.

(Admiralty Action No. 40/80).

Negligence—Master and servant—Safe system of work—Duty of master to give safety instructions to his workmen—Stevedore injured through negligence of fellow workers due to failure of employer to discharge above duty—Employer negligent—Stevedore guilty of contributory negligence.

Costs—Bullock order.

The plaintiff, a stevedore, was injured whilst employed by defendants No. 1, together with five other stevedores, in the hold of the vessel "Tesland" to place the containers that were lowered therein, by means of a crane, at their appropriate positions. The crane used for the above operation belonged to defendants 2 and it was provided to defendants 1 under an agreement which exonerated the former of any liability for damage caused in the process of its being used.

In an action for damages by the plaintiff the Court, relying on the credibility of the witnesses, found that the plaintiff had been holding the said container from its corner with his right hand and same was crashed on account of the jerking of the container brought about in the effort of the stevedores to fit the protruding bars into the corresponding holes on the container before it was lowered into position. It also found that at that particular time, the winch was dead and rejected the version of the plaintiff that the jerking of the container might have been caused by a sudden movement brought about by the winch operator.

Held, that since at that particular time the winch was dead it was as a result of the acts of his fellow workers—who were in the employment of the defendants 1—and the plaintiff himself that his injury was caused; that the circumstances under which the work was carried out amounted to a wrong system of work, bearing in mind always the proximity of the containers and the obvious danger that injury would result from the slightest movement of a container when the hand of a labourer had been placed on the side of the container nearer to the one already in position; it appears that that was a danger which was continuously present and surely it called for a system to meet it: that it was the duty of the employers—defendants 1—to give such general safety instructions as a reasonably careful employer who has considered the problem presented by the work would give to his workmen and to consider the situation to devise a suitable system to instruct his men what they must do and to supply any implements that may be required; that none of such duties have been discharged by defendants 1 and in all the circumstances they were negligent.

(2) That plaintiff, an experienced stevedore, is also to blame by his own conduct in disregarding an obvious danger having contributed to his own injury; that apportioning liability this Court finds that defendants 1 are liable by 60% and the plaintiff by 40%.

(3) That this Court finds no liability against defendants 2 and the action against them is dismissed with costs which the defendants 1 are ordered to pay and which the plaintiff is allowed to include in the costs payable to him by the unsuccessful defendants 1; that this Court has come to this conclusion and exercised its discretion in this way because it was reasonable for the plaintiff to sue both defendants making his claim against them jointly and in the alternative inasmuch as looking at all the facts which the plaintiff knew or might by reasonable effort have ascertained at the time when the writ was issued, he had no choice but to sue both of them. More so as under para. 6 of the answer of defendants 1 they were throwing the blame on defendants 2 in spite of the indemnity.

Judgment for plaintiffs against defendants 1; *action against defendants* 2 *dismissed.*

Cases referred to:

General Cleaning Contractors Ltd. v. *Christmans* [1953] A.C. 180 at p. 194;

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

Bullock v. *London General Omnibus Company* [1907] 1 K.B. 264 (C.A.).

Admiralty action.

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

A. Lemis, for the plaintiff.

A. Neocleous, for defendant 1.

P. Ioannides, for defendant 2.

Cur. adv. vult.

A. Loizou J. read the following judgment. The plaintiff, a stevedore 55 years of age, was on the 27th October, 1978, in the employment of defendants 1 who "are shipping agents and/or contractors and/or engaged in loading cargo and/or were the agents of the vessel "TESLAND", whose unloading they had undertaken.

Defendants 2 are a public authority, established under the Cyprus Ports Organization Law 1973 (Law No. 38 of 1973), and the objects of this organization, which is a body corporate, is to manage and exploit the ports in the Republic as provided by the said Law.

It appears that among their activities is the provision of cranes and other equipment for the loading or discharge of cargo from ships. In this they had provided defendants 1 with a Luffing Crane by virtue of a written agreement entered into between them and defendants 1, whereby the latter agreed to bear the costs of any damage caused during the employment of the said crane to any cargo or craft to be lifted, etc. In other words, they were exonerated of any liability for damage caused in the process of using the said crane.

On the day in question the plaintiff, together with five other stevedores, was engaged in the hold of the said vessel placing the containers that were lowered therein by means of the said

crane at their appropriate positions, which were such that a space of three to four inches only was left between their sides nearer to each other. They had already done so in respect of three to four containers when the accident, which has given rise to this claim for damages for personal injuries, occurred.

The system of operation was that the crane would lower a container as near as possible to the iron bars that were protruding from the floor of the hold so that the container's holes on its four corners would get through them before same was finally lowered and left to rest there. The purpose of these bars is to hold the containers in position and prevent them from moving during the voyage.

The last container whilst being lowered was leaning to the side, obviously because of the uneven position of the 18 tons cargo it contained. It was lowered into the hold to a height of about one foot from the protruding iron bars and then the five stevedores, as one of them had left for a personal matter, tried to twist it into position and place it next to a container already placed there. In the process of doing so, the right-hand of the plaintiff was injured.

Evidence has been adduced by both sides as to the system of work and the circumstances under which the accident occurred. I shall not relate in detail what was stated by the various witnesses, but my findings and conclusions based on their credibility as accepted by me and by piecing together their respective versions, are that the plaintiff had been holding the said container from its corner with his right-hand and same was crashed on account of the jerking of the container brought about in the effort of the five stevedores to fit the protruding bars into the corresponding holes on the container before it was lowered into position. At that particular time, the winch was dead and therefore the version of the plaintiff that the jerking of the container might have been caused by a sudden movement brought about by the winch operator, is not substantiated. It was, therefore, as a result of the acts of his fellow workers—who were in the employment of the defendants 1—and the plaintiff himself that his injury was caused.

On these conclusions I have no difficulty in holding that the circumstances under which the work was carried out

amounted to a wrong system of work, bearing in mind always the proximity of the containers and the obvious danger that injury would result from the slightest movement of a container when the hand of a labourer had been placed on the side of the container nearer to the one already in position. It appears that that was a danger which was continuously present and surely it called for a system to meet it.

As pointed out by Lord Reed in the *General Cleaning Contractors Ltd.* v. *Christmas* [1953] A.C. 180, at 194, "it is the duty of the employer to consider the situation to devise a suitable system to instruct his men what they must do and to supply any implements that may be required". He referred to the case where a practice of ignoring an obvious danger had grown up and he thought that it is not reasonable to expect an individual workman to take the initiative in devising and using precautions. As Lord Oaksey put it in the same case at p. 189, it was "the duty of an employer to give such general safety instructions as a reasonably careful employer who has considered the problem presented by the work would give to his workmen". None of the said duties have been discharged by defendants 1 in this case and in all the circumstances they were negligent.

The matter, however, cannot end here. It has also to be considered whether the plaintiff, an experienced stevedore as he is, has contributed to the accident by placing his hand in the circumstances of this case on the side of the container nearer to the one in situ than placing it to the other side of the corner.

Having considered the evidence as a whole, I have come to the conclusion that he is also to blame by his own conduct in disregarding an obvious danger having contributed to his own injury. Apportioning liability, I find that the defendants 1 are liable by 60% and the plaintiff by 40%. I find no liability against defendants 2. As the special and general damages have been agreed on a full liability basis at C£1,850.–, there will be judgment for plaintiff for C£1,110.– with costs on that scale. The action against defendants 2 is dismissed with costs, which the defendants 1 are ordered to pay and which the plaintiff is allowed to include in the costs payable to him by the unsuccessful defendant 1.

I have come to this conclusion and exercised my discretion in this way as I am of the opinion that it was reasonable for the plaintiff to sue both defendants making his claim against them jointly and in the alternative inasmuch as looking at all the facts which the plaintiff knew or might by reasonable effort have ascertained at the time when the writ was issued, he had no choice but to sue both of them. More so as under para 6 of the Answer of defendants 1 they were throwing the blame on defendants 2 in spite of the indemnity contained in the contract, exhibit 1, whereby they hired the use of the crane used in the unloading. If any authority is needed for the aforesaid approach, reference may be made to the case of *Karaolis & Another* v. *Charalambous* (1976) 1 C.L.R., p 310, and the authorities therein mentioned, namely, *Bullock* v. *London General Omnibus Company* [1907] 1 K.B. 264 C A , as well as to *The Annual Practice* 1958, p 1842.

Judgment against defendant 1 for £1,110.– *with costs. Action against defendants 2 dismissed*