[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

1972
May 16

STAVROS G. TSANGARIS,
Appellant-Plaintiff,

v.

GEORGHIOS TAMAMOUNAS AND ANOTHER,
Respondents-Defendants.

STAVROS G. TSANGARIS *v.* GEORGHIOS TAMAMOUNAS AND ANOTHER

(*Civil Appeal No.* 5013).

Negligence—Master and Servant—Duty of Master—Safe system of work—Demolition of roof—Workman falling from roof by knowingly stepping on to asbestos sheets believing that they could support his weight—Existence of planks on which workman could safely step—Warning by fellow-worker to avoid stepping on to asbestos sheets—Finding of the trial Court that workman was injured solely because of his own negligence amply warranted—System of work adopted by employer namely the placing of planks, a safe one in the circumstances.

Master and Servant—Duty of master towards his servants—To provide safe system of work—See supra.

Safe system of work—See supra.

Statutory duty—Breach—Onus and standard of proof.

Building—Safety Regulations—Demolition of roof—Planks providing sufficient and safe foot-hold placed on roof—" Portable ladders " or " safety ladders " provided under Regulation 31 (3) *of the Buildings (Safety, Health and Welfare) Regulations,* 1965*—Whether planks, placed as aforesaid substantially different from " portable ladders " or " safety ladders ".*

Building—Safety Regulations—Demolition of roof—Duty to employ workman experienced in the particular kind of work—Forty years experience in building operations by workman injured—Nature of demolition work, cannot be regarded, in the circumstances of this case, as being outside the ambit of said experience—Regulation 79 (5) *of the Buildings (Safety, Health and Welfare) Regulations,* 1965*—See further* infra.

Building—Safety Regulations, supra*—Demolition of roof—" Immediate Supervision " in Regulation* 79 (5) (supra)*—Absence for a short space of time of supervisor of work, after he had arranged a safe system of work—Not a breach of said Regulation* 79 (5).

The appellant workman took this appeal from the judgment of the District Court of Nicosia dismissing his action for damages in respect of injuries which he has suffered allegedly due to the negligence of, or breach of statutory duty by the respondents, (respondent No. 1) being his employer.

The trial Court dismissed the action, having held, *inter alia*, that the injuries suffered by the plaintiff (now appellant) were solely due to his own negligence.

After reviewing the facts, the Supreme Court dismissing this appeal,

Held, (I). As to the allegation of negligence and breach of the duty to provide a safe system of work :

(1) On the evidence we are of the view that the finding of the trial Court that the accident was solely due to the workman's (appellant's) negligence was amply warranted.

(2) Furthermore, we are inclined to agree with the trial Court that the system of work adopted by the employer (respondent 1), namely the placing of planks on the roof on which the workmen were to squat or step while demolishing the roof, was in the circumstances a safe one.

Held, II. As to the allegation of breach of statutory duty viz. *breach of Regulations* 31 (3) *and* 79 (5) *of the Buildings (Safety, Health and Welfare) Regulations* 1965 :

(1) The general principles of law relevant to the matter of liability for breach of statutory duty are summarized in Halsbury's Laws of England, 3rd ed. Vol. 17, p. 9, paragraph 10 (*Note :* The passage is set out *post* in the judgment). See also *Bonnington Castings Ltd.* v. *Wardlaw* [1956] 1 All E.R. 615, at p. 618 H.L. and the other English cases (*infra*).

(2) In the absence of any evidence to the contrary, we cannot hold that it has been established by the appellant that the planks which were provided in this case, and which provided sufficient and safe foot-hold on the roof were substantially different from the " portable ladders " or " safety ladders " referred to in Regulation 31 (3) (*supra*) ; so, it has not been proved that there was no compliance with such regulation.

(3) Regarding Regulation 79 (5) (*supra*) it has been contended by counsel for the appellant that there had to be

employed workmen experienced in this particular kind of work, namely demolition work, and that the appellant was not such a workman. But the appellant had forty years' experience in building operations and the nature of the work which he was doing in demolishing the roof in question cannot, in our view, be regarded in the circumstances of this case, as being outside the ambit of his said experience.

(4) Concerning the matter of supervision, it is true that the accident happened soon after (respondent No. 1)—who was supervising the demolition work—had gone away for a few minutes. But in the light of the dictum of Ormerod L.J. in *Owen* v. *Evans and Owen (Builders) Ltd.* [1962] 3 All E.R. 128, at p. 131 (see this dictum *post* in the judgment) and the particular circumstances of this case we find that the absence for a short space of time of respondent No. 1, after he had arranged a safe system of work, was not a breach of Regulation 79 (5) (*supra*).

(5) In any case, and independently from the above, we are of opinion that it has not been established on the balance of probabilities that the injuries suffered by the workman appellant were caused, or contributed to, by a breach of statutory duty, if at all, because, as already stated the accident was entirely due to the workman's (appellant's) own negligence.

Appeal dismissed. No order as to costs of the appeal.

Cases referred to :

Bonnington Castings, Ltd. v. *Wardlaw* [1956] 1 *All E.R.* 615, *at p.* 618 ;

Nicholson and Others v. *Atlas Steel Foundry and Engineering Co., Ltd.* [1957] 1 All E.R. 776 ;

Clarke v. *E.R. Wright and Son and Another* [1957] 3 All E.R. 486 ;

Clarkson v. *Modern Foundries, Ltd.* [1958] 1 All E.R. 33 ;

Nolan v. *Dental Manufacturing Co., Ltd.* [1958] 2 All E.R. 449 ;

Wigley v. *British Vinegars, Ltd.* [1961] 3 All E.R. 418 ;

Jenner v. *Allen West and Co. Ltd.* [1959] 1 W.L.R. 554 ;

Owen v. *Evans and Owen (Builders) Ltd.* [1962] 3 All E.R. 128, at p. 131.

1972
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—
STAVROS G. TSANGARIS
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GEORGHIOS TAMAMOUNAS AND ANOTHER

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Evangelides and Ioannou, Ag. D. JJ.) dated the 24th September, 1971, (Action No. 884/69) whereby plaintiff's action for damages in respect of injuries he suffered, allegedly due to the negligence of, or breach of statutory duty of, the defendants, was dismissed.

L. Clerides with *T. Eliades*, for the appellant.

L. Papaphilippou, for respondent No. 1.

K. Michaelides, for respondent No. 2.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P. : The appellant appeals from a judgment of the District Court of Nicosia by means of which there was dismissed an action against the respondents for damages in respect of injuries which he has suffered, allegedly due to the negligence of, or breach of statutory duty by, the respondents.

The trial Court dismissed the action, having held that the injuries suffered by the appellant were solely due to his own negligence.

It is useful to summarize, first, very briefly, the salient facts of this case :

Respondent No. 2 had entered into an agreement with respondent No. 1, as a building contractor, for the demolition of a shed belonging to respondent No. 2 ; its roof was made of asbestos sheets. Respondent No. 1 employed three or four workers for this purpose, one of whom was the appellant. As the appellant was working on the roof, demolishing part of it, he stepped, while moving backwards, on one of the asbestos sheets which gave way and he fell through the roof to the ground and was injured very severely indeed. Along the roof there had been placed planks on which the workers carrying out the demolition work were to squat or step while working, in order to avoid stepping on to the asbestos sheets.

It is in evidence, which has been accepted by the trial Court, that about five minutes before the fall of the appellant through the roof, one of his fellow-workers told him to be careful and showed to him where he should stand in the course of doing his work ; the appellant was told to step only on to the planks but he replied that he was light in weight and that there was no cause for anybody being worried about him.

The appellant did not step accidentally on the asbestos sheet of the roof through which he fell to the ground ; as it appears from the record before us, he knowingly stepped on the said sheet, believing that it could support his weight ; therefore, we are of the view that the finding of the trial Court that it was solely because of his own negligence that the appellant was injured was amply warranted.

Furthermore, we are inclined to agree with the trial Court that, on the basis of the evidence adduced, it appears that the system of work adopted by respondent No. 1, namely the placing of planks on the roof on which the workmen were to squat or step while demolishing the roof, was, in the circumstances, a safe one.

Counsel for the appellant has raised, also, the issue of breach of statutory duty ; and has argued in this respect that there have been committed breaches of regulations 31 (3) and 79 (5) of the Buildings (Safety, Health and Welfare) Regulations, 1965, which were made by the Council of Ministers under the relevant provisions of the Factories Law, Cap. 134.

It has been submitted by counsel for the respondents that these Regulations are *ultra vires* the said Law, Cap. 134.

As, for the reasons which will be stated in this judgment, we have not been satisfied by the appellant that his injuries were caused by a breach of statutory duty, we have decided that it is not necessary to decide in this case whether or not the Regulations in question are *ultra vires*, and we shall proceed on the *assumption* that they were validly made.

The general principles of law relevant to the matter of liability for breach of statutory duty are summarized in Halsbury's Laws of England, 3rd ed., vol. 17, p. 9, paragraph 10, as follows :—

> " The civil right of action for breach of statutory duty arises if it is shown (1) that there has been a breach of statutory duty towards the plaintiff, he being among the class of persons whom the statute is intended to protect, and (2) that the damage or injury was caused or was materially contributed to by the breach.
>
> The onus of proof, both of breach of statutory duty and of causation of the damage or injury is on the plaintiff. Whether sufficient causal connexion of the damage or injury with the breach of statutory

duty is proved should be determined by applying common sense to the facts of the case rather than by the theories of logicians. The onus of proving that the injury was caused by the breach of duty is not shifted from a plaintiff employee merely by the facts that there has been a breach of a safety enactment and that the employee has been injured in a way that could have resulted from the breach."

In *Bonnington Castings, Ltd.* v. *Wardlaw* [1956] 1 All E.R. 615, Lord Reid stated the following (at page 618) :—

" It would seem obvious in principle that a persuer or plaintiff must prove not only negligence or breach of duty but also that such fault caused, or materially contributed to, his injury, and there is ample authority for that proposition both in Scotland and in England. I can find neither reason nor authority for the rule being different where there is breach of a statutory duty. The fact that Parliament imposes a duty for the protection of employees has been held to entitle an employee to sue if he is injured as a result of a breach of that duty, but it would be going a great deal further to hold that it can be inferred from the enactment of a duty that Parliament intended that any employee suffering injury can sue his employer merely because there was a breach of duty and it is shown to be possible that his injury may have been caused by it. In my judgment, the employee must, in all cases, prove his case by the ordinary standard of proof in civil actions ; he must make it appear at least that, on a balance of probabilities, the breach of duty caused, or materially contributed to, his injury."

The *ratio decidendi* of the *Bonnington* case was applied in *Nicholson and Others* v. *Atlas Steel Foundry and Engineering Co., Ltd.* [1957] 1 All E.R. 776, *Clarke* v. *E. R. Wright & Son and Another* [1957] 3 All E.R. 486, *Clarkson* v. *Modern Foundries, Ltd.* [1958] 1 All E.R. 33, *Nolan* v. *Dental Manufacturing Co., Ltd.* [1958] 2 All E.R. 449 and *Wigley* v. *British Vinegars, Ltd.* [1961] 3 All E.R. 418.

We are of the opinion that it has not been established on the balance of probabilities that the injuries of the appellant were caused, or contributed to, by a breach of statutory duty, as alleged by him ; as stated, already, in this judgment we are in agreement with the learned trial Judges that the injuries of the appellant were caused solely

by his own negligence ; therefore, there could not be found to exist a probability, or even a possibility, that such injuries were caused by a breach of statutory duty by the respondent.

We would go further and say that in our view there has not even been established any contravention of regulations 31(3) and 79(5), as has been contended by counsel for the appellant :

It has been argued in this connection that as the appellant was working on a roof covered with fragile material, namely asbestos sheets, there was a duty, under regulation 31(3), to provide " portable ladders " or " safety ladders " (" φορηταὶ κλίμακες " ἢ " κλίμακες ἀσφαλείας ").

There does not exist on record any evidence explaining the meaning of the technical terms in question as understood in the building trade—(as in *Jenner* v. *Allen West & Co. Ltd.* [1959] 1 W.L.R. 554, in relation to the meaning of crawling boards in regulation 31(3) of the Building (Safety, Health and Welfare) Regulations, 1948, in England, which corresponds to our regulation 31(3))—and in the absence of such evidence we cannot hold that it has been established by the appellant that the planks which were provided, as aforesaid, and which provided sufficient and safe foot-hold on the roof were substantially different from the " portable ladders " or " safety ladders " referred to in regulation 31(3) ; so, it has not been proved that there was non-compliance with such regulation.

Regarding regulation 79(5), it has been contended by counsel for the appellant that there had to be employed workmen experienced in the particular kind of work, namely, demolition work, and that the appellant was not such a workman ; also that there should have been immediate supervision by a competent foreman and that when the appellant fell through the roof such supervision did not exist.

The appellant had forty years' experience in building operations and the nature of the work which he was doing in demolishing the roof cannot, in our view, be regarded, in the circumstances of this case, as being outside the ambit of his said experience ; we cannot see, in this respect, any real difference between constructing an asbestos sheets roof and demolishing such a roof, because in the course of both these operations the workmen have to avoid stepping on to the asbestos sheets which are a fragile material.

Concerning the matter of supervision, it is in evidence that the accident happened soon after respondent No 1—who was supervising the demolition work—had gone away for a few minutes in order to fetch a carpenter and, thus, there was nobody supervising the work at the material time.

In *Owen* v. *Evans and Owen* (*Builders*), *Ltd.* [1962] 3 All E.R. 128, Ormerod, L.J. said the following (at p. 131) in relation to the application of the relevant part of regulation 79(5) of the Building (Safety, Health and Welfare) Regulations, 1948, in England, which corresponds to our regulation 79(5) :—

> "It has been argued that in the circumstances of this case, there has been a breach of that regulation. Mr. Stanley Owen went away from this work. He was undoubtedly and admittedly a competent foreman to be in charge of this work. It was his duty to supervise it. He went away for ten minutes, and while he was away the accident happened. Therefore, it is argued on behalf of the plaintiff that there had been a breach of the regulations as the work had not been carried out under his immediate supervision. The question is: What is meant by 'immediate'? It has been submitted that 'immediate' must mean constant, unremitting supervision of work of this kind. That is not my view of the proper construction of this regulation. The word 'immediate', in my judgment, carried no limitation of supervision, other than it must be a direct supervision. There must not be any intermediary between the person supervising and the person being supervised. That, I think, is the meaning of the word 'immediate'. It means 'direct'. But it has been submitted on behalf of the plaintiff that it means much more than that; that it means 'constant'. That I cannot accept, but that, of course, does not put an end to the matter, because it may be that the term 'constant' is a quality connoted in the term 'supervision'. I do not think that is so. I think that the supervision, in certain circumstances, may have to be constant—in circumstances which will demand it—whereas in other circumstances a much more intermittent supervision will be compliance with the regulation."

In the light of the above dictum and the particular circumstances of this case we find that the absence, for

a very short space of time of respondent 1, after he had arranged a safe system of work, was not a breach of regulation 79(5).

For all the foregoing reasons this appeal fails, and is dismissed.

Bearing in mind the fact that the appellant was very severely incapacitated—and his condition does call for consideration by the respondents from the humanitarian point of view—we shall make no order as to the costs of the appeal.

Appeal dismissed. No order as to costs of the appeal.