EMIR AHMET DJEMAL,

Plaintiff,

v.

ZIM ISRAEL NAVIGATION CO. LTD. AND ANOTHER,

Defendants.

(*Admiralty Action No.* 1/65).

Civil Wrongs—Negligence—Injuries to plaintiff in the course of his employment as a stevedore on a ship—Claim for damages against his employers—Liability—Negligence—Contributory negligence—Statutory duty—Breach of—Regulation 40 *of the Docks Regulations—Safe place of work and proper system or mode of handling machines—Duty of the employers in these respects—The rule "Res Ipsa Loquitur"—A rule of evidence based on common sense—Cases where the rule is applicable—Doctrine of "res ipsa loquitur" applicable to the present case—The doctrine of "volenti non fit injuria" as distinct from "scienti non fit injuria"—Its meaning, scope and effect— Express or implied acceptance of certain risks—In the circumstances of this case the maxim "volenti non fit injuria" has no application—Negligence—Standard of—Evidence—There is evidence of negligence where the facts proved are more consistent with negligence on the part of the defendant than with any other cause—Absence of reasonable explanation of the accident on the part of the defendant—Especiallly where the thing causing the accident is shown to be under the management or control of the defendant—And the accident is such as in the ordinary course of events does not happen if those who have the management used proper care—Contributory negligence—Section* 57 *of the Civil wrongs Law, Cap.* 148*—Factors to be taken into account in considering the question of contributory negligence—Especially as far as workmen are concerned—Instructions strain or fatigue—In the present case there was no contributory negligence on the part of the plaintiff workman—Damages—Special damages—General damages—Factors to be considered—See, also, herebelow under Damages; Statutory Duty; Agent.*

Damages—Special damages—Loss of past earnings—Pleadings—Necessary amendments—General damages in cases of personal injuries due to negligence and the like—Factors to be considered—

Pain, suffering, loss of amenities of life—Continuous loss of future earnings—Assessment of—General damages should be awarded by way of a global figure without the Court having to apportion it under the various heads of damages—Span of life—Allowance to be made for the various contingencies of life—And, also, for the fact that the award will be in the form of a lump sum.

General Damages—See above.

Special Damages—See above.

Contributory negligence—See above.

Negligence—See above.

"Res ipsa loquitur"—See above.

"Volenti non fit injuria"—As distinct from "scienti non fit injuria".

Statutory Duty—Breach of—Breach of regulation 40 of the Docks Regulations, in force by virtue of section 108 (2) of the Factories Law, Cap. 134—See, also, above under Civil Wrongs.

Docks—Docks Regulations—See immediately above.

Factories—The Factories Law, Cap. 134 section 108 (2)—See above under Statutory Duty.

Agent—Employment of agent—Section 12 (1) (b) of the Civil Wrongs Law, Cap. 148.

Principal and Agent—See, above, under Agent.

Quantum of damages—See, above, under Damages.

Practice—Costs—Judgment awarding costs to successful plaintiff and excluding costs of an application for amendment of pleadings made at a late stage—Dismissal of action against joined defendant with no order as to costs, as there was no extra expense in the action for joining such defendant.

Costs—See immediately above under Practice.

Admiralty—Admiralty action—Injuries to plaintiff in the course of his working on a ship—Claim for damages against his employers—Liability—Negligence etc. etc. —See above under Civil Wrongs.

Master and Servant—Duty of the master towards his servants—To use proper care—To provide a safe place of work, and a proper

system or mode of work or using machinery and the like—See above under Civil Wrongs.

Employer—Duty of employer to his employee—See above under Civil Wrongs; Master and Servant.

Employee—Rights of employees in respect of their safety—See above under Civil Wrongs; Master and Servant.

In this case the plaintiff, a stevedore, claimed damages against his employers in respect of injuries which he sustained, whilst working on the ship "Galilah" on January 12, 1964, when he was hit by the fall of the sling of the ship's winch. In his statement of claim, the plaintiff alleged that the accident was due to the negligence of the defendants and/or to a breach of their statutory duty under regulation 40 of the Docks Regulations. He, also, relied on the doctrine of *res ipsa loquitur*. The defendants denied negligence and, further, introduced the defence of *volenti non fit injuria* and, in the alternative, pleaded contributory negligence on the part of the plaintiff. At the time of the accident the plaintiff was forty one years of age. During the hearing of this case counsel agreed that the amount of the plaintiff's permanent incapacity due to the accident is 65 per cent and that his average earnings at the material time were of the amount of £39 monthly.

It was argued on behalf of the defendants that the maxim of *res ipsa loquitur* does not apply in the present case in view of the evidence adduced that there was nothing wrong with the functioning of the winch; and that slings of the winches fall down, a fact known to the plaintiff, who had accepted it as one of the hazards of the job of a stevedore. He further argued that the plaintiff had failed to establish that the accident was due to the negligence of the defendants.

In giving judgment for the plaintiff and awarding him special damages and £4,150 general damages the Court :

Held, I, As to the doctrine of "res ipsa loquitur" and its application to the present case :

(1) The maxim *res ipsa loquitur* is not a rule of law. It is not more than a rule of evidence affecting onus. It is based on common sense and its purpose is to enable justice to be done when the facts bearing on causation and on the care exercised by the defendant are on the outset not known to the plaintiff and are or ought to be within the knowledge of the

defendant. See *Barkway* v. *S. Wales Transport Co. Ltd.* [1950] 1 All E.R. 392, at p. 399 per Lord Normand.

(2) There is no doubt that a special application of the principle that there is evidence of negligence if the facts proved are more consistent with negligence on the part of the defendant than with other causes, is found in cases in which the maxim *res ipsa loquitur* applied. These cases are where the plaintiff proves the happening of the accident and nothing more. The mere happening of the accident itself may be more consistent with negligence on the part of the defendant than with other causes, and the Court may find negligence on the part of the defendant unless he gives a reasonable explanation to show how the accident may have occurred without negligence on his part. It is clear that the maxim comes into operation on proof of the happening of an unexplained occurrence; when the occurrence is one which would not have happened in the ordinary course of events without negligence on the part of somebody other than the plaintiff; and the circumstances point to the negligence in question being that of the defendant rather than that of any other person.

(3) (*a*) If, on the other hand, the facts are sufficiently known, the question ceases to be one where the facts speak of themselves and the solution is to be found by determining whether on the facts as established, negligence is to be inferred or not.

(*b*) But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of events does not happen if those who have the management used proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care. See *Scott* v. *London and St. Katherine Docks Co.* (1865) 3 H. & C. 596; *Russel* v. *L. and S.W. Railway* (1908) T.L.R. 548, at p. 551 per Kennedy L.J. explaining the meaning of *"res ipsa loquitur"*; *Vide*, also, section 55 of our Civil Wrongs Law, Cap. 148.

(4) (*a*) In the present case the evidence of P.O. goes to the extent of proving the accident only and leaves open the question of how a perfectly sound machine operating so smoothly, suddenly and without introduction of a negligent system or mode of using such machinery, the sling connected with it dropped down and fell on the plaintiff with the result that he was seriously injured.

(*b*) In these circumstances and in view of the fact that the machine was under the full control of the defendants and that the accident is such as in the ordinary course of events, does not happen if those who have the management and/or operating it used proper care, in my view, it affords reasonable evidence, in the absence of an explanation by the defendants, that the accident arose from want of care; in my opinion, therefore, the doctrine of *res ipsa loquitur* does apply to the present case.

(*c*) The next question, therefore, is : have the defendants adduced evidence to explain the occurrence of the accident? The only explanation offered by the defendants through the evidence of Thomas Antoniou (a defence witness) was to the effect that the falling of the sling causing the accident to the plaintiff was due to the negligent mode of operating the gears of the winch by the driver. This negligent mode of operating the winch was also known or ought to have been known to the defendants.

(*d*) In my opinion, therefore, what has happened to the plaintiff can reasonably be attributed to the negligent mode of operating the winch by the servants of the defendants and to no other cause.

(*e*) If, however, the explanation offered on behalf of the defendants through their said witness Thomas Antoniou (*supra*) as to the cause of accident, will not be considered as satisfactory evidence, then again, in view of my finding that the doctrine of *res ipsa loquitur* applied, and since the defendants have failed to explain the occurrence of the accident, I find that the accident arose from want of care of the defendants, and that they were guilty of negligence. There is ample authority that a negligent system or a negligent mode of using perfectly sound machinery or in not seeing that it was properly used may make the employer liable apart from any other statutory provision. *Vide Sword* v. *Cameron and Bartonshill Coal Co.* v. *McGuire* referred to in *Smith* v. *Charles Baker and Sons* (1891) 60 L.J. Q.B. 683.

Held, II. As to the maxim "volenti non fit injuria" and its application to the instant case :

(1) (*a*) In answering this question I have in mind the admissions made by the plaintiff to the driver of the winch, upon which almost the whole case for the defendants depends. It seems to me that the utmost they prove is that in the course of the work it did occasionally happen that because of a cut of electricity

or of a fall of the wire the gears get disconnected, or because of a negligent mode of operating the gears of the winch the sling was falling over a stevedore's head and that the plaintiff knew this and believed it to be dangerous.

(*b*) The question of law is whether upon these facts and when the very form of his employment prevented him at the time of the accident looking out for himself, the plaintiff consented to undergo this particular risk and so disentitled himself to recover when the sling of the winch was negligently slung over him, or negligently permitted to fall on him and do him serious injuries.

(2) I am of the opinion that the application of the maxim "*volenti non fit injuria*" is not warranted by these facts. I do not think that the plaintiff did consent at all. True a consent to the particular risk may be inferred from the course of conduct. But I do not believe that the plaintiff ever did or would have consented to the particular act done under the particular circumstances. The proposition upon which the case for the defendants has been argued must be a far wider one than is involved in the maxim. I think they must go to the extent of saying that wherever a person knows that there is a risk of injury to himself, he debars himself from any right of complaint if an injury should happen to him in doing anything which involves that risk; and if applicable to the extent that counsel for the defendants has invited the Court to accept, no person ever would have been awarded damages for being run over in the streets. There is, of course, ample authority that mere knowledge of the risk does not necessarily involve consent to the risk; because as it was aptly stated the maxim is not "*scienti non fit injuria*", but "*volenti non fit injuria.*" See *Smith* v. *Charles Baker and Sons* (1891) 60 L.J. Q.B.D. 683, at pp. 693–694 (per Lord Watson, H.L.); *Harris* v. *Brights Asphalt Contractors* [1953] 1 Q.B. 617; *Bowater* v. *Rowley Regis Corporation* [1944] K.B. 476; at p. 480 per Lord Goddard; see, also, *London Graving Dock Co. Ltd.* v. *Horton* [1951] 2 All E.R.1, at p. 5, per Lord Porter; *Merrington* v. *Ironbridge Metal Works Ltd. and Others* [1952] 2 All E.R. 1101, at pp. 1103–1104; cf. *Thrussel* v. *Handyside* [1886–90] All E.R. Rep. 830.

Held III. As regards the allegation of contributory negligence:

(1) (*a*) As regards contributory negligence section 57 of our Civil Wrongs Law, Cap. 148 reproduced the provisions of the English Law Reform (Contributory Negligence) Act, 1945

on the point. The effect of the authorities is that the standard of negligence is not an absolute standard in all cases but it is dependant upon the attending circumstances, and in the case of contributory negligence the Court must have regard to the instructions of the plaintiff or deceased at the time of the accident and to the strain and fatigue which may make a workman give less thought to his personal safety than persons with less trying surroundings and preoccupations. Thus, though there is only one standard of negligence that standard is subject to qualification in alll cases. See *Caswell* v. *Powell Duffryn Associated Collieries Ltd.* [1939] 3 All E.R. 722, at p. 730, per Lord Atkin, at p. 737, per Lord Wright; *Nance* v. *British Columbia Electric Railway Co. Ltd.* [1951] 2 All E.R. 448

(*b*) In assessing degrees of liability the common sense approach has to be adopted. See *Davies* v. *Swan Motor Co. (Swansea) Ltd.* [1949] 1 All E.R. 620, at p. 627, per Evershed L.J.

(2) Reverting now to the case in hand, it is clear from the evidence that the plaintiff was going through a narrow corridor towards the handrail of the ship for the purpose of signalling to the lightermen below when the accident happened. True, he was aware that sometimes drivers of the winches were negligent in handling such machinery; and it cannot be doubted that he knew that slings had fallen because of such negligent mode of operating the machine, and he warned the driver to be careful. But I can find no contributory negligence at all on the part of the plaintiff. What he did was done according to the orders and he was careful and diligent in his work and there is no evidence at all of negligence on his part, or that he omitted to take ordinary care for his protection. He was lawfully engaged in his occupation and obeying the orders of those entitled to order him and liable to instant dismissal if he refused to obey. I, therefore, take the view that this contention of counsel for the defendants also fails.

Held IV. As regards the issue of breach of statutory duty under regulation 40 of the Docks Regulations :

As regards the question of safe place of work, I would go further and say that since the defendants were bound to employ, under regulation 40 of the Docks Regulations, a signaller during the act of unloading ships, they had a duty cast upon them to provide a safe place of work and a safe system of operating the winch. The conception of absolute obligation of employers under statutory safety regulations is common; and as the defendants,

being the employers of the plaintiff have failed to do so, I am of the view that they are also liable for breach of their statutory duty.

Held V. As to the damages :

(1) (*a*) I shall now proceed to award an amount of damages so that the injured party should be placed in the position he would have been in, if the injury had not occurred, so far as this can be done with a money award.

(*b*) In doing so I have addressed my mind to various comparable awards and have taken into consideration the principle enunciated that the Court can award a global sum for general damages without apportioning it under the various heads of damages.

(*c*) I have taken into consideration that the plaintiff at the time of the accident (*viz.* the 12th January, 1964) was 41 years of age, earning prior to the accident £39 per month; and that in view of his incapacity—agreed at 65%—he will never be able to resume his employment as stevedore; he would never be able to do anything else but very light sitting down job, if he is lucky to find a sympathetic employer. With regard to the continuous loss of earnings I see no reason why the plaintiff should not have continued, but for the accident, as a stevedore until the age of 60; on the other hand, the work of a stevedore is hard work and it appears now fraught with danger. Further, of course, one has to allow for the contingencies of life whereby the plaintiff's life or earning capacity may be terminated before he reaches the age of 60.

(*d*) I have, also, taken into account, in assessing the general damages, that the plaintiff had suffered very serious injuries, and will continue having pain in view of his various injuries, and that he had become permanently impotent.

(*e*) In addition, I have taken into account the fact that any sum I would award would be in the nature of a lump sum and I must, therefore, discount what I do award by reason of that consideration.

(2) Taking all these matters into consideration, I think the right figure to award as general damages in relation to a continuous loss of earnings, for past and future pain and suffering and also the inconvenience of this man being unfit and impotent for sexual intercourse with his wife, would be in my view the amount of £4,150.—

(3) As regards special damages I award £1,696 including an amount of £1,521 for loss of his wages at £39 monthly from the date of the accident *i.e.* the 12th January, 1964, until the 12th April, 1967, in accordance with the amended statement of claim approved by the Court.

Held VI. As regards the liability of defendant 2:

(1) There is no doubt that irrespective of the evidence that defendant 2 had employed and was paying the wages of both winchmen and the stevedores, nevertheless, it is clear that defendant 2, all along was employed by defendant 1 as his agent, and his acts on the date of the accident were performed by him in the course of his duties and under that capacity; and not as independent contractor. The principle of law on this point is well-known and is embodied in section 12 (1) (*b*) of the Civil Wrongs Law, Cap. 148 (which is set out in full in the judgment, *post*).

(2) I have no difficulty at all to find that the plaintiff as well as the rest of the stevedores and winchmen were the servants of defendant 1; and that defendant 2 was merely doing what it was expected of him to do under his contract of agency, acting at all times for and on behalf of his principal. I, therefore, find in view of the reasons given that the action against the defendant 2 fails and is hereby dismissed, with no order as to costs, as there was no extra cost in the action for joining defendant 2 (see *HjiNicolaou* v. *Gavriel and Another* (1965) 1 C.L.R. 421).

Held, VII. In the result there will be judgment for the plaintiff against defendant 1 for the sum of £5,846.— less the amount of £218 (already paid) with costs for one advocate only and excluding costs of the application for amendment at such a late stage (see *Frixos Constantinou* v. *Fylaktis Mina* (1966) 1 C.L.R. p. 171. Action against defendant 2 dismissed with no order as to costs.

Judgment and order as to costs as aforesaid.

Cases referred to :

Barkway v. *S. Wales Transport Co. Ltd.* [1950] All E.R. 392, at p. 399, per Lord Normand;

Scott v. *London and St. Katherine Docks Co.* (1865) 3 *H.&C.* 596;

Russell v. *L. and S. W. Railway* (1908) T.L.R. 548, at p. 551. per Kennedy L.J;

Smith v. *Charles Baker and Sons* (1891) 60 L.J. Q.B.D. 683, at pp. 693-694 per Lord Watson; H.L.;

Harris v. *Brights Asphalt Contractors* [1953] 1 Q.B. 617;

Bowater v. *Rowley Regis Corporation* [1944] K.B. 476, at p. 480, per Goddard L.J;

London Graving Dock Co. Ltd. v. *Horton* [1951] 2 All E.R. 1, at p. 5, per Lord Porter;

Merrington v. *Ironbridge Metal Works Ltd. and Others* [1952] 2 All E.R. 1101, at pp. 1103-1104;

Thrussel v. *Handyside* [1886-90] All E.R. Rep. 830;

Caswell v. *Powell Duffryn Associated Collieries Ltd.*, [1939] 3 All E.R. 722, at p. 730 per Lord Atkin, at p. 737, per Lord Wright;

Nance v. *British Columbia Electric Railway Co. Ltd.* [1951] 2 All E.R. 448;

Davies v. *Swan Motor Co. (Swansea) Ltd.* [1949] 1 All E.R. 620, at p. 627;

Frixos Constantinou v. *Fylaktis Mina* (1966) 1 C.L.R. p. 171;

HjiNicolaou v. *Gavriel and Another* (1965) 1 C.L.R. 421;

Bartonshill Coal Co. v. *McGuire* 3 Macq. 300;

Sword v. *Cameron*, 1 Court Sess. Cas. 2nd Series, 493.

Admiralty Action.

Admiralty Action for damages in respect of injuries sustained by plaintiff, due to the negligence of the defendants, in an unloading operation of a ship belonging to defendants No. 1.

Chr. Mitsides, A. Lemis and *M.H. Yousouf* for the plaintiff.

G. Cacoyiannis, for the defendants.

Cur. adv. vult.

The following Judgment was delivered by :

HADJIANASTASSIOU, J. : In this case, the plaintiff, claimed damages against his employers, in respect of injuries which he

sustained when he was hit by the fall of the sling of the winch, whilst working on the ship 'Galilah', on January 12, 1964.

In the particulars of negligence, the plaintiff alleges in the statement of claim, that the accident was due to the negligence of the defendants for :

> "Failing to take any or any adequate precautions for the safety of the plaintiff while he was engaged upon the said work; exposing the plaintiff to a risk of damage or injuries of which they knew or ought to have known; failing to provide and/or maintain a safe place of work and/or a safe and/or proper system of working; ordering and/or placing and/or permitting the plaintiff to work at or near a place which was not a safe place; operating and/or using a defective winch; operating the said winch and/or unloading the said load without due care and attention; failing to warn the plaintiff of the danger; failing to exercise proper and/or necessary skill care and attention in operating the said winch; failing to keep such winch in a proper and/or good repair and working condition or at all; failing to have any or any proper look out; lowering the said bandle of iron bars suddenly and without any or any proper or adequate warning to the plaintiff; so far as may be necessary the plaintiff will rely on the doctrine of *res ipsa loquitur*".

By their defence, the defendants denied negligence or breach of statutory duty and alleged that the accident which injured the plaintiff, was the result of his failure to take any or any reasonable care or precaution as to his own safety by taking up a dangerous position on the deck; and/or was contributed by the plaintiff's negligence, because he stood directly below the load carried by the winch knowing the course the winch was about to follow; he disregarded the safety instructions or regulations according to which standing at any point on the deck over which the arm of the winch passes was not permissible and in the alternative the plaintiff knew and accepted the risk of working on the said deck with the winch in operation.

It is clear from the defence that although they deny negligence, the defendants introduce the defence of *volenti non fit injuria* and in the alternative the defence of contributory negligence.

During the hearing of this case, counsel have agreed that the amount of the permanent incapacity of the plaintiff due to the accident is 65 per cent; and that the medical reports of

the doctors who have examined the plaintiff be accepted, without calling them as witnesses. Counsel further agreed that the average earnings of the plaintiff were at the material time of the amount of £39 per month; his travelling expenses and medicines referred to in the heading "particulars of special damages" of an amount of £20 and £25 respectively. With regard to the medical fees of doctors Michaelides and T. Evdokas, counsel accepted that the amounts of £80 and £50 respectively were reasonable; as regards the evidence of doctors Tornaritis and Michaelides they have decided to treat it as evidence of a common witness. Finally, counsel have agreed that the defendants should abandon paragraph 5 of their defence and, that the amount of £218, paid to the plaintiff by his employers should be repaid to the employers in the event of the plaintiff successfully suing the authors of his injuries.

The plaintiff, Emir Ahmet Djemal, was one of the stevedores, in the employment of the defendants, working on the ship 'Galilah', anchored at the port of Limassol, on the unloading of a cargo of iron bars. On the date of the accident, the 12th January, 1964, the plaintiff was 41 years of age; he was performing the duties of making signals to the two drivers operating the winch of the ship, and to the men who were unloading the sling into the lighters. The plaintiff had to work through a narrow corridor, of about 1/3 of a metre in width, on the deck which was blocked from a cargo of cars placed there by the servants of the owners of the ship. Amongst his other duties, the plaintiff had to watch the loading of the sling with long iron bars, down in the ship's hold; and to signal to the drivers of the winch to lift the sling slowly, because the iron bars were protruding out of the sling. When such load would have reached above the hold of the ship, the plaintiff, had to signal to the first operator of the winch to stop operating it; and to release the wire connecting both winches, so as to allow the second driver to move the sling in the direction of the lighters for the purpose of unloading such cargo. The plaintiff, was moving towards the handrail of the ship, through the narrow corridor, in order to signal to the men in the lighters; but, before he reached a distance of 2 ½ metres, he heard a crush and immediately he was hit from the fall of the sling; and as he was knocked down, he became unconscious.

The driver of the winch, at the time of the accident, was Petros Orphanides P.W.1., who fortunately managed to manoeuvre the winch in such a way, as to prevent the sling, which was heavily loaded, from crushing further the body of

the plaintiff. The plaintiff was finally removed to the Limassol hospital, but he was removed from there by his relatives, and was taken to the clinic of Dr. Halim, remaining unconscious for a whole month. Whilst in the clinic, the plaintiff was operated on more than once; he remained there for a period of four months; when he was discharged from the clinic, he was attended regularly at his home by the same doctor for a further period of six months. The plaintiff, who has suffered serious injuries, complained of pains and sleepless nights. Unfortunately, for reasons unknown to this Court, Dr. Halim failed to attend the Court and give evidence with regard to the condition of the plaintiff and of the exact number of operations he had carried out.

The accident was also witnessed by Mr. Thomas Antoniou, the foreman supervising the work of both the stevedores and winchmen; he noticed the narrow corridor left on the deck, because of the placing of cars there, and realized that where the plaintiff was working was dangerous, but he did not in any way interfere or otherwise advise the plaintiff to stop working there.

With regard to the accident, Petros Orphanides had this to say : "When I was in the process of manoeuvring the sling, in order to lower it to the direction of the barges, for the purpose of unloading, suddenly it went down fast and dropped on four saloon cars which were on the deck and the plaintiff. I noticed that the plaintiff was crushed by one of those cars on which the iron bars fell. Later on, I made attempts to manoeuvre the winch to remove the sling and managed to remove it and free him from the sling that crushed him". He went on to say that there was no other available space for the plaintiff to stand during the unloading operation. Cross-examined by counsel for the defendants he said : "It often happens for a sling to fall because of fault of electricity and also because of a fault of the wire the gears get disconnected; and because of this disconnection the sling is released faster and drops down. This happens very rarely; it may happen on all winches. It is something that one cannot foresee. I had no warning from the winch that it was not operating correctly and properly. Stevedores usually take precautions as they have in mind that accidents may happen and try to avoid them". He went on to add, that if the plaintiff was standing further away from the range of the operation of the winch it would have been impossible for him to see the plaintiff giving the signals, because of the length of the iron bars in the sling; he further said that the

plaintiff told him that there was danger at the place he was standing, and advised the witness to be more careful with the winch.

The plaintiff claims that he was operated on four times whilst at the clinic; and because of his injuries he is unable to carry out the work of a stevedore, or to perform any other kind of a job. He still feels fidget, dizziness, sleeplessness and pain; his urine is dribbling because of an injury to his urethra. The plaintiff, who is married with three children, also complains that as a result of the accident, he has become impotent and, although he has a desire for sexual intercourse, he is unable to have an erection. Cross-examined by counsel, he said that had there been no cars on the deck the sling would not have hit him; he agreed that he was standing at point 'A' on *exhibit* 3 (this exhibit was prepared by counsel during the hearing of this case); when he was hit he was proceeding from point 'B' to point 'X'. He admitted telling Petros Orphanides that "matters" were dangerous with all those cars on the deck; he explained that his words were not to be understood to mean that he had appreciated that working through the corridor was dangerous, but simply to warn the winchman to be careful with the handling of the sling over the cars.

The evidence of doctors Michaelides and Tornaritis, who examined the plaintiff some time between 1965 and 1966, as well as their reports, *exhibits* 1 *and* 2, is to the effect that the plaintiff is still suffering from frequency of urination and occasional dribbling of urine due to the injury of the pelvis and the urethra, and is of a permanent nature. According to the report of Dr. Tornaritis, the injuries of the plaintiff were the following :

> "1. Shock. 2. Concussion. 3. Fractures of the pelvis. 4. Injury to the urethra.
>
> He was hospitalized for approximately four months and underwent several operations for the management of the traumatized urethra and its complications. After discharge from the clinic he stayed in bed under medical supervision for another three months.
>
> At the time of the examination he complained of headaches, dizziness, pain in the left side of the pelvis, the left hip, weakness of the lower limb, frequency of urination, precipitancy of micturition, occasional dribbling of urine and sexual impotence.

On examination on December 3, 1966 the findings were the following : 1. Considerable limping with instability. 2. Apparent shortening of the left lower limb by 1½ inches. 3. Considerable limitation of the range of motion of all movements of the left hip joint.

.. ..

There is however marked diminution of the power of the left lower limb. 4. Considerable muscle wasting of the left thigh (4 cm.) 5. Impossibility of squatting. 6. Spasm of left lumbar muscles. 7. Scar of ax midline infra-ombilical incision. 8. X-rays taken in this office show : Bilateral old fractures of both pubic ramik; involvement of hip joint; fracture of the iliac bone with displacement upwards of the innominate bone by over an inch (causing the apparent shortening of the left leg); considerable changes in the head of the left femur. Opinion : This man sustained several serious injuries about three years ago so that any further improvement of his present condition may be considered as improbable. The shortening (apparent) of the left lower limb is due to the fractures of the pelvis and has its repercussion of the spine by the tilting it produces of the pelvis on one side and of the vertebral column on the opposite side. Trauma to the urethra has resulted in the various troubles that he is complaining about now; such tears may slowly cause strictures. Sexual impotence has failed to respond to treatment so far and seems permanent. As a result of the pelvic injuries he sustained he cannot possibly do any manual labour or any work involving too much ambulation. In view of these findings a partial impairment in the region of 60% is estimated".

The plaintiff was further examined by doctors Takis Evdokas and Mikellides, who are both neurologists-psychiatrists some time between the 1st March, 1965 and the 2nd December, 1966, and their report is to this effect. I am reading from Dr. Evdokas report :

"Ever since the accident he has been having the following symptoms :

1. Sexual impotence. This consists of a lack of erection. He reports that since the accident he has had no erection.

2. Dizziness and vertigo, especially after motion of the head.

3. Headaches, usually located in the forehead and in the temples.

4. Insomnia.

5. He feels moody, tired and his appetite is diminished.

.. ..

Neurological Examination :

Within normal limits.

He is limping, but this is due to anatomical damage resulted from the accident and should be examined by a surgeon.

Psychiatric Examination :

He is oriented in all spheres and there is no thinking disorder. However, he feels depressed and hopeless. His depression is much increased by his impotence.

Diagnosis :

1. Post Traumatic Brain Syndrome, (dizziness, vertigo, headache and insomnia).

2. Reactive Depression. This is the result (reactive) of the symptomatology of numbers one and two. The impotence is the most important contributing factor.

3. Sexual Impotence (lack of erection).

The prognosis for number 1 is rather good. With drug therapy he has already improved.

The prognosis for number 2 seems to be bad, because it closely relates with his impotence; the fact that he has sexual desire and is unable to enjoy sex makes him depressed.

As far as the *prognosis* for number 3 is concerned, it is also very bad, because the man's impotence seems to be permanent. The conclusion that his impotence is permanent is drawn as follows : he has sexual desire and his sexual impulses seem to be quite strong; his lack of erection does not seem to be of psychogenic origin.

Emotional conflict does not seem to be causing the inability for erection. He was placed on drugs for sexual

stimulation, but still had no erection. His inability to have an erection applies when he is with his wife as well as with other women. Therefore, since the cause for this inability is not psychogenic, it must be organic. Apparently the cause is due to the anatomical damage of the pelvis which resulted from the accident. From the psychological point of view we should have in mind that his organic 'impotence' makes an individual suffer much more than a psychogenic impotence. An individual whose impotence is pshychogenic is usually sexually inhibited or his sexual desire is diminished. Whereas with this individual, whose sexual impulses are quite normal, is suffering much greater because he cannot perform sexually.

At present he is under treatment and should continue for a long time".

It will be seen from a comparison of both medical reports that the only difference is to be found in the words of Dr. Mikellides' report that the plaintiff "lacks desire and erection".

Mr. Thomas Antoniou, for the defendants, said that he has been working as a stevedore for a number of years, and for the last 20 years he became the foreman of stevedores and winchmen; he was employed by defendant 2, together with the rest of the employees, for work on the ship; he was supervising the work of unloading the cargo of the ship 'Galilah' into the lighters. The unloading continued for the whole morning, before the accident took place just after lunch; but the winches continued functioning normally even after the accident

He did not notice that the sling suddenly went down fast, and did not realize whether it was due to a sudden cut of the electric current. As an exprerienced driver of winches, he was aware, that on many occasions slings drop down suddenly and that the winch goes out of control. He described the winch as an electric one, operated by means of four gears by the device of a wheel. Any driver operating the winch has to turn the wheel and automatically the winch is put into motion; the first gear goes in and the sling when loaded is slowly raised; with the second turning of the wheel the second gear goes in and so on with the third and the fourth gear. When a driver is in a hurry and wants to speed up the unloading of cargo he uses the second gear; it often happens that by negligent handling the third gear is inserted and the result is, that if the sling is

heavily loaded the winch stops operating and immediately the sling which is connected by wire falls down fast, because there is no power to control it.

Questioned further he said that the reason of the sling falling on the date of the accident was due to the negligent handling of the gears by the driver Petros Orphanides.

Mr. Cacoyannis has contended for the defendants that the maxim of *res ipsa loquitur* does not apply in view of the evidence adduced by the plaintiff that there was nothing wrong with the functioning of the winch; and that slings of the winches fall down, a fact known to the plaintiff, who had accepted it as one of the hazards of the job of a stevedore. He further argued that the plaintiff had failed to establish that the accident was due to the negligence of the defendants.

With regard to the first contention of counsel, I think it will be convenient if I reiterated that the maxim of *res ipsa loquitur* is not a rule of law. It is not more than a rule of evidence affecting onus. It is based on common sense and its purpose is to enable justice to be done when the facts bearing on causation and on the care exercised by the defendant are on the outset not known to the plaintiff and are or ought to be within the knowledge of the defendant. See *Barkway* v. *S. Wales Transport Co. Ltd.*, [1950] 1 All E.R. 392, at p. 399 *per* Lord Normand.

There is no doubt that a special application of the principle that there is evidence of negligence if the facts proved are more consistent with negligence on the part of the defendant than with other causes, is found in cases in which the maxim of *res ipsa loquitur* applied. These cases are where the plaintiff proves the happening of the accident and nothing more. It may be that he may not prove more but whether he can or not he does not prove any specific act or ommission on the part of the defendant. The mere happening of the accident itself may be more consistent with negligence on the part of the defendant than with other causes, and the Court may find negligence on the part of the defendant unless he gives a reasonable explanation to show how the accident may have occurred without negligence on his part. It is clear that the maxim comes into operation on proof of the happening of an unexplained occurrence; when the occurrence is one which would not have happened in the ordinary course of events without negligence on the part of somebody other than the plaintiff;

and the circumstances point to the negligence in question being that of the defendant rather than that of any other person If, on the other hand, the facts are sufficiently known, the question ceases to be one where the facts speak of themselves and the solution is to be found by determining whether on the facts as established, negligence is to be inferred or not. But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of events, does not happen if those who have the management used proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care. See *Scott* v. *London & St. Katherine Docks Co.* (1865) 3 H. & C. 596.

Kennedy, L.J. in *Russel* v. *L. & S. W. Railway*, (1908) T.L.R. 548 at p. 551, explaining the meaning of "*res ipsa loquitur*" had this to say :

> "The meaning, as I understand it, of that phrase is this, that there is, in the circumstances of the particular case, some evidence which viewed not as a matter of conjecture, but of reasonable argument, makes it more probable that there was some negligence, upon the facts as shown undisputed, than that the occurrence took place without negligence. The *res* speaks because the facts stand unexplained and therefore the natural and reasonable, not conjectural, inference from the facts shows that what has happened is reasonably to be attributed to some act of negligence on the part of somebody; that is some want of reasonable care under the circumstances. *Res ipsa loquitur* does not mean, as I understand it, that merely because at the end of a journey a horse is found hurt or somebody is hurt in the streets, the mere fact that he is hurt implies negligence. That is absurd. It means that the circumstances are, so to speak, eloquent of the negligence of somebody who brought about the state of things which is complained of".

Later he adds :

> "*res ipsa loquitur* in this sense; the circumstances are more consistent, reasonably interpreted without further explanation, with your negligence than with any other cause of the accident happening". Vide also section 55 of our Civil Wrongs Law Cap. 148.

With respect to the argument of counsel for the defendants, in this particular case, the evidence of Petros Orphanides goes

to the extent of proving the accident only, and leaves the question of how a perfectly sound machine operating so smoothly, suddenly and without introduction of a negligent system or mode of using such machinery, the sling connected with it dropped down and fell on the plaintiff with the result that he was seriously injured. In these circumstances and in view of the facts proved that the machine was under the full control of the defendants and that the accident is such as in the ordinary course of events, does not happen if those who have the management and/or operating it used proper care, in my view, it affords reasonable evidence, in the absence of an explanation by the defendants, that the accident arose from want of care; in my opinion, therefore, the doctrine of *res ipsa loquitur* does apply. The next question, therefore, is have the defendants adduced evidence to explain the occurrence of the accident? The only explanation offered by the defendants through the evidence of Mr. Thomas Antoniou was to the effect that the falling of the sling causing the accident to the plaintiff was due to the negligent mode of operating the gears of the winch by the driver. This negligent mode of operating the winch was also known or ought to have been known to the defendants. In my opinion, therefore, and in view of the evidence adduced I have reached the natural and reasonable inference that what has happened to the plaintiff is reasonable to be attributed to the negligent mode of operating the winch by the servants of the defendants and to no other causes.

I would like to add, however, that if the explanation offered on behalf of the defendants as to the cause of the accident, will not be considered as satisfactory evidence, then again, in view of my finding that the doctrine of *res ipsa loquitur* applied, and since the defendants have failed to explain the occurrence of the accident, I find that the accident arose from want of care of the defendants, and that they were guitly of negligence. There is ample authority that a negligent system or a negligent mode of using perfectly sound machinery or in not seeing that it was properly used may make the employer liable apart from any other statutory provisions. Vide *Sword* v. *Cameron and Bartonshill Coal Co.* v. *McGuire* referred to in *Smith* v. *Charles Baker & Sons* (1891) L.J. Q.B.D. vol. 60 p. 683.

With regard to the second contention of counsel to the plaintiff's right to recover damages was that he had voluntarily undertaken the risk. The Court in answering this question,

has in mind the admissions made by the plaintiff to the driver of the winch, and although the plaintiff in his evidence tried to place upon his words a different interpretation, nevertheless, giving full effect to these admissions, upon which almost the whole case for the defendants depends, it appears to me that the utmost they prove is, apart from the additional danger of the plaintiff having to work through a narrow corridor, and I shall have something to say about this later on, is that in the course of the work it did occasionally happen that because of a cut of electricity or of a fall of the wire the gears get disconnected, or because of a negligent mode of operating the gears of the winch the sling was falling over a stevedore's head and that the plaintiff knew this and believed it to be dangerous.

The question of law is whether upon these facts and when the very form of his employment prevented him at the time of the accident lookimg out for himself, he consented to undergo this particular risk and so disentitled himself to recover when the sling of the winch was negligently slung over him, or negligently permitted to fall on him and do him serious injuries.

Having given this matter a serious consideration I am of the opinion that the application of the maxim *volenti non fit injuria* is not warranted by these facts. I do not think that the plaintiff did consent at all. Having to work through a narrow corridor, because of the placing of the cars on the deck, and while he was proceeding for the purpose of signalling to the men in the lighters and while his attention was towards the barges the sling was negligently allowed to fall on him without due precautions and without a warning to the plaintiff. There is no doubt, and I do not deny, that a consent to the particular risk may be inferred from the course of conduct; as well as from proof by express consent; but if I were to apply this proposition as counsel for the defendants so ably had argued, to the particular facts of this case, I do not believe that the plaintiff ever did or would have consented to the particular act done under the particular circumstances.

It appears to me that the proposition upon which the case for the defendants has been argued must be a far wider one than is involved in the maxim *volenti non fit injuria*. I think they must go to the extent of saying that wherever a person knows that there is a risk of injury to himself, he debars himself from any right of complaint if an injury should happen to him in doing anything which involves that risk; and if applicable

to the extent that counsel has invited the Court to accept, no person ever would have been awarded damages for being run over in the streets. There is, of course, ample authority that mere knowledge of the risk does not necessarily involve consent to the risk; because as it was aptly stated the maxim is not *scienti non fit injuria*, but *volenti non fit injuria*.

Lord Watson explaining the maxim *volenti non fit injuria* in *Smith* v. *Charles Baker & Sons* in the House of Lords (1891), L.J. vol. 60 Q.B.D. 683 had this to say at p. 693 :

> "The only question which we are called upon to decide, and, I am inclined to think, the only substantial question in the case, is this, whether, upon the evidence, the jury were warranted in finding, as they did, that the plaintiff did not 'voluntarily undertake a risky employment with a knowledge of its risks'. Whether the plaintiff appreciated the full extent of the peril to which he was exposed, or not, it is certain that he was aware of its existence, and apprehensive of its consequences to himself; so that the point to be determined practically resolves itself into the question whether he voluntarily undertook the risk? If, upon that point, there are considerations pro and contra, requiring to be weighed and balanced, the verdict of the jury cannot be lightly set aside. The defendant's case is that the evidence is all one way; that the plaintiff's continuing in their employment, after he had become aware and had complained of the danger, of itself affords proof absolute and conclusive of his having accepted the risk of a stone falling in the course of its transit from the quarry to the loading bank".

And he goes on at p. 694—

> "In its application to questions between the employer and the employed, the maxim, as now used, generally imports that the workman had either expressly or by implication agreed to take upon himself the risks attendant upon the particular work which he was engaged to perform, and from which he has suffered injury. The question which has most frequently to be considered is not whether he voluntarily and rashly exposed himself to injury, but whether he agreed that, if injury should befall him, the risk was to be his and not his master's. When, as is commonly the case, the incidence of the risk is left to implication, the workman cannot reasonably be held to have undertaken it, unless he knew of its existence, and appreciated, or

had the means of appreciating, its danger. But assuming that he did so, I am unable to accede to the suggestion that the mere fact of his continuing at his work, with such knowledge and appreciation, will in every case necessarily imply his acceptance. Whether it will have that effect or not depends, in my opinion, to a considerable extent upon the nature of the risk and the workman's connection with it, as well as upon other considerations which must vary according to the circumstances of each case".

See also *Harris* v. *Brights Asphalt Contractors*, [1953] 1 Q.B. 617.

In *Bowater* v. *Rowley Regis Corporation*, [1944], K.B. 476 Lord Goddard said at p. 480 :

"The maxim '*volenti non fit injuria*' is one which in the case of master and servant is to be applied with extreme caution. Indeed, I would say that it can hardly ever be applicable where the act to which the servant is said to be 'volens' arises out of his ordinary duty, unless the work for which he is engaged is one in which danger is necessarily involved. Thus, a man in an explosives factory must take the risk of an explosion occurring in spite of the observance and provision of all statutory regulations and safeguards. A horse-breaker must take the risk of being thrown or injured by a restive or unbroken horse. It is an ordinary risk of his employment. A man, however, whose occupation is not one of a nature inherently dangerous but who is asked or required to undertake a risky operation is in a different position. To rely on this doctrine the master must show that the servant undertook that the risk should be on him. It is not enough that, whether under protest or not, he obeyed an order or complied with a request which he might have declined as one which he was not bound either to obey or to comply with. It must be shown that he agreed that what risk there was should lie on him. I do not mean that it must necessarily be shown that he contracted to take the risk, as that would involve consideration, though a simple way of showing that a servant did undertake a risk on himself would be that he was paid extra for so doing, and in some occupations 'danger money' is often paid".

See also *London Graving Dock Co. Ltd.* v. *Horton* [1951] 2 All E.R.1 at p. 5, per Lord Porter; *Merrington* v. *Ironbridge Metal Works Ltd. and Others* [1952] 2 All E.R. 1101 at p. 1103-1104; cf. *Thrussel* v. *Handyside* [1886-90] All E.R. Rep. 830.

In this case, as I have already pointed out, the defendants had a duty to the plaintiff not to be guilty of negligence; and since the defence of *volenti non fit injuria* has failed, in my view, plaintiff is entitled to recover damages.

Counsel for the defendants has further contended that the plaintiff failed to use reasonable care for his own safety and/or contributed to his own damage.

Now, as regards contributory negligence section 57 of our Civil Wrongs Law Cap. 148 reproduced the provisions of the English Law Reform (Contributory Negligence) Act 1945 on the point :

> "57 (1). Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage".

In *Caswell* v. *Powell Duffryn Associated Collieries Ltd.*, [1939] 3 All E.R. 722 (decided prior to the 1945 Act when contributory negligence was a complete defence) Lord Atkin had this to say at p. 730 :

> "The injury may, however, be the result of two causes operating at the same time, a breach of duty by the defendant and the omission on the part of the plaintiff to use the ordinary care for the protection of himself or his property that is used by the ordinary reasonable man in those circumstances. In that case the plaintiff cannot recover because the injury is partly caused by what is imputed to him as his own default. On the other hand, if the plaintiff were negligent, but his negligence was not a cause operating to produce the damage, there would be no defence".

and at p. 731 :

> "I think that the defendant will succeed if he proves that the injury was caused solely or in part by the omission of the plaintiff to take the ordinary care that would be expected of him in the circumstanes. But, having come to that conclusion I am of opinion that the care to be expected

of the plaintiff in the circumstances will vary with the circumstances; and that a different degree of care may well be expected from a workman in a factory or a mine from that which might be taken by an ordinary man not exposed continually to the noise, strain and manifold risks of factory or mine".

Lord Wright delivering his judgment in the same case said at p. 737 :

"Negligence is the breach of that duty to take care, which the law requires, either in regard to another's person or his property, or where contributory negligence is in question, of the man's own person or property. The degree of want of care which constitutes negligence must vary with the circumstances. What that degree is, is a question for the jury, or the Court in lieu of a jury. It is not a matter of uniform standard. It may vary according to the circumstances from man to man, from place to place, from time to time. It may vary even in the case of the same man. Thus, a surgeon doing an emergency operation on a cottage table with the light of a candle might not properly be held guilty of negligence if he were performing the same operation with all the advantages of the serene atmosphere of his operating theatre; the same holds good of the workman. It must be a question of degree. The jury have to draw the line where mere thoughtlessness or inadvertence or forgetfulness ceases, and where negligence begins".

The effect of the *Caswell* Decision is that the standard of negligence is in all cases not an absolute standard but is dependant upon the attending circumstances, and in the case of contributory negligence considering that negligence of one's own personal safety, the Court must have regard to the instructions of the plaintiff or deceased at the time of the accident and to the strain and fatigue of the work which may make a workman give less thought to his personal safety than persons with less trying surroundings and preoccupations. Thus, though there is only one standard of negligence that standard is subject to qualification in all cases. This principle was subsequently applied in the Privy Council case of *Nance* v. *British Columbia Electric Railway Co. Ltd.*, [1951] 2 All E.R. 448.

In assessing degrees of liability the common sense approach has to be adopted. Evershed, L.J. as he then was, in considering

questions of apportionment of blame under the English Law Reform (Contributory Negligence) Act, 1945, in *Davies* v. *Swan Motor Co. (Swansea) Ltd.*, [1949] 1 All E.R. 620, said at p. 627 :

> "In arriving at the conclusion in which I do arrive, I consider it to be my duty to look at the whole facts of the case as they emerge at the trial both of the action and of the third party proceedings, and then, using common sense, to try fairly to apportion the blame between the various participants in the catastrophe for the damage which the deceased suffered".

Reverting now to the case in hand, it is clear from the evidene that the defendants knew that leaving such a narrow corridor for the plaintiff to work it was dangerous for his safety, in case of the fall of the sling; and that they were aware or ought to have been aware of the negligent system or of the negligent mode of using the winches. Under the circumstances of the case the failure to see that the winches were properly used and to take precautions was sufficient evidence of negligence.

As regards the question of safe place to work, I would go further and say that since the defendants were bound to employ under regulation 40 of the Docks Regulations, a signaller during the act of unloading ships, they had a duty cast upon them to provide a safe place of work and a safe system of operating the winch. The conception of absolute obligation of employers under statutory safety regulations is common; and as the defendants, being the employer of the plaintiff have failed to do so, I am of the view that they are also liable for breach of their statutory duty. Now what was then the plaintiff's condition? He was going through the narrow corridor towards the handrail of the ship for the purpose of signalling to the lightermen when the accident happened. True, he was aware that sometimes drivers of the winches were negligent in handling such machinery; and it cannot be doubted that he knew that slings had fallen because of such negligent mode of operating the machine, and he warned the driver to be careful Was there any contributory negligence on the part of the plaintiff? I can find no such negligence at all. What he did was done according to the orders and he was careful and diligent in his work and there is no evidence at all of negligence on his part, or that he omitted to take ordinary care for his protection. He was lawfully engaged in his occupation and obeying the orders of those entitled to order him and liable to instant dismissal if he refused

to obey. I, therefore, take the view that this contention of counsel also fails.

I shall now proceed to award an amount of damages, so that the injured party should be placed in the position he would have been in, if the injury had not occurred, so far as this can be done with a money award. In doing so I have addressed my mind to various comparable awards and have taken into consideration the principle enunciated, that the Court can award a global sum for general damages without apportioning it under the various heads of damages.

I have taken into consideration that the plaintiff at the time of the accident was 41 years of age, earning prior to his accident £39 per month; and that he will never be able to resume his employment as a stevedore; he would never be able to do anything else but very light sitting-down job, if he is lucky to find a sympathetic employer. I, therefore, find that the plaintiff is entitled to the loss of his wages from the date of the accident *i.e.* the 12th January, 1964 until the 12th April, 1967, in accordance with the amended statement of claim approved by Court, which is, if my arithmetic is correct, the sum of £1,521; the amount of £45 for medicines and travelling expenses and £130 for the medical fees of Dr. Michaelides and Evdokas. I would like to add that in view of the objection raised by counsel for the defendants and in view of the absence of Dr. Halim to explain his bill of costs, I do not find it legally possible to include in the amount of the special damages the fees of this doctor. The total amount, therefore, of special damages is £1,696.

With regard to general damages I have taken into consideration that the plaintiff had suffered very serious injuries and as a result of the accident has a permanent incapacity of 65 per cent; he will continue having pain in view of the injuries to his urethra, and that he has become permanently impotent; on the question of whether or not the plaintiff has desire I prefer the medical report of Dr. Evdokas, supporting the evidence of the plaintiff on this point. On the basis of these findings, and I need not repeat the medical evidence with regard to the injuries sufferred by the plaintiff, I have, in determining the sum I should award by way of general damages to make allowances for a continuous loss of earnings. As I said the plaintiff was 41 and all being well there would appear to be no reason had he not suffered this accident, why he should not have continued as a stevedore until the age of 60; on the other hand the work of a stevedore

is hard work and it appears now fraught with danger in view of the negligent handling of the drivers of winches than perhaps other employments. Further, of course, one has to allow for the contingencies of life and the possibility that the plaintiff may be knocked down in a street accident and killed or suffer some disease terminating his life or terminating his earning capacity before he reaches the age of 60.

In addition, I have to take into account the fact that any sum I award would be in the nature of a lump sum and I must discount what I do award by reason of that consideration. Taking all these matters into consideration, I think, the right figure to award in relation to a continuous loss of earnings, for past and future pain and suffering and also the inconvenience of this man being unfit and impotent for sexual intercourse with his wife, would be in my view the amount of £4,150.

Finally, counsel for the defendants contended that defendant 2 was not liable, because he was acting all along as the agent of defendant 1.

As I have already said the plaintiff has proved that the damage suffered by him, was caused by the fall of the sling, which forms part of the winch, which was the property of defendant 1; and over which defendant 1 had full control. It has been further pleaded by the plaintiff, that defendant 1 was at all material times, the owner of the vessel 'Galilah' and that defendant 2 was the agent of defendant 1, (see paragraph 2 of the petition), and this has not been denied by defendant 1. There is no doubt, that irrespective of the evidence that defendant 2 had employed and was paying the wages of both winchmen and the stevedores, nevertheless, it is clear that defendant 2, all along was employed by defendant 1 as his agent, and his acts on the date of the accident, were performed by him in the course of his duties and under that capacity; and not as an independent contractor.

The principle of law on this point is well-known, I need not cite authority, and is embodied in section 12 (1) (*b*) of our Civil Wrongs Law Cap. 148. It reads :

> "For the purposes of this law—any person who shall employ an agent, not being his servant, to do any act or class of acts on his behalf shall be liable for anything done by such agent in the performance of, and in the manner in which such agent does, such act or class of acts".

I have no difficulty at all to find that the plaintiff as well as the rest of the stevedores and winchmen were the servants

of defendant 1; and that defendant 2 was merely doing what it was expected of him to do under his contract of agency, acting at all times for and on behalf of his principal. I, therefore, find in view of the reasons given, that the submission of counsel on this point succeeds.

For the reasons I have advanced I enter judgment in favour of the plaintiff for the sum of £5,846 less the amount of £218, against defendant 1 with costs for one advocate only and excluding costs of the application for amendment at such a late stage. Vide *Frixos Constantinou* v. *Fylaktis Mina* (1966) 1 C.L.R. 171. Case against defendant 2 dismissed with no order as to costs, as there was no extra cost in the action for joining defendant 2. See *HjiNicolaou* v. *Gavriel and Another* (1965) 1 C.L.R. 421.

Judgment and order as to costs as aforesaid.