NICOS KRASIAS,

Plaintiff,

v.

NICOS IACOVIDES & ADAMOS KKAFAS AND ANOTHER,

Defendants.

(*Admiralty Action No.* 3/69).

Negligence—Accident to plaintiff stevedore in the course of unloading ship—Claim for damages against his employees—Coils loaded in a reckless way at port of departure—One falling and injuring plaintiff—Cause of fall unknown—Doctrine of res ipsa loquitur *applicable though not pleaded—Defendants* 2 *held liable.*

Negligence—Res ipsa loquitur—*Doctrine of, applicable, though not pleaded.*

Res ipsa loquitur—*Doctrine of—See* supra.

Admiralty case—Negligence—Accident to stevedore in the course of unloading ship—See supra.

Costs—Successful plaintiff against one of the two co-defendants ordered to pay costs of the other defendant because the plaintiff knew before instituting proceeding that on the evidence he was to adduce the said defendant could in no way be held liable.

Practice—Costs—See supra.

The Court in this Admiralty action for negligence awarded damages to the plaintiff stevedore who sustained personal injuries as a result of an accident in the course of unloading a ship. The Court applied the doctrine of *res ipsa loquitur* notwithstanding that it was not pleaded. The facts sufficiently appear in the judgment of the Court.

Cases referred to :

Bennett v. *Chemical Construction* (G.B.) Ltd. [1971] 1 W.L.R. 1571.

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.

F. Saveriades, for the plaintiff.

Sp. Spyridakis, for *A. Triantafyllides*, for defendant No. 1.

G. Economou, for defendant No. 2.

Cur. adv. vult.

The following judgment was delivered by :—

MALACHTOS, J. : The present case arose out of an accident that occurred on board the ship " Slovoda " on the 25th day of September, 1967, at Famagusta port, where she was unloading general cargo, including a number of coils.

The plaintiff, who is a stevedore, was on that day in the service of defendant No. 1 who undertook, as independent contractors, to unload the cargo of the said ship.

Defendant No. 2 are the agents in Cyprus of Yugoslavenska Linijska Plovidba of Rizeka, Yugoslavia, who are the owners of the said ship.

The plaintiff on the aforesaid day assumed work together with other stevedores at No. 1 hold of this ship. After unloading the general cargo which was on top, they started unloading the coils which were underneath. In between the general cargo and the coils there were dunnages which they had removed. These coils are made of iron and their shape is like that of a tyre of a motor car, their inner circle being of about one foot in diameter. They are very heavy objects—their weight varying from one to two tons each. Their use is for manufacturing pipes. These coils were stowed on the floor of the hold in a vertical position. Their unloading was carried out by means of a winch. A steel wire is inserted right through the inner circle of the coil and its two ends are affixed on to the hook of the winch. The relative signal is then given to the hatchman on the deck, by the stevedores who in turn instructs the winchman to lift it up. While the plaintiff was so engaged one of the coils rolled over and fell and as a result injured him on the left leg.

The plaintiff instituted the present proceedings against both defendants claiming damages for negligence. In the

statement of claim the particulars of negligence as against both defendants, may be summarised as follows :

The alleged negligence as far as defendant No. 1 is concerned, is that wrong instructions were given as to the lifting of the winch, and/or as to the manoeuvring of the said winch and/or no precautions were taken to avoid the fall of the cargo.

The alleged negligence of defendant No. 2 is that they stowed coils in the wrong way and/or failed to secure the said ship in such a way so that during the operation of the winch in unloading the cargo any movement of it would be avoided ; such movement being the cause of the rolling of the coil that injured plaintiff. Furthermore, they knew or ought to have known that the said coils were dangerous things and they were under a duty to take special precautions in connection with their unloading.

On the other hand, the defendants, who, as it appears from the file, decided to raise no objection as far as the title of this action is concerned, but to fight the case on its merits, in their defence deny that they were in any way negligent as alleged by the plaintiff or at all. They allege that the accident was caused by the negligence of the plaintiff at a time when the hook of the winch was outside the hold. They further allege that the plaintiff at the time of the accident was trying to remove a dunnage from under a coil lying on the floor of the hold, and in so doing the coil rolled over the dunnage and as a result the plaintiff was injured.

The question of damages, special and general, having been agreed between the parties prior to the date of hearing of the case, on a full liability basis in the sum of £330, evidence was heard only on the question of liability.

The plaintiff in giving evidence stated, among other things, that while he was engaged in inserting the steel wire through the inner circle of a coil waiting for the hook of the winch to discend down to the hold, all of a sudden another coil which was at some distance away, rolled over and fell, and as a result, his left leg was injured. The plaintiff further stated that the coils in question were stowed in a vertical position and they were not tied together, or in any way secured. When a ship is unloaded and it is empty it is less heavy and so it is more likely to move from one side to the other. After the accident he observed that in other ships these coils were not stowed in a vertical but in a horizontal position and there were dunnages in between them.

To the same or similar effect is the evidence of Andreas Nicolaou and Nicolas Zindilis, two other stevedores who were working at the time in the said hold with the plaintiff and who gave evidence as P.W. 2 and P.W.3, respectively. No other person was present.

Georghios Antoni Krasas, the brother of the plaintiff, who was at the time of the accident working as a winchman, in giving evidence as P.W.4, stated that four winches of the ship were working at the same time. When a ship is unloaded from heavy cargo, the ship moves from one side to the other. When the winch puts down the cargo, the ship goes back to its normal position.

Three witnesses gave evidence in support of the case for the defendants, namely, Fahri Osman Mulla, a foreman in the service of defendant No. 1, Nicos Iacovides, a partner of the first defendants, and George Finikarides, an employee of defendant No.2.

Fahri Osman Mulla stated that on the day of the accident four sections of labourers were engaged in unloading the said ship. Each section consists of 10 men. On board the ship there was general cargo and under it there were two rows of coils. Between the general cargo and the first row of coils there were dunnages as well. Dunnages were also between the floor of the hold and the lower row of coils. He instructed the men to be careful in unloading these coils as they were heavy objects and left. After he left he heard about the accident, and on arriving at the scene he noticed that it was not the coil that hit the foot of the plaintiff but a dunnage. The way these coils were stowed it was impossible for them to roll over by themselves or by the movement of the ship unless they had been interfered with. Neither before nor after the accident he went into the hold but had a look in it from the deck.

Nicos Iacovides stated that on that particular day he and his partner undertook to unload the said ship. He saw the ship before and after the accident. He applied to the Labour Office to supply him with stevedores and the Labour Office sent to him the number of labourers applied for as usual. It is usual whenever the cargo to be unloaded is dangerous the stevedores refuse to work and inform them accordingly. On this particular occasion they had no complaint on the part of the stevedores either before or after the accident. The coils in question were loaded in a vertical position leaning slightly on each other. In his opinion they could not roll by themselves and fall.

Georghios Finikarides stated that soon after the ship in question entered port on the 25th September in the morning, he went on board as his job was to check the loading and unloading of the cargo. The sea was calm on that day. He saw how the cargo was stowed in the different holds of the ship. He saw the hold of the ship where the coils were stowed before the accident. The coils were stowed in a vertical position. In his opinion these coils were properly stowed. This witness further stated in cross-examination that there were no stop-brakes under the coils.

I have carefully considered the evidence adduced in this case and I must say that as to how this accident occurred, I accept the evidence of the plaintiff which stands uncontradicted on this point and is supported by the evidence of Andreas Nicolaou and Nicolas Zindilis, the other two stevedores, who were the only persons working with him at the time and whom I have no reason to disbelieve.

Now from the evidence as it has been accepted, the following facts are established :—

(*a*) that the coil which rolled over and injured the plaintiff was not interfered with either by the plaintiff himself or by any one of his fellow workers ;

(*b*) that all the coils were stowed in a vertical position ;

(*c*) that no stop-brakes were placed under these coils to prevent them from rolling over, and

(*d*) that the hook of the winch at the time of the accident was outside the hold.

No doubt both defendants owed a duty to the plaintiff under the circumstances not to be negligent. However, the question to be answered is whether from the above known facts negligence on the part of either defendant can reasonably be inferred since the exact cause that made the coil in question roll over, remains unknown. Although it cannot precisely be determined as to how this accident happened, yet on the above facts I find that the coils in question were loaded at the port of their departure in a reckless way *i.e.* in a vertical position and without any stop-brakes under them. For this the responsibility rests with defendants No. 2. It appears that the safest way was to load them in a horizontal position with dunnages placed in between them. The doctrine of *res ipsa loquitur* applies in my view in the present case although it has not been pleaded. In *Bennett* v. *Chemical Construction* (*G. B.*) *Ltd.* [1971] 1 W.L.R. 1571,

it was held that " it was not necessary for the plaintiff to plead the doctrine of *res ipsa loquitur* if the facts pleaded and proved showed that the accident was *prima facie* caused by some negligence on the part of the defendant ". The second defendants are, therefore, entirely to blame for this accident. No blame can be attributed to the first defendants.

For the above reasons I give judgment in favour of plaintiff against defendants No. 2 only in the sum of £330 plus legal interest of 4% p.a. as from today to final payment with costs to be assessed by the Registrar.

Action against defendants No. 1 is dismissed. The costs of these defendants, should, however, be borne by the plaintiff who as it appears knew, before instituting the present proceedings that on the evidence he was to adduce in support of his case defendants No. 1 could in no way be held liable. The plaintiff is, therefore, ordered to pay to the first defendants their costs to be assessed by the Registrar.

Out of the amount awarded by this judgment defendants No. 2 are ordered to deduct and pay to the Social Insurance Fund the sum of £7.585 mils according to the certificate of the Senior Social Insurance Officer, dated 15th February, 1972, appearing in the file of proceedings and which certificate was obtained by this Court acting *ex proprio motu*, in accordance with section 46 of the Social Insurance Laws 1964–1970.

Judgment and order as to costs as above.