

1979 November 17

[DEMETRIADES, J.]

ANGELIS SAVVA,

*Plaintiff,*

v.

S. CH. IEROPOULOS CO. LTD. AND ANOTHER,

*Defendants.*

(Admiralty Action No. 77/75).

*Negligence—Loading of ship—Injury to stevedore from hook of sling which sprang free whilst being raised—Hook fastened by plaintiff himself who tested it to see whether properly secured—Plaintiff solely to blame for the accident—Absence of person giving signal for raising of load in no way contributed to the accident.*

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*Ship—Loading of ship—Injury to stevedore employed on quay—Stevedore the employee of the shipper and not of the carrier—Action against carrier dismissed.*

The plaintiff, a stevedore, was injured whilst employed in the loading of pallets containing boxes of citrus fruit on the ship "UNKERMARK". His duty was, with the help of another stevedore, to hook on the pallet the sling of the winch that was to lift the pallet into the holds of the ship. After the sling was fastened on the pallet and whilst being raised on the ship one of the hooks sprang free and injured the plaintiff on the mouth.

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Two stevedores were employed to hook the sling on the pallet. One would fix two of the hooks of the sling and the other the other two. After fixing the hooks, a person—referred to as the "Koumandos"—would shout out "vira", which was the signal for the winch operator to raise the load. The operator of the winch, which was fixed on the ship and was electrically operated, would lift the pallet slightly above the ground to test whether the sling had been properly hooked and once he found that the winch wires had taken the full strain, he would lift it onto the ship.

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The hook that hit plaintiff was one of the two hooks that he

himself had fitted into one of the holes of the pallet and had tested them to find out whether they were secured. Though it was usual for a "Koumandos" to direct the lifting operation, there was no such person present at the time the accident occurred and "vira" was shouted by somebody else.

*In an action for damages for personal injuries against defendants 2, the owners of the said ship and against defendants 1, their agents:*

*Held*, that considering that the plaintiff was the person whose duty was to see that the sling hooks on his side were properly fastened in the pallet, that the hook that sprang free and injured the plaintiff had already been tested by him to see if it was properly secured and that the winch operator before starting to lift the load, saw the plaintiff move from the pallet onto another one—which proves that the plaintiff had already satisfied himself that the hooks had been securely fastened—the accident occurred as a result of the negligence of the plaintiff himself who is solely to blame for it and the absence of the "koumandos" in no way contributed to the accident, nor had it anything to do with what caused it; and that, accordingly, the action must be dismissed.

*Held*, further, that the action against defendants 2 must fail for the reason that the plaintiff was the employee of the shipper of the pallets and not of the carrier, defendants 2, because he was employed in the loading process that took place on the quay.

*Action dismissed with costs.*

#### Admiralty Action.

Admiralty action for special and general damages for injuries sustained by plaintiff whilst employed in the loading of cargo on the ship "UNKERMARK".

*St. Kittis*, for the plaintiff.

*St. McBride*, for the defendants.

*Cur. adv. vult.*

DEMETRIADIS J. read the following judgment. This is an action by which the plaintiff claims special and general damages for injuries, loss and damage he suffered whilst employed in the loading of cargo on the ship "UNKERMARK" which was, at the material time, lying in the port of Limassol.

At the beginning of the hearing, counsel informed the Court

that the special and general damages to which the plaintiff would be entitled, on a full liability basis, had been agreed at £750.—. The only issue that remains for the Court to decide is, thus, that of liability.

The facts of the case are in brief as follows: In the morning of the 17th February, 1975 the plaintiff, a stevedore, was employed in the loading on the ship "UNKERMARK" of pallets which contained boxes of citrus fruit. His duty was, with the help of another stevedore, to hook on the pallet the sling of the winch that was to lift the pallet into the holds of the ship. After the sling was fastened on the pallet and whilst being raised on the ship by P.W.1 Yiannos Angeli, one of the hooks sprang free and injured the plaintiff on the mouth.

It is now the case for the plaintiff that both defendants are liable for the injuries and the consequential loss he suffered. The 2nd defendants were the owners of the ship and the 1st defendants their agents.

Before proceeding to examine the evidence as to how the accident occurred, I consider it pertinent to say a few words how the process of the loading of the cargo in question was being carried out. This process was given to the Court by P.W.1 Angeli, who is a foreman stevedore, and it is as follows: Two stevedores were employed to hook the sling on the pallet which was on a lorry. One of the stevedores stood on top of the pallet and the other on the quay and their duty was to fix the four hooks of the sling into the four rings or holes that were at the four corners of the pallet. One of the stevedores would fix two of the hooks of the sling and the other the other two. After fixing the hooks, a person—who has been referred to as the "koumandos"—would then shout out "vira" which was the signal for the winch operator to raise the load. The operator of the winch, which was fixed on the ship and was electrically operated, would then press a button, lift the pallet slightly above the ground to test whether the sling had been properly hooked and once he found that the winch wires had taken the full strain, he would lift it onto the ship.

The plaintiff, who is P.W.2, told the Court that after he had hooked the hooks in the two holes of the pallet, he pulled them strongly to test if they were secured and the hooks did not slip from the holes. This, he said, was the only way of making sure that the sling was properly hooked on the pallet. The

plaintiff went on to say that one of his companions, who was standing nearby, then called out "vira", the operator of the winch started lifting the pallet and it was then that one of the hooks sprang free and hit him. The hook that hit him, he said,  
5 was one of the two hooks that he himself fitted into one of the holes of the pallet.

Costas Kyriacou, P.W.3, was the stevedore who was working with the plaintiff and who fixed the other two hooks of the sling. He gave this version as to how the accident occurred: "When  
10 the sling was lowered, I fixed the two hooks which were on my side of the pallet. I saw the plaintiff bent down in order to fix the hooks in the holes that were on the pallet. I could see the holes on my side but I could not see well the holes which were on the side of the plaintiff. Whilst the plaintiff was  
15 bending down fixing the hooks, I heard somebody shout 'vira' and the pallet was lifted about 3 inches. Immediately then the pallet started being lifted at a faster speed and one of the hooks that were on the side of the plaintiff got loose and hit him".

20 In cross-examination this witness said that the persons who usually tell the winchman to lift the pallet are the workers who hook the sling on the pallet and that after a stevedore hooks the pallet on the sling, he pulls away. In this particular occasion, this witness said, "vira" was shouted by somebody  
25 whilst he was still in a bending position and before he had time to move away from the pallet. He denied that he was the person who shouted "vira". This witness contradicted the allegation of the plaintiff that there were other stevedores standing nearby and that they called "vira", in that he denied that any other  
30 person was present there besides the plaintiff and himself.

Yiannos Angeli, P.W.1, said that from where he was, he could see the two stevedores, i.e. the plaintiff and the other man, fixing the hooks of the sling in the rings; that whilst he was waiting for the plaintiff and the other man to hook the sling he  
35 heard somebody shout "vira", and that though it is usual for a "koumandos" to direct the lifting operation, there was no such person present at the time the accident occurred. However, he said, from where he was he could see everything well and the "koumandos" could not have assisted him better in the lifting

of the pallet. Angeli further said that the person who has to make sure that none of the hooks will spring free is the man who in fact fits them into the rings of the pallet. This witness also said that when he pressed the button of the winch to test if the sling was properly hooked, the plaintiff had already moved away from the pallet onto another one. 5

Comparing now the evidence of the plaintiff with that of his witness Kyriacou, P.W.3, I find that the evidence of the latter does not in any way support the version of the plaintiff as to how the accident occurred. I further find that the person who gave the signal to P.W.1 Angeli to lift the pallet must have been either the plaintiff or P.W.3 since, according to the evidence of P.W.3, there was nobody else nearby. There is no doubt in my mind that P.W.3 came to Court to help his comrade, though unsuccessfully. 10 15

Considering now that the plaintiff was the person whose duty was to see that the sling hooks on his side were properly fastened in the pallet, that the hook that sprang free and injured the plaintiff had already been tested by him to see if it was properly secured, and that Angeli, P.W.1, before he started lifting the load saw the plaintiff move from the pallet onto another one—which proves to me that the plaintiff had already satisfied himself that the hooks had been securely fastened—I find that the accident occurred as a result of the negligence of the plaintiff himself and that he is solely to blame for it. The absence of the “koumandos” in no way contributed to the accident, nor had it anything to do with what caused it. 20 25

There is one other reason why this action must fail. According to the evidence of D.W.1 Giorkadjis, which is supported by the evidence of P.W.1 Angeli, the plaintiff, because he was employed in the loading process that took place on the quay, was the employee of the shipper of the pallets and not of the carrier, that is to say the 2nd defendant. In the absence of any evidence that the accident was caused as a result of the negligence of the winch operator, the plaintiff’s claim should fail. 30 35

Evidence was adduced that after this accident and since the Port Authority took over the management of the Port of Limassol, the system of loading changed; that pallets are now

unloaded on the lorries by forklifts onto the quay and that the stevedores stand, whilst hooking the hooks of the sling on the pallet, on the quay. In view of my finding, however, that the plaintiff was solely to blame for the accident, I find that this  
5 change in the system of work has nothing to do with the present case and does not help the plaintiff.

In the circumstances, I dismiss the action with costs.

*Action dismissed with costs.*