1983 May 3

[A. LOIZOU, DEMETRIADES, LORIS, JJ.]

MANTHOPOULOS PLASTICS LTD.,

Appellants-Defendants,

v.

ANTONIS HADJIIOSIF,

Respondent-Plaintiff.

(*Civil Appeal No.* 6404).

Negligence—Master and servant—Duty of employer to provide a safe system of work—Which includes mode of operation of such system—Employee injured whilst removing together with another person a very heavy iron bar—Method used for removing it by two men alone not a reasonably safe one—Employee subjected to a risk that the employer could reasonably foresee and against which he could guard—Employer liable in negligence.

Damages—General damages—Personal injuries—Labourer aged 28, *sustaining crushing injuries of the fingers of his right hand—Award of* £1,000 *sustained.*

The respondent-plaintiff who was in the employment of the appellants-defendants was instructed by his employers to remove a very heavy iron bar together with another person and in the course of doing so the bar fell and crushed the fingers of his right hand. In an action by the plaintiff for damages the trial Judge after accepting the evidence of the respondent found that he was instructed "to embark on a very dangerous procedure of removing the iron bar, which was of quite big weight, simply by removal means"; and after finding that the employers were liable for the accident awarded to the respondent the sum of £1,000 general damages. The respondent who was 28 sustained a compound fracture of the distal phalanx with traumatic detachment of the nail bed of the right middle finger, a badly lacerated pulp of the tip of the right ring finger and a 2 cm laceration on the nail bed of the right index finger. His injuries were initially painful and the complication which

developed on his middle finger caused protracted discomfort and inconvenience; and though he could use his hand the tender stump of the right middle finger and the non-sensitive pulp of the right ring finger interfered to a certain extent with the execution of precision finger movements.

Upon appeal by the employers the correctness of the findings and conclusions drawn therefrom by the trial Judge were questioned and it was also contended that the award of £1,000 general damages was excessive.

Held, (1) that this Court has not been persuaded that this is a case where it would interfere on appeal with either the findings based on the credibility of witnesses or the conclusions drawn therefrom; that it is the employer's duty towards his employees to provide a safe system of work which includes the provision of competent staff of men, suitable machinery for the work, adequate supervision of the work and safe premises for work; that the duty includes both the establishment as well as the enforcement of such a system by means of adequate directions and the mode of its operation without this meaning that the employer must decide on every detail of the system of work or mode of operation; that in the present case, from the evidence adduced and as accepted by the trial Judge the appellants had failed in the discharge of that duty inasmuch as the method used by them for moving this heavy iron bar by two men alone was not a reasonably safe one; that by doing so he subjected his employee to a risk that he could reasonably foresee and against which he could guard by measures such as the engagement for the purpose of the removal of that bar by more persons or by mechanical means; that the convenience and expense of which were not entirely disproportionate to the risk invovled.

(2) That the amount of £1,000 does not seem to be a manifestly excessive one bearing in mind the injuries suffered by the respondent; accordingly the appeal must fail.

Appeal dismissed.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Artemides, Ag. P.D.C.) dated the 24th February, 1982 (Action No. 3164/79) whereby they were adjudged

to pay to the plaintiff the sum of £1,571.- as special and general damages for the injuries suffered by him as a result of an industrial accident.

St. Erotocritou (*Mrs.*), for the appellant.

Th. Montis, for the respondent.

A. Loizou J. gave the following judgment of the Court. This is an appeal from the judgment given against the appellant company for the sum of £1,571.- with interest thereon at 4% per annum and costs, as special and general damages for the injuries suffered by the respondent, as a result of an industrial accident.

The facts of the case appear sufficiently in the judgment of the learned Acting President who tried the case and said:

"I shall explain as explicitly as I can the machinery on which the plaintiff was engaged when he met with his accident and its surrounding circumstances, although there are two versions as to how it occurred. Very near to one of the walls of the basement there is a saw-machine affixed to the ground. The saw is electrically operated and is used to cut very heavy round iron bars about 6' (six feet) long. The part of the iron bar which is to be cut is placed underneath the saw whilst the other end of the bar is resting on a stand with iron legs. When the bar has been cut and has to be removed from the saw-machine, in view of its weight it has to be manipulated in such a way so that its removal from the saw on the ground is made safely.

It is during this procedure that the plaintiff was injured according to his own evidence in the following circumstances: He was called by Savvakis Madthopoulos, the son of the director of the company who was employed as a foreman although he was 16 at the time, to help him remove the iron bar from the saw. The plaintiff has put the weight of this bar at 500 okes whilst Savvakis Madthopoulos and Mr. Madthopoulos himself at around 120. Whichever is the correct estimate, one thing is undisputed, i.e., that the iron bar was very heavy. When I saw it at the defendant's premises I was surprised by the fact that this iron bar was to be removed by two men only. Savvakis asked the

plaintiff to push the iron bar from its end which was resting on the stand towards the platform of the saw-machine so that its weight would balance on it, that is, to rest in such a way that there would be equal weight from each side of the bar extending from the platform. When the iron bar would have been so balanced, Madthopoulos would go and take the stand from the one side and bring it to the other so that the other side of the iron bar would then be pushed on the stand. The plaintiff and Savvakis pushed the iron bar and was balanced on the saw-platform. Savvakis was about to bring the stand whilst the plaintiff was holding the iron bar on the platform lest it would roll down. Savvakis moved towards this stand so that he would fetch it to the other side of the bar, when the bar fell and crushed the fingers of the right hand of the plaintiff."

After dealing with the version of the defendants he concluded by saying:

"After examining the evidence with care and having had the opportunity of watching the witnesses whilst testifying before me, I have no hesitation whatsoever in accepting the evidence of the plaintiff and find that he has given me the true and correct account of what has happened. The evidence of Savvakis Madthopoulos and his father Mr. Madthopoulos is contradictory to one another and was given in an apparent effort to avoid liability for the accident that had occurred.

In any event, I find that even if ropes were to be used this would have made no difference at all. The important thing is that the plaintiff was instructed to embark on a very dangerous procedure of removing the iron bar, which was of quite big weight, simply by manual means. The procedure that has been described to me leaves me with no doubt that it was a dangerous one and Savvakis Madthopoulos has actually admitted this in his testimony. In my judgment this iron bar could only be removed either by the use of more hands or by mechanical means."

Counsel for the appellant has questioned the correctness of the findings and the conclusions drawn thereon and has invited the attention of the Court to various aspects of the case which she claimed emanated from the evidence adduced.

Having given to her arguments our best consideration we have not been persuaded that this is a case where this Court on appeal would interfere with either the findings based on the credibility of witnesses or the conclusions drawn therefrom.

It is the employer's duty towards his employees to provide a safe system of work which includes the provision of competent staff of men, suitable machinery for the work, adequate supervision of the work and safe premises for work. The duty includes both the establishment as well as the enforcement of such a system by means of adequate directions and the mode of its operation without this meaning that the employer must decide on every detail of the system of work or mode of operation. In the present case, from the evidence adduced and as accepted by the learned acting President, we find ourselves in agreement with him that the appellants had failed in the discharge of that duty inasmuch as the method used by them for moving this heavy iron bar by two men alone was not a reasonably safe one. By doing so he subjected his employee to a risk that he could reasonably foresee and against which he could guard by measures such as the engagement for the purpose of the removal of that bar by more persons or by mechanical means. The convenience and expense of which were not entirely disproportionate to the risk involved.

The second ground argued in this appeal is with regard to the amount of damages. As to the special damages the assessment of the weekly earnings of the respondent were challenged and as to general damages what was questioned was the amount of £1,000.- awarded to him.

The problem as to the earnings of the respondent arose because the contract of employment was concluded on the Saturday and work commenced on Monday when the accident occurred and there had been no payment made which could be a clear proof of the agreed remuneration. From the evidence adduced, however, which consisted of the testimony of the previous employer of the respondent, who stated that his net earnings when engaged by them were £19.- per week and from the two versions that of the respondent who claimed to have agreed to work at £25.- per week and that of the appellants who alleged that the wages they had agreed to pay were £15.- per week, the learned acting President came to the conclusion that the net

earnings of the respondent were £21.500 mils which multiplied by 24 weeks during which he remained unemployed owing to his injuries, gave the figure of £516.-.

On the totality of the circumstances we have no reason to interfere with this figure which is the outcome of an appreciation by the trial Judge of questions of credibility.

On the question of general damages this Court has on more than one occasion stated the principles on the basis of which it will interfere on appeal with their assessment which is the primary task of trial Courts. The amount of £1,000.- does not seem to us to be a manifestly excessive one bearing in mind the injuries suffered by the respondent, which are described in a medical report by Dr. Pelides - produced by consent of the parties - who had treated him and also re-examined and assessed his condition at a later stage and which injuries consisted of the following:

"1. Compound fracture of the distal phalanx with traumatic detachment of the nail bed of the right middle finger.

2. Badly lacerated pulp of the tip of the right ring finger.

3. 2 cm laceration on the nail bed of the right index finger."

He then deals with his treatment and objective findings and gives his opinion and the condition of the respondent as finally crystallized on the 28th January, 1981, as follows:

> "The injuries he sustained were initially painful. The complication which developed in his middle finger caused protracted discomfort and inconvenience. This was resolved by the removal of the infected half of the distal phalanx of the finger. At present though he can use his hand, the tender stump of the right middle finger and the non-sensitive pulp of the right ring finger interfere to a certain extent with the execution of precision finger movements. As the stump of the middle finger is unhealthy it is liable to break down due to irritation. As he is a skilled technician the residual impairment is more serious than it would otherwise have been."

The learned acting President in arriving at the figure of £1,000.- said that:

"I have already described the injuries the plaintiff has suffered. He is a 28-year-old man; I do not know whether he is married or not, the evidence is silent on this matter. Although the plaintiff is not impaired in the performance of his duties as a prison warden, one should not lose sight of the fact that the plaintiff is impaired in the daily movements of his hand, like when he is eating, dressing or touching something. Furthermore, I had the opportunity to see the injured fingers of the plaintiff and I can say that they present an ugly sight. His pain and suffering must also be appreciated."

It has been argued that the finding of "like when he is eating, dressing or touching something" is not warranted by the evidence. It is indicated, however, in the medical reports which have earlier been set out in this judgment, that "the deformed stump of the middle finger and the non-sensitive pulp of the ring finger inconveniences him when he is doing work that requires precision finger movements."

In our view this warrants the examples given by the learned acting President in his judgment as to the difficulties which the respondent will encounter in his every day life.

For all the above reasons, this appeal is dismissed with costs.

Appeal dismissed with costs.