1979 September 21

[A. Loizou, J.]

COSTAS MICHAEL SKAPOULLAROS,

Plaintiff,

v.

1. NIPPON YUSEN KAISHA,
2. A.L. MANTOVANI & SONS LTD.,

Defendants.

(*Admiralty Action No.* 47/75).

Negligence—Injury to stevedore by fall of pallets from a winch, the property of the employers and under their control—No explanation as to how accident happened offered by employers—Improbability of accident happening if proper care used by those having the management of the winch—Falling of pallets a risk which could have reasonably been foreseen and could have been prevented or guarded against by proper measures—Employers guilty of negligence—Res ipsa loquitur.

Negligence—Res ipsa loquitur—Injury to stevedore through falling of pallets from winch—Winch under management of defendants who offered no explanation as to how accident happened—Improbability of accident happening if proper care used—Defendants liable in negligence.

Agent—Principal and agent—Claim against shipowners and agents in negligence for injuries sustained by stevedore in the course of employment on ship—Liability of agents—Machinery that caused accident the property of shipowners and under their control—And plaintiff and person guilty of negligence the servants of shipowners—Agents not liable.

Master and servant—Duty of masters to take reasonable care to provide proper appliances and to maintain them in good and safe condition and so to carry on their operations as not to subject those employed by them to unnecessary risks—Injury to stevedore through fall of pallets from winch—Employer (owner of winch) liable in negligence.

Damages—Special damages—Personal injuries—Loss of earnings—Permanent incapacity—Plaintiff in hospital for ten months—Four months for convalescence added to period of permanent incapacity.

Damages—General damages—Personal injuries—Stevedore aged 44—Head injury with severe concussion—Laceration wound at the temporal area of the scalp—And severe contusion of right side of chest wall resulting in displaced fracture ribs which, inter alia, *penetrated the pleura—In hospital for ten months—Plaintiff fit for sedentary or semi-sedentary form of work—Loss of future earnings—Award of* C£10,000, *having in mind cash value of money—Pain and suffering and loss of amenities of life—A heading which is more conventional in character than calculable—Award of* C£5,000.

The plaintiff, a stevedore aged 44, was on February 21, 1974, injured whilst engaged in the discharge of cargo from the ship "Fusu Maru" at the port of Famagusta. The discharge was effected with the use of pallets which were lifted or lowered by means of a winch; and the injuries were received when the pallets had been unhooked, whilst being lowered, and fell on the plaintiff and hit him.

The explanation for the unexpected falling, offered by witnesses for the plaintiff, was because the pallets were lowered in a side-ways motion and because one of the hooks was smaller than the rest. Plaintiff was engaged as above by defendants 1 who were the owners and the persons having the management of the said vessel and also the persons having control of the winch. Defendants 2 were their agents.

The plaintiff sustained a head injury with severe concussion and a laceration at the temporal area of the scalp; a severe contusion of the right side of his chest wall resulting in displaced fracture ribs which have penetrated the pleura and the diaphragm and damaged the liver and the common bile duct; a contusion of his right shoulder and a severe shock from internal bleeding. He was treated at the Famagusta Hospital by surgical repair of the damaged organs and drainage of the bile duct. The injuries were followed by complications which necessitated several operations and plaintiff remained for ten months in hospitals undergoing operations and receiving treatment; his

condition crystallized after the lapse of about 14 months from the accident. Plaintiff could not go back to his old work of a stevedore and he was only fit for sedentary or semi-sedentary form of work which required a minimum physical effort There was some uncertainty regarding the earnings and extent of employment of plaintiff after July and August, 1974

In an action for special and general damages for personal injuries

Held, (1) that though no explanation as to how the accident happened has been advanced by the defendants it has been shown that the thing that caused the accident was under the management of defendants 1 and that of their servants, that the accident was such that in the ordinary course of events it would not have happened if those who had the management of the machinery had used proper care; and that this is a situation that affords reasonable evidence of negligence and in the absence of an explanation by the defendants, one is led to the conclusion that the accident arose from want of care

(2) That defendants 1, as employers of the plaintiff, had a duty to take reasonable care to provide proper appliances, and to maintain them in good and safe condition and so to carry on their operations as not to subject those employed by them to unnecessary risks, that the falling of pallets was, in the circumstances, a risk which could have reasonably been foreseen and could have been prevented or guarded against by proper measures, that if the explanation for the cause of the accident, offered by the witnesses for the plaintiff, is ignored then the doctrine of res ipsa locquitur does apply because in such a case there is left a situation where the cause of the accident is not known and then "the res can only speak so as to throw the inference of fault upon the defender in some cases where the act of the defender is unexplained" (see per Lord Adam in *Mihie* v *Townsend* [1890] 19 R 830 quoted by Scrutton L J in *Langham v. Governors of Wellingborough School* [1932] 101 L J K.B. 513 , and that, accordingly, the employer, defendants 1, are liable for the injuries sustained by the plaintiff on account of the negligent way in which they conducted their work

(3) (*With regard to the liability of defendants* 2)· That it was admitted by defendants 1 that defendants 2 were acting as

their agents and there was no evidence that they did act under any other capacity; that it was, also, admitted, that the plaintiff was employed by defendants 1; that there was nothing to show that defendants 2 did anything beyond what it was expected of them to do under their contract of agency, acting at all times for and on behalf of their principal; that the injury suffered by the plaintiff was caused by the fall of the pallets which were lowered by means of the winch which was the property of defendants 1 and over which they had full control through the winchman employed by them; that, therefore, the acts complained of are those for which defendants No. 1 are accountable; and that, accordingly, defendants 2 have no liability whatsoever and the action against them is dismissed with no order as to costs (principles governing liability of agents enunciated in *Djemal* v. *Zim Israel Navigation Co. Ltd. and Another* (1967) 1 C.L.R. 227; (1968) 1 C.L.R. 309 (C.A.) *applied*).

(4) That the seriousness of the injuries received by the plaintiff justify this Court in adding to the ten months of hospitalization a few months of convalescence and so there are 14 months of permanent incapacity (February, 1974–May, 1975) for which plaintiff is allowed C£2,200 for loss of earnings by taking into consideration the spells of unemployment and irregular employment; that from May 1975 to March 1, 1979 an amount of C£6,900 will be allowed for loss of earnings to which an amount of £170 agreed out of pocket expenses for medical fees, medicines and travelling has to be added; that for loss of future earnings, making all necessary discounts and proceeding on the basis that the plaintiff is, though seriously, only partially incapacitated, and having in mind the cash value of such earnings, an amount of C£10,000 will be allowed; that for pain and suffering and loss of amenities of life, a heading which is more conventional in character than calculable an amount of £5,000 will be allowed (see *Lim Poh Choo* v. *Camden and Islington Area Health Authority* [1979] 2 All E.R. 910 at p. 920); and that, accordingly, judgment is given for the plaintiff against defendants 1 for the sum of C£24,270 with costs.

Judgment for £24,270 *against defendants* 1 *with costs. Action against defendants* 2 *dismissed with no order as to costs.*

Cases referred to:

Georghiou v. *Planet Shipping Co. Ltd.* (1979) 1 C.L.R. 188 at p. 190;

Athanassiou v. *Attorney-General of the Republic* (1969) 1 C.L.R. 160;

Djemal v. *Israel Navigation Co. Ltd. and Another* (1967) 1 C.L.R. 227 at p. 244; (1968) 1 C.L.R. 309 at pp. 321–322 (C.A.);

Milne v. *Townsend* [1890] 19 R. 830;

Langham v. *Governors of Wellingborough School* [1932] 101 L.J. K.B. 513;

Scott v. *London and St. Catherine's Docks Co.* [1861–1873] All E.R. (Rep.) 246 at p. 248;

Lim Poh Choo v. *Camden and Islington Area Health Authority* [1979] 2 All E.R. 910 at pp. 920, 921.

Admiralty action.

Admiralty action for special and general damages for personal injuries sustained by the plaintiff on S.S. "Fusu Maru" as a result of the negligence and/or breach of statutory duty and/or breach of contract by the defendants.

Ant. Lemis, for the plaintiff.

St. McBride, for the defendants.

Cur. adv. vult.

A. Loizou J. read the following judgment. The plaintiff's claim against the defendants jointly and severally is for special and general damages for the personal injuries he sustained on the 21st February, 1974, on s.s. "FUSU MARU" at the port of Famagusta, as a result of the alleged negligence and/or breach of statutory duty and/or breach of contract by the defendants or either of them, their servants and/or agents.

The plaintiff, aged 44, at the time was on the 21st February, 1974, working as a stevedore on the aforesaid ship, then lying at the port of Famagusta. The defendants, by paragraph 2 of their answer admit that he was so employed by defendants 1 "who were the owners and/or employers and the persons having the management and/or control of a winch which was fixed thereon and that defendants 2 were their agents."

The plaintiff who had been a stevedore for almost 30 years,

was as such on list 'A' for the port of Famagusta, and persons on this list have priority in employment in the port, to which the list is related.

The ship in question was discharging at the time general cargo, with the use of pallets. These are wooden planks the four corners of which are connected with steel wire or ordinary rope to a ring. They are placed in their proper position, the cargo is placed on them and they are hooked from that ring and lifted or lowered by means of the winch as the case may be. When used for the discharge of cargo, the empty pallets are lifted from the quay and lowered into the hold either one by one or more than one at a time.

On that day the plaintiff was working with Anastassis Marneros, P.W. 3, at the one end of the hold whilst Costas Platritis P.W. 4, was working at the other end. The operator of the winch was a certain Markos Tappas who was also in the employment of defendants 1. Pallets were lowered into the hold, loaded with goods and lifted up. When running short of pallets the stevedores were asking to be supplied with empty ones.

At the crucial time a cry of "varda" was heard. This is a colloquial word of warning understood by stevedores to mean either "move away" or "be careful". The plaintiff thereupon ran to the extreme end as far as the cargo in the hold permitted him to go. Prastitis, P.W.4, on hearing the word "varda" also ran away but to the opposite side of the hold where there was more room. He looked up and saw that the pallets which were being lowered at that moment had been unhooked and fell. They hit on the cargo underneath, jerked towards the plaintiff and hit him. There were three pallets lowered at that moment, because after the accident Prastitis saw in the hold two, and one still hanging from the hook of the winch. The impression of this witness was that the pallets fell when the winch was in the process of bringing them to their proper position in the hold, they had some momentum, hence the hitting of the plaintiff which would not have happened had they fallen vertically down. The explanation given by this witness for the unexpected falling of the pallets was that they had been unhooked whilst lowered and in a side-ways motion and because one of the hooks was smaller than the rest.

The plaintiff was seriously injured and treated initially for

seven months in Famagusta hospital and then spent another three months in Dhekelia military hospital. Regarding, however, his injuries the treatment given and his resulting incapacity I shall be dealing extensively when considering the question of damages.

Reverting now to the facts connected with the circumstances of the accident, it has to be added that according to the evidence these pallets belonged to defendants 2 who employed a man to maintain them.

Panos Vrahimis, D.W.4, an employee of defendants 2 stated that he was giving express orders to their employee for the proper maintenance of the frames and iron ropes but in substance he was not following up this work, he was simply giving instructions. Avraam Karpatsoukkas, D.W.5, said that he had checked the hooks by looking at them but he could not exclude that these hooks could be stretched and opened and if they were used for the carrying of heavy loads. When he arrived at the scene of the accident he saw two pallets on the floor of the hold and one still hanging on the hook but he did not pay attention as to whether there was anything wrong with the hooks used on that day.

Matheos Stylianou, D.W.3, a member of the Famagusta Porters Association which was supplying ship agencies with hooks and pallets, stated that for their own safety they had an interest in checking from time to time the condition of such equipment. He stated that on account of long use, hooks may get loose but labourers who hook the pallets, if careful, may notice such a defect.

What is certain in this case is that nobody tried to examine the various hooks and appliances used in order to ascertain the cause of this accident. No explanation as to how the accident happened has been advanced though it has been shown that the thing that caused the accident was under the management of defendants No. 1 and that of their servants, and the accident was such that in the ordinary course of events it would not have happened if those who had the management of the machinery had used proper care. This is a situation that affords reasonable evidence of negligence and in the absence of an explanation by the defendants, one is led to the conclusion that the accident arose from want of care.

No doubt defendants 1, as employers of the plaintiff, had a duty to take reasonable care to provide proper appliances, to maintain them in good and safe condition and so to carry on their operations as not to subject those employed by them to unnecessary risks (see *Georghios Georghiou* v. *Planet Shipping Co. Ltd.*, (1979) 1 C.L.R., p. 188, at p. 190, and the English authorities mentioned therein which were also adopted in *Athanassiou* v. *The Attorney-General of the Republic* (1969) 1 C.L.R., p. 160). The falling of pallets was, in the circumstances, a risk which could have reasonably been foreseen and could have been prevented or guarded against by proper measures, that is, by checking the condition of their wire ropes and hooks and also even if those were checked, to lift or lower at each time empty pallets in such numbers as same could safely be done without anyone of them falling down. There is no doubt that there was improbability of this accident happening if proper care was used.

The plaintiff also rested his case on the doctrine of res ipsa locquitur. This doctrine was fully explained in the case of *Emir Ahmet Djemal* v. *Zim Israel Navigation Co. Ltd., and Another* (1967) 1 C.L.R., 227, at p. 244 by reference to the English authorities and with which exposition of the law, I fully agree.

Indeed in the circumstances of this case this doctrine does apply if we are to ignore the explanation for its cause offered by the witnesses for the plaintiff. In such a case then we are left with a situation where the cause of accident is not known. Then "the res can only speak so as to throw the inference of fault upon the defender in some cases where the act of the defender is unexplained". (Per Lord Adam in *Milne* v. *Townsend* [1890] 19 R. 830 quoted by Scrutton L.J. in *Langham* v. *Governors of Wellingborough School* [1932] 101 L.J. K.B. 513).

In the case of *Scott* v. *London and St. Catherine's Docks* Co., [1861-1873] All E.R. (Rep.), p. 246, at p. 248, Erle, C.J., said:-

> "The majority of the Court have come to the following conclusion. There must be reasonable evidence of negligence, 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 things, does

not happen if those who have the management of the machinery use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care."

I have no difficulty that in this case the employer, defendants 1, are liable for the injuries sustained by the plaintiff on account of the negligent way in which they conducted their work.

On the question of liability there remains to consider the liability of defendants 2. In the pleadings it is admitted by defendants 1 that defendants 2 were acting as their agents and there is no evidence that they did act under any other capacity. It was also admitted that the plaintiff was employed by defendants 1. There is nothing to show that defendants 2 did anything beyond what it was expected of them to do under their contract of agency, acting at all time for and on behalf of their principal. The injury suffered by the plaintiff was caused by the fall of the pallets which were lowered by means of the winch which was the property of defendants 1 and over which they had full control through the winchman employed by them. The acts, therefore, complained of are those for which defendants No. 1 are accountable.

The question of liability of agents in such circumstances was examined in the first instance by the learned Judge in the case of *Zim Navigation Co., Ltd.*, (*supra*) and dealt with also on appeal in that case reported under the same name in (1968) 1 C.L.R. p. 309 at pp. 321–322.

On the facts of the present case I find the principles stated therein duly applicable and that defendants 2 have no liability whatsoever and the action against them is dismissed.

I turn now to the question of damages. I have already referred to the age and calling of the plaintiff. His earnings were claimed to be, at the time of the accident, in the region of £3,000.— a year. Counsel for the defendants suggested to him in cross-examination that his average earnings at the time were between £190 to £200 per month.

The injuries suffered by the plaintiff, the treatment received and the operations that he underwent as well as his resulting disability have been described by Dr. Thoukis Zambarloukos in evidence before me and they appear also from the set of

medical reports which have been produced by consent and marked as *exhibits* 2(A) to 2(F). They come from different doctors who examined the plaintiff on various dates either at his instance or at the instance of the defendants. The first one is from Dr. Thoukis Zambarloukos, *exhibit* 2(a) dated the 3rd May, 1975. It reads:

"Re: Costas Michael Skapoullarou age 44
of Paralimni.

The above named was involved in an industrial accident on the 21.2.74 (whilst unloading general cargo from the store room of a ship he was hit by the bucket of a crane) and sustained:

1. A head injury with severe concussion and a laceration at the temporal area of scalp.

2. A severe contusion of the right side of his chest wall resulting in displaced fracture ribs which have penetrated the pleura, and the diaphragm and damaged the liver and the common bile duct.

3. A contusion of his right shoulder.

4. A severe shock from internal bleeding.

Treatment: He was treated by Dr. M. Argyrides at the Famagusta Hospital by surgical repair of the damaged organs and drainage of the common bile duct.

He was first examined by me on the 26.6.74 still with drainage tube of his bile in position.

He was re-examined on the 16.10.74 after he has undergone another operation at Dhekelia Military Hospital on the 12.9.74.

He was re-examined and was followed up on the 2.12.74, 12.2.75, 19.2.75, 9.4.75 and 30.4.75 when an x-ray of his chest was taken by me and reported that he has undergone another operation at Dhekelia Military Hospital for surgical repair of an incisional hernia on the 4.3.75.

Present condition. There are two incisional scars one right paramedial, another oblique at the right side of his back (6" and 4" long respectively.).

He is pathetic with low voice and he is complaining of head-ache, dizziness, general weakness and debility with short breath 6-7 motions every day and almost immediately after food.

Radiological findings: The x-ray reveals the fracture ribs united with an irregularity of the right dome of diaphragm.

These clinical findings and the history of the case clearly depict the symptomatology.

Opinion. This fellow was the victim of a compressive and shearing force of great magnitude which resulted apart from the head injury with a lacerated wound of scalp and concussion, a compression of his right lower chest wall, fracturing the lower ribs which have penetrated the pleura, rupturing the diaphragm and liver and the common bile duct associated with haemorrhage and shock. His condition was dramatic and his life was in great danger.

Prompt surgical exploration by Dr. M. Argyrides at Famagusta Hospital, repair of the liver and drainage of the common bile duct has saved his life. But only to be followed by late complications which necessitated another operation 6 weeks later at Dhekelia Military Hospital at the right side of back, by an oblique incision at the upper dome of the liver.

Another operation was followed at a later stage for repair of an incisional hernia which has developed at the lower end of the original incision.

His pains and sufferings were severely protracted and I considered my last examination on the 30.4.75 as the final healing state recognized.

He is weak, mentally and physically with debility, short of breath from pleuritic irritation from the damaged pleura secondary to the penetrating fracture ribs and impair function of the liver or proper drainage into the bowels of the bile and ferments, resulting in severe disturbances of digestion and absorption of his food.

To tidy my thoughts:

After prolonged severe illness secondary to his injuries

repeated hospitalization and operations, with the lasting symptoms, this patient will never regain the degree, of physical and mental strength and endurance required to perform a day's work without marked discomfort and fatigue or deterioration of skill at frequent intervals during the day.

I consider him as fit for only sedentary or semi-sedentary form of work with a minimum of physical effort required."

Then we have the report of Dr. George Doritis, a neuro-psychiatrist dated 2nd June, 1975, *exhibit* 2(b). To the extent that is material and leaving out matters already contained in *exhibit* 2(a) it reads:

" To me he complained of dizziness lasting for a few hours, blurring of vision, forgetfulness, fatiguability, frequency of micturition and disturbed sleep. At times he would complain of pain at the side of the injuries.

The patient seemed to be tired and rather despondent due perhaps to prolonged, suffering. An E.E.G. was performed in February, 75 which showed no significant abnormality.

The symptoms complained of by the patient could be attributed partly to the physical injuries he received and partly they are of a post-concussional nature.

It could be claimed that a fair degree of improvement has set in but in view of the fact that 16 months elapsed and the patient is not symptom free is an indication of poor prognosis."

On the 4th March, 1977, he was further examined by Dr. George Savvides, an orthopaedic surgeon who after referring to the history of the case and the treatment given gives the condition of the plaintiff as on that date and his opinion as follows:

" *Patient's present condition*: The patient was seen for the last time on the 4th March, 1977.

He complained of headaches, dizziness, forgetfulness, pain and stiffness in the right shoulder, and epigastric pain and distension.

Examination revealed a scar 1 1/2 inches long on the left side of the midline of the forehead.

At the right shoulder there was limitation of movement; combined abduction was limited at 110 degrees as compared with 180 on the opposite side. Internal and external rotation was also limited.

There was a right paramedian incisional scar on the abdomen and a scar along the 11th rib on the right side.

X-ray examination (5th March, 1977) revealed osteo-arthritis of the right shoulder with evidence of united fractures of the neck of the right scapula and of the body of the right scapula. Also united fractures of the right ribs (5th and 6th). The outer third of the 11th right rib, was missing.

Opinion: The patient suffered potentially fatal injuries and his fate was in the balance for more than a week.

(a) Head injuries: There was prolonged unconsciousness and post-traumatic amnesia. These are evidence of severe concussion and possibly contusion of the brain. The patient is now suffering of attacks of headaches and dizziness and these are, now, likely to be permanent. There is also a change in his personality, which, also, is likely to be permanent.

(b) The fractures at the right shoulder have left him with pain and stiffness which are now permanent. They will interfere with actions such as reaching up to pick up something above himself and they will limit his capability to ever returning back to any kind of manual work.

(c) His chest injuries have healed well and they do not appear to limit his respiratory function.

(d) There were very severe injuries to his liver with large parts of this organ having been converted to an amorphous mass. This was further complicated by abscess formation behind the liver.

The functional reserve of the liver has been permanently

diminished and failure of this organ including the complication of portal hypertension is a possibility which may arise in the future and may limit the natural life-span of the patient.

The patient will never be able to return to his pre-accident work or indeed to any other heavy manual work. He will have to be rehabilitated into some kind of semi-sedentary kind of work.

His temporary complete incapacity for work is rated at two years."

On the 5th March, 1977 he was examined by Dr. George Tornaritis who gives in his report, *exhibit* 2(e) the following opinion after giving the history of the case and his findings:

"*Opinion*: This patient seems to have sustained head, chest and abdominal injuries in an accident at work, about three years ago. The injuries were followed by complications and multiple operations had to be carried out. His period of active treatment has been protracted. He had to put up with a severe amount of pain and suffering on several occasions. For the head injury and its after effects the specialist in the field will report. The exact nature of his chest and abdominal injuries is not known. From the history, the reports available and the findings of the clinical and radiological examinations, it appears that, most probably, the impact of the object that hit him at the time of the accident, fractured his ribs and injured his liver and bile tract. The scar on the back, associated with the finding on the X-rays of partial rib resection and the pleural thickening suggest a drainage procedure, most probably of a sub-phrenic collection. The information available on the liver damage or other intra-abdominal injuries is so meagre, that to venture a prognosis for the future is quite risky. The fractured ribs have healed and may cause occasional pain during cold weather. Pleural thickening and pleural adhesions cause some reduction of the pulmonary reserve and occasional pain. The abdominal wall is solid now but, because of the history of an incisional hernia, albeit repaired, heavy lifting should be avoided. There is no evidence of biliary obstruction at present. The

burning at the side of the abdominal incision is due to the keloid formation; this, usually eventually subsides with time. The extent to the damage to the liver is not known; this organ, however, has great reserves. Taking into consideration all the information available and the findings of the examination, it would be safer for this man to engage only in a lighter type of work."

Finally we have the report of Dr. Chr. P. Messis a specialist neurologist psychiatrist who examined the plaintiff on the 2nd April 1977 and whose report, *exhibit* 2(f) reads as follows:

" Re: *Costas Skapoularos, age* 46, *of Paralimni.*

The above named was examined by me on 4.3.77 in order to evaluate his present neuropsychiatric condition.

He complained of headache, nervousness, irritability, forgetfulness and discomfort of the right upper quadrant of the abdomen.

He stated that he developed those symptoms, after his involvement in a work accident on 21.2.74, in which he sustained a head and other body injuries. He apparently under–went surgical intervention for his abdominal injury and was also treated subsequently at Dekelia Hospital.

Unfortunately there is no report of his condition during his hospitalization at Famagusta Hospital. Dr. Mikellides, Zambarloukos and Doritis, saw the patient months later. An E.E.G. on 24.2.75, showed no abnormalities.

In my examination, he was rather overtalkative and evasive when asked about his job etc. There were no objective neurological abnormalities and the electroencephalogram was normal.

CONCLUSION. This patient apparently sustained a craniocerebral trauma among other things and subsequently developed a post–traumatic brain syndrome. His present subjective complaints could be part of this syndrome, although there is some degree of exaggeration."

The picture which emerges from the medical evidence and the medical reports hereinabove set out, is that of a man who was

the victim of serious injuries of compressive and shearing force of great magnitude which resulted to a head injury with severe concussion and laceration wound at the temporal area of the scalp, a compression of his right lower chest wall fracturing the lower ribs which penetrated the pleura, rupturing the diaphragm and liver and the common bile duct and which were associated with haemorrhage and shock. His condition, as Dr. Zambarloukkos put it, was dramatic and his life was in great danger. The prompt surgical exploration carried out then by Dr. M. Argyrides at the Famagusta Hospital, the repair of the liver and drainage of the common bile duct saved his life. These injuries, however, were followed by complications which necessitated several operations, one at Dhekelia Military Hospital at the right side of the back by an oblique incission at the upper dome of the liver, and another operation at a later stage for the repair of an incisional hernia which had developed at the lower end of the original incision. His condition crystallized after the lapse of about 14 months from the date of the accident.

The gist of these medical opinions, leaving aside difference in expression or differences as to the degree of the permanent partial incapacity of the plaintiff, which are not substantial, is that the plaintiff cannot go back to his old work of a stevedore. He will never regain the degree of physical and mental strength and endurance required to perform a day's work without much discomfort, fatigue and deterioration of skill at frequent intervals during the day. He is only fit for sedentary or semi-sedentary form of work with a minimum physical effort required.

As defending counsel put it in cross-examination to Dr. Zambarloukkos, the defence did not seek to question really the permanent incapacity of the plaintiff, but only its extent in the sense that the plaintiff might be fit to work as a kiosk keeper or to do some light work or to some sitting down job like a checker.

The loss of the records in Famagusta and the absence of Dr. Argyrides from Cyprus, deprived this Court of first hand information but this has been remedied by the rest of the evidence adduced in this case.

I have referred to the evidence regarding the earnings of the plaintiff at the time of the accident for which there does not

appear to be a substantial dispute. It is the earnings and it is the extent of employment rather than the average earnings of the plaintiff after July and August 1974, that contain an element of exaggeration and definitely one of uncertainty. Contributory factors to this uncertainty have been the events of those months, the coup d' etat and the Turkish invasion, the occupation of Famagusta port by the Turkish forces and the displacement of the inhabitants of Famagusta and the consequential deprivation of the plaintiff and his colleagues of the opportunity to engage in their regular employment in that port. This brought about the change to the worse in the status of the plaintiff as a stevedore, who before July 1974 was, as already mentioned, on list "A", whereas after an initial period of unemployment or irregular employment, things were so arranged for displaced port workers from Famagusta as to be placed on list "B" of the stevedores in Limassol and Famagusta ports. This means that they are now engaged only after the stevedores on list "A" are fully utilized in priority to them. Hence stevedores on list "B" are not as regularly and fully employed as stevedores on list "A".

Of course how long this situation will continue cannot be ascertained at present. Another aspect relevant to the issue of loss of earnings from the date of the accident to the date of the trial, or to be more accurate, to the 1st March, 1979 as claimed in paragraph "D" of the particulars of damage set out in the amended writ of summons is the fact that the evidence adduced is not so clear about the period the plaintiff was totally incapacitated whilst receiving treatment, a total period of ten months in hospitals undergoing operations and treatment.

Dr. Zambarloukos in his evidence said that the condition of the plaintiff crystallised by May, 1975. The seriousness of the injuries received by the plaintiff justify me in adding to the ten months of hospitalization a few months of convalescence, so we have 14 months of permanent incapacity for which I allow to the plaintiff £1,200.—for the initial six months, calculated at the rate of £200.— per month and another C£1,000.— making all necessary allowances for the period from July to May 1975 and taking into consideration the spells of unemployment and irregular employment to which I have already referred.

From May 1975 to the 1st March, 1979, I estimate the loss of

earnings at £6,900.—. To this sum the amount of £170.—agreed out of pocket expenses for medical fees, medicines and travellings has to be added.

For loss of future earnings, making all necessary discounts, and proceeding on the basis that the plaintiff is, though seriously, only partially incapacitated, and having in mind the cash value of such earnings, I allow C£10,000.

Finally for pain and suffering and loss of amenities of life, a heading which is more conventional in character than calculable, I allow the amount of £5.000.—.

As stated by Lord Scarman in *Lim Poh Choo* v. *Camden and Islington Area Health Authority* [1979] 2 All E.R. 910, at p. 920

> " An award for pain, suffering and loss of amenities is conventional in the sense that there is no pecuniary guideline which can point the way to a correct assessment. It is, therefore, dependent only in the most general way on the movement in money values. Like awards for loss of expectation of life, there will be a tendency in times of inflation for awards to increase, if only to prevent the conventional becoming the contemptible. The difference between a 'Benham *v.* Gambling award' and a 'West *v.* Shephard award' is that, while both are conventional, the second has been held by the House of Lords to be compensation for a substantial loss. As long, therefore as the sum awarded is a substantial sum in the context of current money values, the requirement of the law is met."

This brings the total award of damages to £24,270.—. Of course as stated by Lord Scarman again in *Lim Poh Choo supra.* at p. 921:

> " The separate items, which together constitute a total award of damages, are interrelated. They are the parts of a whole, which must be fair and reasonable. 'At the end', as Lord Denning M.R. said in *Taylor* v. *Bristol Omnibus Co. Ltd.*, ([1975] 2 All E.R. 1107 at 1111) 'the Judges should look at the total figure in the round, so as to be able to cure any overlapping or other source of error' ".

Having looked at it in the light of these pronouncements

I have come to the conclusion that this is a fair and reasonable amount for the plaintiff to receive.

There will be therefore judgment for the plaintiff against defendants 1 for the sum of £24,270 with costs. Case against defendants 2 dismissed with no order as to costs.

Judgment against defendants 1 *for* £24,270 *with costs. Action against defendants* 2 *dismissed with no order as to costs.*