1987 November 18

[A LOIZOU DEMETRIADES LORIS JJ]

EMILIOS GEORGHIOU,

Appellant - Plaintiff,

v

ANTONIOU WOOD MANUFACTURERS LTD ,

Respondents - Defendants

(Civil Appeal No 6661)

Employers' liability — Employee sustaining injuries whilst using employers' machinery for his own purposes but with employers' permission — Duty of care owed to employee by his employers — It is not the duty of care of an employer towards his employees, but of an occupier of premises to licensees in the premises, that is a duty to warn him of any unknown hidden dangers

Breach of statutory duty — Employee sustaining injuries whilst working in a factory using employers' machinery for his own purposes, but with employer's permission — The Factories Law, Cap 134, section 66(1) — Breach by employer of Regulations made pursuant to said section (Regs 31 and 32 of the Woodworking Machines Regulations 1973) — As the section applies to «persons employed» the appellant did not belong to the class of persons the law intended to protect — Consequently, no duty was owed to him by his employers

The appellant was injured whilst operating a vertical spindle moulding machine at the factory of the respondents, who are manufacturers of wooden furniture No suitable jig or holder, as is required by Regulations 31 and 33 of the Woodworking Machines Regulations 1973, was provided by the respondents, moreover no instructions or warning were given regarding the proper and safe use of the machine in question, nor was his attention directed to the presence of any such holder in the workshop

At the material time the appellant was not acting in the course of his employment with the respondents, but was doing private work for a customer of his own using the respondent's workshop and machines with their permission

It must be noted that it was a term of the contract of employment of the appellant/plaintiff with the respondents that in addition to his wages he would be at liberty to use their tools and machinery for his own purposes

This is an appeal from the judgment, whereby appellant's action for damages, was dismissed.

Held, dismissing the appeal: (1) The appellant was not acting at the time of the accident in the course of his employment with the respondents, but was a licensee doing a private job. It follows that the respondents did not owe to him a duty of care as an employee.

2) The appellant being a licensee was owed no greater duty of care than the ordinary common law duty of care owed by the occupier of premises to licensees entering such premises for their own purposes in which the occupier has no interest, that is no more than a duty to warn him of any unknown hidden dangers.

3) Since section 66(1) of Cap. 134 by virtue of which the aforesaid regulations were made, expressly applies to «persons employed», the appellant does not belong to the class of persons the law intended to protect Therefore the respondents were not in breach of their statutory duty towards the appellant, as none was owed to him

Appeal dismissed with costs.

Cases referred to:

Napieralski v Curtis (Contractors) Ltd. [1959] 2 All E R 426

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Boyadjis, P.D.C.) dated the 18th November, 1983 (Action No. 4346/81) whereby appellant's claim against the respondents for damages for injuries sustained by plaintiff whilst operating machinery at defendants' factory was dismissed.

Chr. Kitromelides, for the appellant.

M. Christofides with S. Triftarides, for the respondents.

Cur. adv. vult.

A. LOIZOU J. read the following judgment of the Court. This is an appeal from the judgment of the learned President (Boyadjis P.), of the District Court of Nicosia, whereby the appellant's claim against the respondents for damages for injuries sustained by him while operating machinery at their factory in Nicosia was dismissed with costs.

The facts of the case, so far as relevant for the purposes of the present appeal are briefly as follows:-

The appellant was injured whilst operating a vertical spindle moulding machine at the factory of the respondents who are manufacturers of wooden furniture. He had been employed by them six months prior to the accident, having presented himself at the time as able to do all the necessary work for all kinds of furniture and to operate all the machines in their workshop. The machine on which he was injured was purchased by the respondents about two or three months prior to the accident.

On the day of the accident, which was a Saturday, the appellant started the vertical spindle machine intending to do work on an oak wood leg of a bed. He was holding the piece of wood with his bare hands against the cutters of the machine and the moment the wood came into contact with the cutters, it was thrown back, his left hand thus came into contact with the revolving cutters of the machine and was seriously injured.

According to the evidence of the inspector of factories given before the trial Court, the accident was caused despite the use of the proper guard with which the machine was equipped at the time of the accident, because, when the operator of the machine commences to make a cutting elsewhere, than at the end of the surface of the material, there is a real danger of the material being thrown back and the operator sustaining injuries. For this reason, a «holder» must be used, or the trailing end of the material must be secured with a suitable back stop, which the appellant did not use. A different holder is necessary for each material depending on its size and shape, which must be provided or constructed each time to suit the needs of the particular piece of wood to be machined. Its construction takes about forty to sixty minutes.

The learned President found on the one hand that the appellant/plaintiff was employed by the respondents as a craftsman albeit an experienced one, conversant with the use of the machines; furthermore it was found that no suitable jig or holder, as is required by Regulations 31 and 33 of the Woodworking Machines Regulations 1973, was provided by the respondents, and also that no instructions or warning were given regarding the proper and safe use of the machine in question, nor was his attention directed to the presence of any such holder in the workshop.

On the other hand it was found that the appellant was not acting in the course of his employment with the respondents at the time when the accident occurred, but was doing private work for a customer of his own using the respondent's workshop and machines with their permission.

It was further found that the respondents owed the appellant no duty at common law neither as his employers, as he was doing work of his own during nonworking hours which was totally unconnected with the work they employed him to do, nor any duty as a licensee. Finally it was held that the respondents were not in breach of their statutory duty as no such duty was owed to him since he was not «a person employed» as is provided in section 66(1) of the Factories Law, Cap. 134, but was doing a private work of his own.

As against this decision the appellant filed the present appeal on the grounds that since the trial Judge found that it was a term of the contract of employment of the appellant/plaintiff with the respondents that in addition to his wages he would be at liberty to use their tools and machinery for his own purposes, it was therefore an express or implied term or condition that such tools and machinery would be safe; moreover that the learned President wrongly found that the appellant/plaintiff was a licensee and not an employee entitled under a contractual right to use the tools and machinery of his employers.

From a perusal of the evidence we find no reason to interfere with the findings of fact as accepted by the learned President, which we find as correct. We consider that the appellant was at the time of the accident not acting within the course of his employment but was indeed a licensee doing a private job of his own and the fact that he may have been allowed to do so under the terms of his contract of employment, with the respondents does not bring the accident within the course of his employment. Consequently, as correctly found by the trial Judge, no duty of care was owed to him as an employee.

We further consider that the appellant being a licensee was owed no greater duty of care than the ordinary common law duty of care owed by the occupier of premises to licensees entering such premises for their own purposes in which the occupier has no interest, that is, no more than a duty to warn him of any unknown hidden dangers. In the present case we consider that in view of the

fact that the appellant was familiar with the premises and the mode of operation of the machinery in question, such duty to warn him on that particular day was not necessary.

Finally as to whether the respondents were in breach of their statutory duty towards the appellant, it must be shown that the respondent owed a duty which he failed to perform, that the appellant/plaintiff had suffered the kind of harm which the law intended to prevent and that he belonged to the class of persons the law intended to protect.

We would consider that in the circumstances and in the light of the particular statutory provisions the respondents had a duty to provide suitable back stops or holders as is required by Regulations 31 and 33 of the Woodworking Machines Regulations 1973, which they failed to discharge. Moreover the appellant's injuries were of the type the law intended to prevent. However, since section 66(1) of Cap. 134 by virtue of which the aforesaid regulations were made, expressly applies to «persons employed» we have no doubt in our minds that the appellant does not belong to the class of persons the law intended to protect. Therefore we consider that the learned President correctly decided that the respondents were not in breach of their statutory duty towards the appellant, as none was owed to him.

A case similar to this case is that of *Napieralski v. Curtis (Contractors) Ltd.*, [1959] 2 All E.R. 426, also referred to by the trial Court. It turned on the construction of s. 94(1) of the English Factories Act 1937 which corresponds to section 26 of our Factory Law, Cap. 134 and Regulation 10(c), of the Wood Working Machinery Regulations (1922), now deemed to be made under section 60(1) of the English Act which is identical to our section 66(1).

It was stated therein at p. 432 as regards the words «every person employed» contained in the relevant Act as follows:

> «Counsel for the plaintiff contended that the words were wide enough to include any person who was employed or legitimately working on the premises. I find myself, after consideration, unable to accept that interpretation. I do not think that the word 'working' is wide enough to cover what the plaintiff was doing at the time. Mr. Thomson was really pursuing a hobby of his own, making a table for himself, and

all the plaintiff was doing was helping him to pursue his hobby. The plaintiff was a mere volunteer at the time, not employed under any contract of service or for services. He was voluntarily helping Mr. Thomson to do a private job of his own.»

In conclusion we find that the learned President rightly decided as he did. This appeal therefore fails and is hereby dismissed with costs.

Appeal dismissed with costs.