

1983 April 28

[DEMETRIADES. J.]

VASILIS CHARALAMBOUS,

Plaintiff.

v.

1. ASSOCIATED LEVANT LINES S.A.L.

2. DEMETRIOU GARGOUR AND CO. LTD.,

Defendants.

(Admiralty Action No. 5/81).

Negligence—Loading of ship—Injury to stevedore by pallet which swang whilst hoisted by winch—No mechanical fault—Accident due to negligence of winch operator—His employers liable for his negligence—No negligence proved against the shipowners.

5 The plaintiff, a port worker, was employed at the port of Larnaca in the loading on the vessel "BATROUN", belonging to defendants 1, pallets containing cases of oranges; and was entailed to attach the hooks of the pallet on the sling of the rope of the winch that was to lift the load onto the ship. Whilst
10 he was still holding the hooks in order to make sure that they were securely attached to the sling the pallet, whilst being hoisted slowly, swang and hit him. In an action against the owners of the ship—defendants 1 and their agents—defendants 2—
15 the latter admitted that the stevedores were in their employment. The winch operator said that the reason the pallet swang in this case was because one of the derricks operated quicker than the other, in that the one lever instead of moving to the second step it moved to the third step and it caused the one derrick to work faster than the other.

20 *Held*, that in the absence of any evidence that there was a mechanical fault in the system that operated the derricks the accident occurred as a result of the negligence of the winch operator who was not careful to make sure that both levers he was handling were set to the same step; that as there is no
25 evidence as to what was the relationship or the connection

between the first defendants and the second defendants and what was their role in the loading of the vessel, the plaintiff has failed to prove any negligence on the part of the first defendants and the action against them will be dismissed, but as they are defended by counsel appearing for the second defendants, no costs will be awarded to them, that in the light of the above findings and the admissions of the second defendants that the stevedores were in their employment, the second defendants are liable for the negligence of the winch operator and therefore, judgment will be given in favour of the plaintiff and against these defendants for £3,400 – with 2/3rds of the costs

Judgment against the second defendants Action against the first defendants dismissed

Admiralty action.

Admiralty action for special and general damages sustained by plaintiff, as a result of the negligence and/or breach of statutory duty of the defendants whilst in their employment and in the course of loading the vessel “Batroun”.

A Lemus, for the plaintiff.

St. McBride with *G. Christodoulou*, for the defendants

Cur. adv. vult.

DEMITRIADES J. read the following judgment. This is an action by which the plaintiff claims special and general damages which he alleges he sustained as a result of the negligence and/or a breach of statutory duty and/or a breach of contract by the defendants or either of them, their servants or agents.

The plaintiff is a port worker and at the material time he was employed at the port of Larnaca in the loading on the vessel BATROUN of pallets containing cases of oranges. The pallets were on a lorry that was parked on the quay.

By para. 2 of the petition the plaintiff alleged that at the material time defendants No. 1 were ship owners and the owners and/or the charterers and/or the occupiers of the vessel BATROUN and that defendants No. 2 were the servants or agents of defendants No. 1 and/or the charterers of the said ship and/or that defendants No. 1 and/or 2 were the persons

responsible for and/or who had undertaken the loading and or unloading of the said vessel.

By their answer the first defendants deny the allegations made by the plaintiff in para. 2 of his petition and they further allege
5 that they were in no way engaged in the loading of the ship.

The second defendants, by para. 4(a) of their Answer, admit that they were the direct employers of the stevedores who, on or about the 4th January, 1980, were loading the BATROUN, but say that the task of the said stevedores commenced when
10 the cargo to be loaded had been attached to the hook of the winch by the quay porters who were in the employment of Comarine Ltd.

The special and general damages, to which the plaintiff may be entitled on a full liability basis, have been agreed amongst
15 the parties at £3,400.-. Both defendants deny liability and, alternatively, plead that the plaintiff was injured as a result of his own negligence and/or was the author of his own misfortune.

The issues, therefore, that remain for the Court to decide
20 are (a) who was to blame for the accident and (b) whether the plaintiff contributed to such accident.

The plaintiff gave evidence and said that he and a colleague of his were entailed to attach the hooks of the pallet on the sling of the rope of the winch that was to lift the load onto the ship.
25 When this was done, the appropriate signal was given for the winch operator to hoist the load, but whilst he was still holding the hooks in order to make sure that they were securely attached to the sling, for reasons unknown to him, the pallet, whilst being hoisted slowly, swang and hit him. As a result, he said,
30 he was thrown with his back on the side of the ship and then fell into the sea. The plaintiff denied that the pallet swang because the lorry on which it was and from which it had to be lifted by the winch was not in the perpendicular under the winch.

The man supervising the loading, who is known as "the koumandos", namely Neophytos Andreou, P.W.2, gave evidence
35 on behalf of the plaintiff and said that after the pallet was hooked, he gave to the winchman the appropriate signal to lift it. The hoisting of the load, he said, was done by means

of two derricks which were socketed on the deck of the ship. These derricks had to operate in co-ordination. In his opinion, one of the derricks did not operate properly and when the pallet was lifted about one foot from the platform of the lorry, it swang, hit the plaintiff and threw him into the sea. When asked what can happen when there is no co-ordination between the derricks, this witness said that the load had to be lifted slowly, otherwise the load would swing as it happened in the present case. 5

Panayiotis Sentouxis, D.W.1, a stevedore employed at the Larnaca port, described how a load is lifted from a lorry into a ship. He said that after the pallet is hooked on the sling of the derrick rope, they call out "vira" and that then the "koumandos" signals to the winchman to lift the load. To start with, the load is then lifted about 1 to 1 1/2 feet in order to test that the winch rope gets tight so that the opportunity is given to the port worker, who is on the side nearer to the ship, to clear from the spot or to step away. 10 15

The winch operator, D.W.2 Panayiotis Stavrou, said that the "koumandos" told him that the pallet swang and hit the plaintiff; he, also, said that swinging of loads when being lifted is a usual thing and that when he receives the signal to lift the load he pushes the levers of the winches, but on that occasion one of the derricks of the winch did not co-ordinate with the other and that was the reason why the pallet swang. He further said that this is a most usual thing to happen. He can only he said, control the swinging of the pallet when it reaches his sight. At the position where he was at the time he could not see the load when it was being hooked. The reason the pallet swang in this case, he said, was because one of the derricks operated quicker than the other, in that the one lever instead of moving to the second step it moved to the third step and it caused the one derrick to work faster than the other. 20 25 30

The defendants further called Mr. George Papoutsos, an employee of the second defendants, who stated that he is in charge of the loading of vessels that belong to his employers or that are represented by them. He said that when the accident occurred, he was standing on the quay looking towards the loads on the lorry and that when the accident occurred, the pallet 35

that hit the plaintiff did not swing whilst it was hoisted. The opinion he expressed why the accident occurred is that the plaintiff put too much pressure on the pallet whilst holding the hooks or "for some other reason".

5 Having in mind the way he was giving his answers and his whole demeanour in the Court, I have no hesitation to reach the conclusion that he was telling lies in order to protect his employers and for these reasons I reject his evidence.

10 From the evidence of D.W.2 Stavrou, and in the absence of any evidence that there was a mechanical fault in the system that operated the derricks, it is clear that the accident occurred as a result of the negligence of this witness, who was not careful to make sure that both levers he was handling were set to the same step.

15 There is no evidence before me as to what was the relationship or the connection between the first defendants and the second defendants and what was their role in the loading of the vessel. Therefore, I find that the plaintiff has failed to prove any negligence on the part of the first defendants and the action
20 against them will be dismissed. But as they are defended by counsel appearing for the second defendants, I have decided not to award them any costs.

25 In the light of my findings and the admissions of the second defendants that the stevedores were in their employment, I find that the second defendants are liable for the negligence of the winch operator and I, therefore, give judgment in favour of the plaintiff and against these defendants for £3,400.- with 2/3rds of the costs.

Costs to be assessed by the Registrar.

30 *Judgment for plaintiff for £3,400.-.*
Order for costs as above.