1979 May 7

[HADJIANASTASSIOU, J.]

CHARALAMBOS GEORGHIOU,

Plaintiff,

v.

MICHALAKIS JOVANIS,

Defendant.

(*Admiralty Action No.* 45/75).

Negligence—Master and servant—Safe system of work—Loading of ship—Injury to stevedore when stepping on hold cover door ("boukaporta") of ship which yielded and fell into the hold—No instructions to foreman by employer to supervise the work and properly fix the hold cover doors—And no warning to stevedores—Employer liable in negligence—No contributory negligence by stevedore.

Damages—General and special damages—Personal injuries—38 years old stevedore sustaining severe contusion of the right side of chest wall, fracture of the 5th rib on the right side and echymosis at the right lateral border of the scapula and in front of the nipple line—Duty of Court to take into account changes of circumstances, which increase or diminish plaintiff's loss, that have taken place since the infliction of the injury—Plaintiff in a position to work—Award of £670 general and special damages.

The plaintiff was in the employment of the defendant as a stevedore. On March 28, 1975 whilst loading a cargo of scrap iron, together with a gang of stevedores, on the ship "Sea Aphrodite" he stepped onto the hold cover door ("boukaporta") of the ship, which on taking the weight of the plaintiff yielded and so plaintiff fell into the hold. As a result of this accident the plaintiff, who was 38 years of age at the time, sustained (a) a severe contusion of the right side of his chest wall and back involving the right costal margin, a fracture of the 5th rib on the right side, echymosis at the right lateral border of the scapula and in front of the nipple line. As a result of these injuries the

plaintiff was feeling pain and discomfort when lifting or rotating his right shoulder and was, also, feeling tired and soreness in doing arduous work necessitating repeated bending, lifting or carrying rather heavy articles. Moreover as the injury to the ribs, which are in constant motion, cannot be cured by complete rest, pain from pleuritic irritation was often the cause of persistent disability.

Upon an action by plaintiff for special and general damages:

Held, (1) that an employer is under a duty to his workmen to provide a safe system of work, and to take reasonable care not to expose them to unnecessary risks; that the defendant conceded that he had not given instructions to his foreman to supervise the work and to properly fix the hold cover doors ("boukaportes") and make them safe for the workmen to step on them when they were unloading the scrap iron; that the absence of any warning shows that the defendant was negligent and that the fact that the plaintiff took it for granted that it was safe to step on it, cannot be considered as contributory negligence; and that, accordingly, the defendant was negligent, and there was no contributory negligence on behalf of the plaintiff.

(2) (*After stating that the plaintiff claimed by way of special damages the sum of* £325.—*viz.*, £250.—*for loss of earnings estimated and agreed by both parties,* £60.—*for medical expenses and* £15.—*for travelling*) that there is in nowadays a universal acceptance of the sensible and realistic rule that trial Courts must look at the position at the time of their judgments and take account of any changes of circumstances which may have taken place since the injury was inflicted on the plaintiff; that this applies both to change which increases the plaintiff's loss and to change which diminishes it; that with this in mind and fully aware of the nature of the injuries he sustained and of the fact that he is now in a position to work, this Court has decided that the amount of damages which should be awarded to him against the defendant both for special and general damages, is the total amount of £670.

Judgment for £670.—*with costs.*

Cases referred to:

Evripidou v. *Cyprus Palestine Plantations Co. Ltd.* (1970) 1 C.L.R. 132;

Krashias v. *Iacovides and Another* (1972) 1 C.L.R. 40;

Olver v. *Satler & Co.* [1929] A.C. 584;

Fardon v. *Harcourt-Rivington* [1932] All E.R. Rep. (H.L.) 81 at p. 83;

Grant v. *Sun Shipping Co. Ltd. and Others* [1948] 2 All E.R. (H.L.) 238 at pp. 242 and 247;

Panayiotou v. *Mavrou* (1970) 1 C.L.R. 215 at p. 219;

Simmons v. *Heath Laundry Co.* [1910] 1 K.B. 543 at p. 552.

Admiralty action.

Admiralty action for special and general damages for injuries, loss and damage sustained by the plaintiff, in the course of loading of a ship, whilst in the employment of the defendant as a stevedore.

B. Vassiliades, for the plaintiff.

V. Tabakoudes, for the defendant.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. The plaintiff, Mr. Charalambos Georghiou, of Limassol, claimed in this action special and general damages for injuries, loss and damage sustained by him on March 28, 1975, whilst in the employment of the defendant.

The facts, as shortly, as possible, are these: The plaintiff who at the material time was 38 years of age, was in the employment of the defendant as a stevedore. On March 28, 1975, together with a gang of stevedores were loading a cargo of scrap iron on the ship "Sea Aphrodite" which belonged to the Cyprian Sea Ways Agencies Ltd. of Limassol. The ship was lying at the port of Limassol and whilst the plaintiff was working during and in the course of his employment, he stepped onto the hold cover door (boukaporta), which on taking the weight of the plaintiff yielded and/or slipped out of position and/or fell into the hold and so did the plaintiff. As a result of this accident he suffered injuries and damages viz., (a) a severe contusion of the right side of his chest wall and back involving the right costal margin; (b) fracture of the 5th rib on the right side; (c) echymosis at the right lateral border of the scapula and in front of the nipple line; (d) pain and discomfort when lifting or rotating his right shoulder. This movement the plaintiff said is frequently required in his occupation as a port labourer.

He was also feeling tired and soreness in doing arduous work necessitating repeated bending, lifting or carrying rather heavy articles becoming worse when exposed to weather changes; (e) as the injury to the ribs, which are in constant motion, cannot be cured by complete rest, pain from pleuritic irritation is often the cause of persistent disability.

As a result of these injuries the plaintiff, who was earning as a stevedore an amount of £50.—per week, was complaining that he was no longer fit to do the job because he had difficulties in breathing and pain from his back to the front, at the right side at the level of the right 5th–6th ribs, which is more troublesome on deep breathing or on bending his spine. On the contrary, the defendant repudiated the allegations of the plaintiff, and in reply it was put forward that at the material time the plaintiff was acting outside his employment. In addition, the defendant alleged that his only duty towards the plaintiff was to take such reasonable precautions for his safety as under the circumstances a reasonable employer would have taken in the ordinary course of business; and that such duty was discharged because the hold cover door was used only by the sailor of the ship, a fact which the plaintiff knew or ought to have known.

The accident in question was described by Mr. Procopis Georghiou, a fellow employee, who said that just before the accident a gang of stevedores were loading scrap iron on the ship. The witness said that the persons who witnessed the accident was himself, a certain Kemal and the foreman employed by the defendant. They were all working at hold No. 1. Because they were called to go to hold No. 2 in order to place iron bars on the side "tis kouvertas" of the ship they did so. When they returned to the first one there were already three planks closed on each side of the hold which were fixed or resting on "mezania". The plaintiff went near a winch of the ship because at that time heavier scrap iron was loaded on that winch. He was following him in order that both would remove the heavy iron from the winch. The plaintiff stepped on the planks and before proceeding further he fell and he had no time to get hold of him. He fell into the first hold of the ship and at the same time the plank fell also in the said hold. The accident was witnessed also by Mr. Kemal and the foreman Mr. Mavros. Just after the accident he took the plaintiff to the hospital. While there, the plaintiff underwent an examination and an

X-ray. In cross-examination the witness said that they had instructions to see the foreman of Mr. Jovanis who would give them instructions what to do on that date. Their instructions were to stay in the hold and when the scrap iron was unloaded by the lorries their job was to place it in the hold itself for reasons of space. There were three planks on each side of the second hold and under those planks there were what they call "mezania", which are big irons on which the planks are placed. Questioned further he said that there was no other way to go to the winch without passing or stepping on the planks.

The plaintiff in giving evidence said that just before the accident occurred they had placed the scrap iron in the hold and they were on their way to go to the first hold of the ship. The winch, belonging to the ship, was in operation and he had to step on the planks in order to approach the winch with a view to removing the scrap iron from the sling. As soon as he stepped on the planks he fell into the first hold and was injured on his left side. He was taken to the hospital for examination, and because of the accident he was suffering with pains and he is still suffering until now. In cross-examination he said that he has been working for nine years as a stevedore, and on the date of the accident the instructions on behalf of his employer, the defendant, were to place the scrap iron into the hold. Furthermore he admitted that before stepping on those planks he did not examine to see whether they were in order, because he added "we take it for granted that they were properly fixed".

On the contrary, the employer Mr. Michalakis Jovanis, quite fairly, conceded that his foreman was the person responsible to direct the operation of the men he employed on that date. He also admitted that on that date he visited the ship and warned his employees not to allow a car to fall into the hold of the ship during the unloading. He added that when the loading is fully carried out the seaman in charge closes the hatch of the hold, and his employees have nothing to do with such operation. Then this witness, was questioned in these terms: "The placing of mezania and planks is the exclusive work of the employees or seamen of the ship". A: "It is not the business of my employees". In cross-examination, the witness said that during the loading of the big iron bars when the winch is used, one of his employees with the use of a hook directs the sling with big pieces of iron in order to unload the hold. Then counsel for

the plaintiff very fairly put this question to the defendant: "I want to be fair to you, this is an important question I am putting to you and think about it. Once you know that the people you employ walk on the bookaportes, did you consider it important to give instructions to your foreman to see whether those bookaportes are properly fixed?" In reply the defendant said: "As a matter of fact, I did not warn my foreman because from experience I know that the people of the ship are responsible and usually they do it". Finally the witness stated that he knew that until that time accidents took place only when the "mezania" were not properly placed.

Counsel for the defendant in his particulars made it clear (a) that the plaintiff failed to have any or any proper or reasonable consideration for his own safety; and that he exposed himself to the risk of injury or damage of which he knew and/or ought to have known; (b) that he stepped onto a hold cover door without ensuring that it was safe for him to do so and/or whether it was unsafe and/or dangerous for him to do so; (c) stepped onto the hold cover door without ensuring that the sailors of the ship put on the safety catches on the iron cross bars.

Counsel for the defendant in support of the defence put forward that because the bookaportes were not properly fastened by the employees of the ship, the defendant was not liable for the acts of other people once there was not any interference by his own employees. Counsel further argued that in those circumstances the obligation to see that the system of work was safe fell on the shoulders of the ship owners, because their employees were negligent in not fixing properly the bookaportes upon which the plaintiff had stepped in order to go on with his work. Counsel relied on *Ermioni Evripidou* v. *Cyprus Palestine Plantations Co. Ltd.* (1970) 1 C.L.R. 132, and on *Nicos Krashias* v. *Nicos Iacovides and Another* (1972) 1 C.L.R. 40. Finally counsel argued that if the Court came to the conclusion, having regard to the circumstances of this case, that the defendant was guilty of negligence, he should not be awarded wages more than £3.795 mils per day, once he exaggerated the amount of his earnings.

On the contrary counsel for the plaintiff in a strong and able argument contended (a) that the placing of certain bookaportes on either side of the hold was necessary for the stevedores engaged in the loading of the ship to enable them to step on that

temporary platform in order to pull or push the loaded scrap iron. Had the work finished, counsel went on to add, and the sailors replaced the bookaportes he would admit or concede that his learned colleague could have an argument but this was not the case. Here the placing of those bookaportes was made for the convenience and use of the stevedores, the defendant's employees, and it was the duty of the foreman to look after them from the safety point of view. He was there to supervise the whole loading and unloading operations and it was the duty of this employer to see that the planks of wood on which workers were expected to step were in a safe condition. Finally counsel argued that it was clearly the duty of the employer to provide a safe system of work and a safe access to the place of work. Counsel relied on *Olver* v. *Salter & Co.* [1929] A.C. 584. Regarding the injuries of the plaintiff sustained as a result of the accident counsel contended that an amount of £325.—special damages would be a reasonable amount in the particular circumstances of this case.

It was said time and again that negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case and the categories of negligence are never closed. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to cause physical injury to persons or property.

In *Fardon* v. *Harcourt-Rivington* [1932] All E.R. Rep. 81 H.L., Lord Dunedin said at p. 83:-

" The root of this liability is negligence, and what is negligence depends on the facts with which you have to deal. If the possibility of the danger emerging is reasonably apparent, then to take no precautions is negligence; but if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extraordinary precautions".

In *Grant* v. *Sun Shipping Co. Ltd. and Others* [1948] 2 All E.R. H.L., 238, Lord Porter dealing with the question of negli-

gence, and having observed that prima facie the question whether a pursuer or defender was negligent or not is a matter for the Judge who tries the case, said at p. 242:-

"There remains the question whether the pursuer was himself guilty of contributory negligence. This matter is largely a question of fact and if there was evidence from which a tribunal could fairly come to the conclusion that the pursuer was not himself negligent, and if the Judge or jury before whom the case was tried came to that conclusion, I imagine your Lordships would not interfere with the decision. It is, I think, not in dispute that the decision has to be made in the light of the characteristics of the type of men affected. In this case the pursuer was a stevedore, used to taking the ordinary risks of loading and unloading a ship, no doubt not very ready in describing his mental processes, but painly by his acts and, indeed, as I think, by his words indicating that it never occurred to him as a possibility that the men who had been working on No. 2 hatch would take down the cluster lighting it and leave the covers off or, indeed, in defiance of their duty, would leave the hatch open after their work was done, more particularly as they knew that stevedores were passing and repassing the hatch in the course of their work and as they had been reminded by the third officer to leave all in order. In these circumstances, he stepped on to the hatch without thinking of danger. It may be that 'inadvertently' does not describe the act with complete accuracy, and perhaps 'without conscious thought' is more exact—but everyone acts constantly on the instincts gained by a lifetime of experience and I do not think the pursuer can be blamed for so acting. It is, I understand, common ground that the only question which your Lordships have to determine on this part of the case is: Would a prudent stevedore with a lifetime of experience behind him reasonably think that workmen who had both apparently and in fact gone and had taken down the light which had previously shone across the deck instinctively conclude that the hatch covers were on? I myself think he was justified in doing so and hold the view the more strongly inasmuch as the Lord Ordinary came to that conclusion and had evidence on which he could do so. I should allow the appeal, and hold the defenders liable for damages and costs."

Lord Du Parcq, delivering a separate speech said at p. 247:-

" My own conclusion, therefore, is that the pursuer did not fail to take the ordinary care that would be expected of him in the circumstances. If the standard of the conduct of 'an ordinary prudent man' is preferred, I do not think that his own conduct fell below it. Almost every workman constantly and justifiably, takes risks in the sense that he relies on others to do their duty, and trusts that they have done it. I am far from saying that everyone is entitled to assume, in all circumstances, that other persons will be careful. On the contrary, a prudent man will guard against the possible negligence of others, when experience shows such negligence to be common. Where, however, the negligence is a breach of regulations, made to secure the safety of workmen, which may be presumed to be strictly enforced in the ordinary course of a ship's discipline, I am not prepared to say that a workman is careless if he assumes that there has been compliance with the law. The real complaint of the defenders is that the pursuer reposed an unjustified confidence in them. No doubt, his confidence was not justified in the event, but he is not, I think, to be blamed for that. The Court have long recognised that in some circumstances an omission to make sure for oneself that others have done what they ought to have done is not negligent. Thus, in *Gee* v. *Metropolitan Ry. Co.*, [1873] L.R. 8 Q.B. 161, when a railway passenger who had leant against a carriage door, which he had erroneously supposed to be properly fastened, had fallen through it and suffered injury, it was unanimously held in the Exchequer Chamber that he was entitled to hold a verdict against the Company, and three of the Judges were of opinion that there had been no evidence of contributory negligence to go to the jury. He had, in the words of Keating, J. (L.R. 8 Q.B. 161, 174):

..... a right to assume that the company were not negligent, and that all the doors were properly shut....."

In *Elpiniki Panayiotou* v. *Georghios Kyriacou Mavrou*, (1970) 1 C.L.R. 215, Josephides, J. adopting the principle enunciated in Fardon (*supra*) said at p. 219:-

".....if the possibility of the danger emerging is reasonably

apparent, then to take no precautions is negligence; but if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extraordinary precautions. This statement is regarded as applying generally to actions in which the negligence alleged is an omission to take due care for the safety of others; and it must follow that a prudent man will guard against the possible negligence of others, when experience shows such negligence to be common....."

Whether or not in any given case the relationship of master and servant exists is a question of fact (*Simmons* v. *Heath Laundry Co.*, [1910] 1 K.B. 543, C.A. at p. 552, Per Buckley L.J.), and an employer is under a duty to his workmen to provide a safe system of work, and to take reasonable care not to expose them to unnecessary risks.

In the present case the defendant very fairly conceded that he had not given instructions to his foreman to supervise the work and that the bookaportes were properly fixed and were made safe for the workmen to step on them when they were unloading the scrap iron. In my view the absence of any warning shows that the defendant was negligent and that the fact that the plaintiff took it for granted that it was safe to step on it, cannot be considered as contributory negligence.

For all the reasons I have given, and in the light of the authorities I have quoted earlier in this judgment, I find that the defendant was negligent, and that there was no contributory negligence on behalf of the plaintiff. I therefore dismiss this contention of counsel.

The next question is: What is the correct amount to be awarded to the plaintiff for pain and suffering. The plaintiff claimed by way of special damages the sum of £325.—viz., £250.—for loss of earnings estimated and agreed by both parties, £60.—for medical expenses and £15.—for the travelling of the plaintiff.

There is in nowadays a universal acceptance of the sensible and realistic rule that trial Courts must look at the position at the time of their judgments and take account of any changes of circumstances which may have taken place since the injury was

inflicted on the plaintiff. This applies both to change which increases the plaintiff's loss and to change which diminishes it. With this in mind and fully aware of the nature of the injuries he sustained and of the fact that he is now in a position to work, I have decided that the amount of damages which should be awarded against the defendant both for special and general damages, is the total amount of £670.—.

For the reasons I have given, I have reached the conclusion to give judgment in favour of the plaintiff for the sum of £670.— with interest thereon at 4% per annum. Costs to be assessed by the Registrar.

Judgment accordingly and order for costs as above.

Judgment and order for costs as above.