1985 March 21

[TRIANTAFYLLIDES, P., SAVVIDES, PIKIS, JJ.]

LOIZOS STAVRINOU,

Appellant-Defendant,

v.

STAVROS CHR. ASPROGHENIS,

Respondent-Plaintiff.

(Civil Appeal No. 6712).

Negligence—Master and servant—Safe system of work—Bakery—Employee injured by bread-cutting machine in the course of cleaning it—Indulging in the cleaning in disobedience to express instructions of the employer and in full disregard of repeated reprimands of his foreman to keep away from the machine—No negligence could be attributed to employer.

Civil Procedure—Verdict—Outside the pleaded facts, contrary to the findings of the trial Judge and inconsistent with them—Set aside.

Civil Procedure—Pleadings—Amendment—Evidence not in line with pleadings—Which were not amended to bring them in line with the facts as emanated from the evidence—Verdict set aside.

Negligence—Apportionment of liability—Appeal—Principles on which Court of Appeal acts.

Judgments—Writing of—Extensive reference to decided cases—Whether desirable.

The appellant who at the material time was operating a bakery at Kalo Chorio village, employed the respondent as a driver for the distribution of his products. The respondent acting in disobedience to the express instructions of the appellant and in full disregard to the repeated reprimands of his foreman to keep away from the bread cutting machine, engaged himself in the cleaning of the

machine by attempting to remove the back plate by putting his hand under the plate, after having removed the piece of metal which was acting as a fence and after having put the machine in motion whilst his hand was under the plate, with the result that his hand suffered a crushing injury.

In an action for damages by the employee-respondent—the trial Judge concluded that both parties were to blame and he apportioned liability as resting upon the appellant to a percentage of 20 per cent and on the respondent to a percentage of 80 per cent. Though the respondent-plaintiff in his pleadings based his claim on the allegation that he was employed temporarily as an unskilled worker, and it became evident at the hearing that the respondent was not employed as an "unskilled labourer" but as a driver for distribution of bread, there was no application for amendment of the pleadings to bring them in line with the facts as emanated from the evidence.

Upon appeal by the employer:

Held, per Savvides J., Triantafyllides, P., concurring, that though this Court does not interfere on appeal to disturb the apportionment of liability as found by a trial Court, unless a very strong case is made out justifying such review of apportionment and provided it is satisfied that the trial Court has erred in principle or has made an apportionment of liability which is clearly erroneous, in the present case bearing in mind the findings of the trial Judge that what the respondent attempted to do was contrary to the prohibition of his employer and in full disregard of the repeated warnings of his foreman, that by so acting he turned a machine which was properly fenced and "very safe when in operation" into a source of danger and that in so doing he engaged himself in a course which was outside the scope of his duties as a driver for the distribution of bread and the fact, as found by the trial Judge, that by so acting "he was looking for trouble", the verdict of the trial Judge besides the fact that it is outside the pleaded facts and there has been no amendment of the pleadings, is contrary to his findings and inconsistent with them and that in the circumstances no ne-

gligence could be attributed to the appellant who is not to blame for this accident; accordingly the appeal must be allowed.

Per Pikis J., Triantafyllides P., concurring, that the verdict of the trial Judge holding appellant liable in negligence for breach of the duty owed to the respondent, is contradicted by the primary finding of fact and rests on a premise other than that laid in the statement of claim.

Appeal allowed.

Observations by the members of the Court of Appeal regarding reference by trial Judges to decided cases in their judgments.

Cases referred to:

Papadopoullos v. *Perikleous* (1980) 1 C.L.R. 576 at p. 579;

Municipality of Nicosia v. *Kythreotis* (1983) 1 C.L.R. 154 at p. 175;

G.I.P. Constructions Ltd. v. *Neophytou* (1983) 1 C.L.R. 669;

Nicolaou v. *Louca* (1985) 1 C.L.R. 91;

Kourtis and Others v. *Iasonides* (1970) 1 C.L.R. 180 at pp. 182, 183;

Loucaides v. *C.D. Hay & Sons Ltd.* (1971) 1 C.L.R. 134;

Hotel Catering v. *Pilavas* (1982) 1 C.L.R. 82;

Pioneer Candy Ltd. and Another v. *Stelios Tryfon & Sons Ltd.* (1981) 1 C.L.R. 540.

Appeal and Cross-appeal.

Appeal and cross-appeal against the judgment of the District Court of Limassol (Fr. Nicolaides, Ag. S.D.J.) dated the 29th February, 1984 (Action No. 1440/79) whereby in an action for damages in respect of injuries received by plaintiff whilst in the employment of the defen-

dant the liability was apportioned at 20 per cent on the defendant and 80 per cent on the plaintiff.

B. Vassiliades, for the appellant.

A. Lemis, for the respondent.

Cur. adv. vult.

The following judgments were read.

SAVVIDES J.: This is an appeal by the defendant against the judgment of the District Court of Limassol in Civil Action 1440/79, for breach of duty owed by the appellant to respondent-plaintiff, as his employee, whereby the liability was apportioned at 20 per cent against the appellant-defendant and 80 per cent against the respondent-plaintiff. The respondent plaintiff cross-appeals against such apportionment and maintains that the appellant-defendant should have been wholly to blame for the accident.

The facts of the case as found by the trial Court and which have not been contested in this appeal, are briefly as follows:

The appellant who at the material time was operating a bakery at Kalo Chorio village, employed the respondent as a driver for the distribution of his products. On the day when the accident occurred, the respondent acting in disobedience to the express instructions of the appellant and in full disregard to the repeated reprimands of his foreman to keep away from the bread cutting machine, engaged himself in the cleaning of the machine by attempting to remove the back plate by putting his hand under the plate, after having removed the piece of metal which was acting as a fence and after having put the machine in motion whilst his hand was under the plate, with the result that his hand suffered a crushing injury. By so acting, he turned a machine which as found by the trial Judge, when operating, "very safe as it is automatic and there is no need at all for the labourer operating the machine to place his hands under the knife", into a source of danger.

The trial Judge made his findings after accepting the version of the appellant and his witnesses. He said the following in this respect:

"Having examined the evidence as a whole and having the opportunity to see the witnesses testifying I have no hesitation to accept that the evidence of the plaintiff is not true. The account he gave as to how the accident happened is unnatural and unconvincing. It is impossible for the piston to be removed whilst the machine was in motion and it is more than obvious that the plaintiff's story was concocted by him. On the other hand, the version of the defendant and his witnesses is more natural and convincing."

The trial Judge having considered the evidence as accepted by him, concluded that both parties were to blame and he apportioned liability as resting upon the appellant to a percentage of 20 per cent and on the respondent to a percentage of 80 per cent. In so concluding, he said the following:

"I find that the plaintiff was employed as a driver for the distribution of the defendant's products and that by trying to clean the machine in question, he actually disobeyed the orders of the defendant. This fact alone does not, as we saw, earlier exonerate the defendant from his liability. His employee Telemachos Papadopoulos, who was, according to the evidence for the defendant, the person in charge when the defendant was not present, had the opportunity to be informed, before the accident, that the plaintiff intended to clean the machine. The plaintiff himself informed him accordingly and later he heard the plaintiff knocking on the machine trying to remove the piston. Again he expressed his disapproval to the plaintiff and informed him that only himself and the defendant were supposed to clean the machine. Nevertheless, although the knocking continued for some time, he failed to approach the plaintiff and reprimand him more definitely. He even failed to leave his work and go and see what the plaintiff was actually doing. It may be assumed that the machine was dangerous and that was the reason the defendant prohibited anyone but himself or Telemachos to clean it. It was easily foreseeable that the plaintiff handling a machine he hardly knew, might be injured. The accident might have been avoided if only Telemachos had approached

the plaintiff and appeared more firm in his prohibition... . . . . .

There is no doubt at all that the accident was caused in the course of the employment of the plaintiff. He was doing his employer's work although he was working in a place where he was forbidden to go or he was doing something which was equally prohibited. The fact that he disobeyed the orders of his employers does not mean that he had moved out of the course of his employment... . . . . .

. . . . . .

Returning to the facts of the present case, I find that the plaintiff contributed to a great extent to his injuries. The plaintiff tried to clean the machine, the operation of which was not well known to him, in-spite of the warning of the man in charge. He did not in his own interest take reasonable care of himself, although he could foresee, that he could harm himself. The person in charge prohibited to him to deal with the machine. He put his hand near the unprotected knife after turning the piece of metal which was acting in a way as a fence and after knocking the piston out. He also put the machine in motion when his hand was under the knife.

Taking all the facts into consideration, one might say that the plaintiff was really looking for trouble.

I believe that his contribution is quite severe and I would apportion the liability at 80 per cent on the plaintiff and 20 per cent on the defendant."

The trial Judge found as a fact that the machine was well protected from all sides, nevertheless he concluded that it was possible for a person not accustomed with its operation and not knowing how to clean it to be hurt by attempting to put his hand in a certain part and for this reason "the machine was dangerous."

Respondent-plaintiff in his pleadings based his claim on the allegation that "he was employed temporarily at the

aforementioned bakery *as an unskilled worker"* and that "on or about 2.9.77, while the plaintiff *during and in the course of his employmnet and having been ordered to do so* was removing and/or cleaning the back plate of the said dough cutting machine at the said bakery *while the said machine was in motion, the* plaintiff's right hand was caught by the moving parts of the said machine.

It became evident at the hearing that the respondent was not employed as an "unskilled labourer" but as a driver for distribution of bread; that not only he was not ordered but he was prohibited from interfering with the machine, and that he put the machine in motion after he had removed the protective fence and placed his hand under the plate.

The following observations as to pleadings and their amendment where such course is deemed necessary, were made by Vassiliades, P., in *Courtis* v. *Iasonides* (1970) 1 C.L.R. 180 at pp. 182, 183:

> "The pleadings in an action are the foundations of the litigation; they must be carefully prepared as the set of rails upon which the train of the case will run. The Civil Procedure Rules (Ord. 19, r.4) are clear on the point; and daily practice lays stress on the need to apply strictly this rule. A case is decided on its pleaded facts to which the Law must be applied. If in the course of the trial it appears that a party's pleadings requires amendment, steps for that purpose must be taken as early as possible in order to give full opportunity to the parties affected by the amendment to meet the new situation; to run their case, so to speak, on the new rails."

In the present case there was no application for amendment of the pleadings to bring them in line with the facts as emanated from the evidence before the Court.

It has been held, time and again, that this Court does not interfere on appeal to disturb the appointment of liability as found by a trial Court, unless a very strong case is made out justifying such review of apportionment and provided it is satisfied that the trial Court has erred in principle or has made an apportionment of liability which

is clearly erroneous (see, in this respect, inter alia, *Papadopoulos* v. *Perikleous* (1980) 1 C.L.R. 576 at p. 579, *The Municipality of Nicosia* v. *Kythreotis* (1983) 1 C.L.R. 154, 175, *G.I.P. Constuction Ltd.* v. *Neophytou* (1983) 1 C.L.R. 669, *Nicolaou* v. *Louca* (Civil Appeal 6623) (not yet reported)* in which reference is made to the same Law on this subject).

In the present case bearing in mind the findings of the trial Judge that what the respondent attempted to do was contrary to the prohibition of his employer and in full disregard of the repeated warnings of his foreman, that by so acting he turned a machine which was properly fenced and "very safe when in operation" into a source of danger and that in so doing he engaged himself in a course which was outside the scope of his duties as a driver for the distribution of bread and the fact, as found by the trial Judge, that by so acting "he was looking for trouble," I find that the verdict of the trial Judge besides the fact that it is outside the pleaded facts and there has been no amendment of the pleadings, is contrary to his findings and inconsistent with them and that in the circumstances no negligence could be attributed to the appellant who is not to blame for this accident.

For the above reasons I find that this appeal should be allowed and the attribution of any liability on the appellant has to be set aside.

Before concluding, I wish to observe that the trial Judge in his judgment has made an extensive and elaborate reference to case Law both of the English Courts and of this Court covering all aspects of the case. Reference by Judges to decided cases and in particular to decisions of this Court is useful as it enables this Court on appeal to follow the way of thought of the trial Judge, the principles on which he acted and whether such principles were correctly applied.

In the result, the appeal is allowed with costs here and at the trial in favour of the appellant. The cross-appeal is dismissed with no order for costs.

* Now reported in (1985) 1 C.L.R. 91.

PIKIS J.: The verdict of the Court holding appellant (defendant at the trial) liable in negligence for breach of the duty owed to his employee, the respondent (plaintiff at the trial), is contradicted by the primary findings of facts and rests on a premise other than that laid in the statement of claim. The court found as a fact that plaintiff suffered crushing injuries to his hand while engaged in a venture of his own, outside his duties, pursued in disobedience to express instructions of his employer. The accident occurred when respondent busied himself with the cleaning of a bread-cutting machine, contrary to the instructions of his employer and the admonitions of his foreman to keep clear of the machinery. As if such diversion from his duties—a distributor of bread—was not enough, he set the machinery in motion and interfered with it in a manner turning an otherwise safe machine to operate into source of danger. He suffered injuries when he attempted to remove the back plate of the dough-cutting machine. The Judge found as a fact that the afore-mentioned venture was wholly outside respondent's duties; in sum, as the Judge found, respondent was "looking for trouble". Apart from contradicting the verdict, this finding demolishes the pleaded case of the plaintiff (para. 4 of the statement of claim) to the effect that the accident occurred in the course of his employment and in consequence of instructions issued "to removing and/or cleaning the back plate of the said dough-cutting machine". Consequently the verdict not only it defies the primary findings of the Court but is also found outside the pleadings and the issues defined therein as well. Ordinarily the machine was, according to another finding of the trial Court, "very safe when in operation". Evidently it became dangerous because of the unauthorized meddling of the respondent. Counsel for respondent candidly acknowledge the findings of the Court contradict the pleaded case of his client.

In the light of the above there was no justification whatever for attributing liability to the employer for the accident. There was nothing that a prudent employer could reasonably be expected to do unless he was under duty to scare him off the machine. In agreement with Savvides, J., I direct that the appeal be allowed. The sole reason I consider it necessary to write a separate judgment is in

order to draw attention to an unsalutary aspect of the judgment of the trial Court that contributed, it seems to me, to a confusion of the issues that eventually led to an erroneous verdict. Instead of focussing attention on the resolution of the straight forward issues before him, the trial Judge embarked on a lengthy examination of caselaw including areas that had no immediate relevance to the issues in dispute, a course, I believe, that led him ultimately to overlook the issues before him and find his verdict on assumptions unrelated to the facts of the case. Reference was made to about 55 English and Cyprus cases, covering a wide area of the Law of negligence with voluminous citations expanding the judgment to 35 typed pages. He surveyed, inter alia, the Law relating to foreseeability in tort, engagement of competent personnel, the duty of an employer to apply proper appliances, the establishment of a safe system at work, as well as the implications of straying from duty.

It is difficult to keep live awareness of the issues calling for resolution as one reads his way through the mass of material on the Law of negligence. In the end one is left with the impression that the issue before the Judge was the duty of an occupier to a stranger. Despite the lengthy exercise undertaken no effort was made to extract the principle of Law applicable to the facts of the case in the context of the issues as defined by the pleadings. In *Kourtis and Others* v. *Iasonides*(1) the frame-work of a case and the issues calling for an answer were thus depicted: "A case is decided on its pleaded facts to which the Law must be applied". It very much seems to me that because of the fruitless exercise the case was eventually decided on a basis other than that framed by the pleadings(2) and in a manner unwarranted by the facts of the case.

The practice of massive citation of authority was deprecated by the House of Lords in *Pioneer Shipping Ltd. and Others* v. *BTP Tioxide Ltd.* [1981] 2 All E.R. 1031. All members of the Court joined in the following statement of Lord Roskill condemning the citation of a plethora of

(1) (1970) 1 C.L.R. 180, 182, 183.
(2) Christakis Loucaides v. C. D. Hay & Sons Ltd. (1971) 1 C.L.R. 134; Hotel and Catering v. Pilavas (1982) 1 C.L.R. 82; G. I. P. Constructions v. Neophytou and Another (1983) 2 C.L.R. 659.

authority by counsel where the principle of Law at issue is clear and unambiguous: "I shall not be thought discourteous or unappreciative of the industry involved in the preparation of counsel's arguments if I say that today massive citation of authority in cases where the relevant legal principles have been clearly and authoritatively determined is of little or no assistance and should be firmly discouraged". To my comprehension there are more cogent reasons still for discouraging Courts from citing unnecessarily a multitude of authorities for, unlike counsel, they do not ordinarily have to debate something on an alternative basis. They are the fact-finding-body and can invoke directly the principle of the Law relevant to the determination of the issues raised by the pleadings in the light of such findings.

Judgmentship is about the resolution of disputes and the declaration of the rights of the parties. How a trial Court should go about discharging its foremost duty, to bring judgment to bear on the dispute before it, was outlined in *Pioneer Candy Ltd. and Another* v. *Stelios Tryfon and Sons Ltd.* (1981) 1 C.L.R. 540. If the relevant principle of the Law is beyond controversy, it may be stated concisely supported, if at all necessary, by reference to one or two leading cases without need necessarily arising of citing therefrom. If the principle of Law at issue is the subject of conflicting pronouncements reference may be made to the clashing authorities with a view first to indicating and identifying the controversy and secondly to show why one line of authority is preferred to another. Reference may also be made to a case the facts of which bear resemblance to the facts of the case under trial if for any reason it is judged necessary to distinguish it. Here again the object should not be the bare citation of a case but the explanation of the reasons for distinguishing it.

Nothing said in this judgment is meant to discourage Judges or the profession from studying the caselaw. A study of cases is, apart for its importance for acquainting oneself with developments in the Law, essential for easy access to the principle of the Law relevant to the determination of a cause and amenity to state it with clarity and concision. At issue, in this case, is the liability of an employer to his employees for injuries sustained by the latter

while engaged outside the course of his employment suffered as a result of contravention of the instructions of the former. The relevant principle of the Law is that an employer is under a duty not to expose his employees to reasonably foreseeable risks at work. In determining what risks are, within reason, foreseeable knowledge about hazards at work, human proclivities as well as available scientific knowledge and its cost are all relevant and must be evaluated in the context of the facts of the case. If a defendant fails to take appropriate precautions reasonably expected of an employer in his circumstances, he can be held liable in negligence, for breach of the duty owed to his employee, but not otherwise. Given the findings of the Court in this case we fail to see what a prudent employer should do other than forbid, as the appellant did, the respondent from having anything to do with the machine and bring it to the notice of his subordinates, the man in charge in his absence, his instructions. He had no reason to anticipate that the respondent, a man of age, would disobey his instructions and far less act in the irresponsible manner he did. If the respondent chose, as the trial Court found, to go about the premises of his employer "looking for trouble" he should not look to the appellant to compensate him. Responsibility for the accident lied with him and for that reason he should bear the consequences.

We must not overlook that a judgment is not exclusively addressed to the profession but mainly to the litigants who have a right to know by reading the judgment why they win or lose their cases. They have a right to know in plain language the findings of the Court and the principle of the Law applicable so that they, as well as their neighbours, may in future direct their affairs accordingly. Judgment writing is not an academic exercise, enlightening though such exercise may be, but one involving primarily choice between conflicting claims and allegations and application of the pertinent principle of Law clearly and unequivocally. That is, in my view, the way to reason a judgment, explaining in face of conflict why one version of events is preferred to another, the principle of the Law relevant to the disposal of the case and the results of its application to the findings of the Court.

TRIANTAFYLLIDES P.: I, too, agree that this appeal should be allowed.

In view, however, of certain observations of my brother Judge Pikis J. I am anxious not to leave the impression that trial Judges should refrain from examining thoroughly the legal, in addition to the factual, aspect of each case, as has been done by the trial Judge in this occasion, or that they should avoid setting out sufficiently and fully in their judgment the relevant principles of Law and the case-law on which they have relied in this connection; and, indeed, by doing so they comply duly with the letter and spirit of the relevant provision in Article 30.2 of the Constitution.

Courts of first instance should not, therefore, be discouraged from including in their judgments in sufficient detail, but of course without undue prolixity, all factual or legal considerations which have led them to their conclusions regarding the outcome of each particular case. Their judgments are subject to review on appeal and such review can only be adequately and effectively carried out if the Supreme Court has before it everything that has in any way influenced the trial Court in reaching its decision.

I do not think that in the present case the trial Judge has overindulged in expounding the relevant legal principles. It is obvious from his meticulously careful judgment that, after having reached certain, adverse for the respondent, as plaintiff, conclusions regarding the credibility of his evidence, the trial Judge went on to examine, through a kaleidoscopic analysis of the legal facets of the case, whether or not, notwithstanding his adverse for the respondent view about his credibility, there still could be pinpointed in Law any liability in negligence of the appellant, as defedant; and, eventually, he found that the appellant was guilty of contributory negligence to the extent of 20%.

I do agree with my learned brother Judges, Savvides J. and Pikis J., that this was, in the particular circumstances of this case, a wrong finding, but I am still appreciative of

the efforts of the trial Judge in exploring all paths of the Law while striving to do justice.

In the result this appeal is allowed unanimously.

Appeal allowed.