1986 May 26

[A. LOIZOU, PIKIS, KOURRIS, JJ.]

MARY PAPADAKIS,

Appellant-Plaintiff,

v.

ANGELOS CONSTANTINOU,

Respondent-Defendant.

(Civil Appeal No. 6775).

Civil Wrongs—Invitor—Liability of, for acts of third parties in the premises—No duty to take precautions against dangers not apparent to persons of ordinary intelligence and prudence.

Whilst the appellant, a professional singer employed by the respondent at his place of entertainment, was performing her act, a foreign tourist broke a water bottle on the floor. Fragments of the bottle hit and injured the appellant, who as a result brought an action against her employer, claiming general and special damages.

The trial Court, having rejected the contention of the appellant that incidents, as the one aforesaid, were a usual occurrence in respondent's place of entertainment and having accepted respondent's evidence that the incident was an isolated and unforeseeable one, dismissed the action.

Hence the present appeal. Counsel for the appellant submitted that the respondent was vicariously liable for the appellant's injuries. His submission was based on the Common Law liability of a master towards his servants.

Held, dismissing the appeal: (1) On the totality of the evidence adduced before the trial Court and the circumstances of the case as emanating from the transcribed record, this Court does not find any reason to interfere with the findings of fact made by the trial Court.

(2) The facts of this case do not establish a case that the damage could arise from such acts of third parties as could reasonably be foreseen. As said by Lord Wright in *Glasgow Corporation* v. *Muir* [1943] A.C. 448 at page 462 "the respondents (i.e. the defendants) were not bound to take precautions against dangers which were not apparent to persons of ordinary intelligence and prudence".

Appeal dismissed with costs.

Cases referred to:

Adderly v. *Great Northern Ry* (1905) 2 I.R. 378;

Glasgow Corporation v. *Muir* [1943] A.C. 448.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Famagusta (Papadopoulos, P.D.C. dated the 12th May, 1984 (Action No. 458/81) whereby her action for general and special damages for personal injuries suffered by her whilst in the service of the defendants was dismissed.

A. Eftychiou, for the appellant.

A. Andreou, for the respondent.

A. LOIZOU J. gave the following judgment of the Court. The appellant instituted these proceedings in the District Court of Larnaca against the respondent claiming "General and Special damages for personal injuries pain and suffering and other consequential damages which she suffered on account of the negligence and/or breach of statutory duty, both under the Law and the Regulations in force and the duties and obligations of the respondent thereunder and/or his servants and/or his agents and/or breach of express terms of the written agreement of employment dated 12th May, 1981 and/or implied terms of the employment on or about June 1981 at Ayia Napa whilst the appellant was in the service of the respondent."

More clearly the claim as set out in the statement of claim is based on breach of duty under the Law and in that respect the Law invoked is Section 2 of the Criminal

Code (Amendment) Law 1975 (Law No. 3 of 1975) that prohibits the breaking by anyone of crockery and other items in places of entertainment as that of the respondent. In the alternative it was claimed that the said accident was caused "by the respondent, his servants or agents in breach of the Employer's Liability Act 1957 and the obligations derived therein". Needless to say that this English Act has no application to Cyprus.

In the course of the hearing before us, however, the vicarious liability of the respondent was based on the Common Law liability of a master towards his servants as expounded in numerous cases of this Court.

The facts of the case are these. Whilst the appellant, a professional singer employed by the respondent at his place of entertainment, was performing her act, a foreign tourist broke a water bottle on the floor. Fragments of the broken bottle hit and injured the appellant on her neck causing her serious injury and an ugly scar which looking at the photographs before us calls for extensive plastic surgery. She no doubt has our sumpathy for her predicament.

The factual issue of the case at the trial turned on whether there had been a habitual breaking of crockery and other glassware in the place of entertainment, which conduct the respondent took no precautions and measures to prevent, or not. The learned President, after hearing the evidence and on the basis of the credibility of the witnesses, whose testimony, he accepted, concluded that the incident by this foreign tourist who threw the water bottle on the dancing floor was an isolated and unforeseeabe one which happened in the entertainment place of the respondent and he rejected the version of the appellant that such an event was of usual occurrence and something which the respondent himself encouraged.

Learned counsel for the appellant has invited this Court to interfere with these findings of fact made by the learned President and drew our attention to a part of the testimony of one of the witnesses for the appellant which related to an incident when a certain Kikis Constantinou threw, obviously out of anger, the glasses and other glass items from the table on the floor for which he was approached by the waiter who spoke to him and that was the end of it. Our attention was also drawn to the fact that the waiter remarked that this Kikis Constantinou always does these things or words to that effect.

On the Law pertaining to the issues raised in the appeal learned counsel for the appellant has referred us to the relevant passage to be found in Salmond on the Law of Torts, Seventeenth Edition page 271 where the following is stated under the heading "Liability for third parties."

> "The invitor's duty most commonly has reference to the structural condition of the premises, but it may also be extended to include the use which he (or whoever has control so far as is material) permits a third party to make of the premises. The occupier has the power of immediate supervision and control and the power of permitting or prohibiting the entry of other persons and he is under a duty to take reasonable care to prevent damage, at least from unusual danger, arising from such acts of third parties as could reasonably be foreseen. So the occupier of a theatre has been held liable for a dangerous show put on by an independent contractor, and the occupiers of a vehicle, club, or restaurant for assaults committed by intoxicated passengers or guests."

Learned counsel has further invited our attention to the case of *Adderley* v. *Great Northern Ry.* (1905) 2 I. R. 378, a case of assault by a drunken fellow-passenger, of which unfortunately the full report is not available. This case, however, together, inter alia, with the case of *Glasgow Corporation* v. *Muir* (1943) A.C. 448, 463 are cited in the footnotes to the aforesaid passage in support of the proposition that the invitors duty may be extended to include the use which he permits a third party to make of the premises. This emanates from the power of the occupier for supervision and control and the power of permitting, or prohibiting the entry of other persons and, of course, the duty to take reasonable care to prevent damage, at least from unusual danger, arising from such acts of third parties as could reasonably be foreseen.

Learned counsel for the appellant has argued that the learned President wrongly held that the respondent had no liability in law for the act of the throwing of the water-bottle by his client whilst the appellant was singing and as a result of which the latter was injured by the fragments of the broken bottle, and that since it had been proved from the evidence adduced that it was likely to be created a dangerous situation for the appellant in the dance-floor of the place of entertainment of the respondent by the breaking of fragile objects, and further that the learned President concluded that the appellant did not prove that the respondent could have a safer system of work for her, as in accordance with the Law he had no such duty to discharge.

Having considered the totality of the evidence adduced and the circumstances of the case as emanating from the transcribed record, we find no valid reason to interfere on appeal with the findings of fact made by learned President. On the factual basis of the case we have come to the conclusion that the learned President correctly arrived at the conclusion he did, as the facts as accepted by him do not establish a case that the damage could arose from such acts of third parties as could reasonably be foreseen, the whole incident being obviously an isolated incident in itself. As said by Lord Wright in the *Glasgow Corporation case* (supra) at p. 462, "the respondents (i. e., the defendants) were not bound to take precautions against dangers which were not apparent to persons of ordinary intelligence and prudence".

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

Appeal dismissed with costs.