1980 August 28

[SAVVIDES, J.]

ANDREAS KAKOU,

Plaintiff,

v.

1. ADRIATICA SOCIETA PER AZIONI DI NAVIGAZIONE,
2. A.L. MANTOVANI & SONS LTD.,

Defendants.

(*Admiralty Action No.* 44/73).

Negligence—Master and servant—Safe system of work—Loading of ship—Injury to stevedore after losing his balance upon stepping on planks in hold of ship—Planks of irregular size and thickness and not placed properly—Attention of employers drawn to defects in system of work who, instead of making efforts to set it right, ordered stevedores to proceed with the work or leave—Employers liable in negligence—Stevedore not guilty of contributory negligence.

Principal and agent—Claim on negligence, for injuries sustained in the course of employment on a ship, against shipowners and their agents—Liability of agents—Agents having no say as to the mode of carrying out of the work or a duty to provide the necessary means for the carrying out of such work, which was carried out under the supervision of the servants of the shipowners—Accident the result of the negligence of such servants—Agents not liable.

Negligence—Contributory negligence—Whether to be pleaded specifically.

Civil Procedure—Practice—Pleadings—Contributory negligence—Whether to be pleaded specifically.

Damages—General damages—Personal injuries—Stevedore aged 36 *at time of the accident and* 42 *at time of trial—Sustaining fracture of left leg—In hospital for two weeks—An out-patient for a period of five months—Considerable pain during first five months—Still feeling pain at the injured part—Resumed work after five months—*

Will have to retire from his well remunerated type of work and look for a lighter and less remunerative work, within five to ten years—Award of £4000 *for loss of future earnings—And* £1500 *for past, present and future pain, suffering and discomfort due to development of osteoarthritis and after effects of injuries.*

Costs—Successful defendant—Awarded costs against unsuccessful defendant in view of the latter's line of defence.

Plaintiff, a stevedore employed in the loading and unloading of ships in the port of Famagusta, was injured on April 14, 1972 while loading boxes of oranges in the hold of the ship "STELVIO" owned by defendants 1. The boxes of oranges had to be placed on wooden planks (dunnage) which were placed parallel to each other on the floor to allow the boxes rest on them. Before the loading started, it was the duty of the cargo officer of the ship, an employee of defendants 1 who was responsible for the loading in the hold to place the planks in their position for the boxes to be stacked on. Each wooden box contained oranges and was weighing about 40 okes. The stevedores had to lift such box from the pallet holding each box with their arms and supporting it on their bellies and had to move slowly within the hold in such position up to the place where the boxes were to be stacked. When plaintiff and the other stevedores went into the hold to start loading, they noticed that the planks which were placed on the floor were of irregular size and thickness and were not placed properly, a fact which was making their work dangerous. Plaintiff and the other stevedores remarked to the cargo officer of the ship about that and, also, that it was dangerous for them to work under such conditions. In reply, he asked them to carry on with the work and that the planks would remain as they were placed. They, also, protested and drew the attention of the foreman, Xenis Tsoukas, who went down into the hold, saw the situation and ordered them to carry on with their work, otherwise they had to leave. After the plaintiff and his colleagues found no response to their protest they started work. The space which was left between the planks was ranging from 8 inches to 1 1/2 ft. a fact which necessitated the stepping of the workmen on the planks whilst proceeding from the pallets towards the end of the hold to stack the boxes. As the plaintiff was walking slowly and carefully holding the box in his arms he stepped on one of the planks,

the plank slipped and as a result he lost his balance, fell down forcibly and was injured. Hence this action.

The plaintiff was 36 years of age at the time of the accident. He was a regular customs porter working as a stevedore. As a result of the accident, his left leg was fractured and he was removed to the Famagusta Hospital where he was operated and was kept as an in-patient for treatment for about two weeks. His leg was placed in plaster and was sent home from where he used to visit the hospital as an out-patient for a total period of five months. He was out of work for five months. As a result of the accident he had considerable pain during the period of the first five months and he still felt pain at the injured part nearly every day due to the nature of his work which was a rather heavy type of work, because he had to stand for long hours carrying heavy loads and straining of his leg caused him pain which, pain, instead of diminishing was increasing with time. He had, within five to ten years, to retire from his well remunerated work as a stevedore, out of which he was earning £3,000-£4000 a year, plus an increase of 5 per cent as from January, 1980 and also an increase of 18 per cent of the cost of living since last November and with prospects of future increases, and look for a lighter job involving less physical effort and obviously less remunerative than his present job. At the time of the accident his average income was £2,500-£3000 a year.

Plaintiff explained that he brought the above action against both defendants because it was the foreman of defendants 2 that gave him the instructions to work on the above ship and he was of the impression that he was employed both by defendants 2 and by defendants 1 to whom the ship belonged. Before the Court there was uncontradicted evidence*, which was adduced by defendants 2 and was accepted by the Court, to the effect that the relations of defendants 1 with defendants 2 were those of a principal and agent; that when defendants 2 were employing any labourers or doing any work in connection with any ship belonging to defendants 1, including the above ship, they were acting in their capacity as agents for the account of defendants 1; that the responsibility for the loading and storage of the boxes of oranges was upon the master and the cargo officer of the ship who were employees of defendants 1; that the planks were

* See details of this evidence at pp. 373-74 *post*.

the property of the ship and were supplied by the ship for use for such purpose; and that defendants 2 had no control over the stevedores or anybody working on the ship during the loading or unloading operations.

On the question whether the defendants or either of them were guilty of negligence in respect of the accident:

Held, (1) that defendants 2 had no say as to the mode of carrying out the work by the labourers or a duty to provide the necessary means for the carrying out of such work; that, both according to the evidence of the plaintiff and his witnesses and that of defendants 2, the work in the hold had to be carried out under the orders and supervision of the cargo officer of the ship who was the servant of defendants 1; that all necessary appliances for carrying out the work and the whole system of the operation was the responsibility of such officer; that furthermore, the deck foreman, Tsoukas, who was also responsible for the work of the gang of stevedores in the hold and of all other porters engaged on the ship, was at the material time a servant in the employment of defendants 1; that the accident was caused by the fact that one of the planks, on which plaintiff stepped, slipped; that such plank and all the means provided for the work in the hold of the ship were the property of defendants 1 and defendants 1 had full control over them; that defendants 2 were merely doing what was expected of them to do under their contract of agency acting at all times for and on behalf of their principals; and that, therefore, defendants 2 are not to blame in any event for this accident.

(2) That the condition of the planks and the way they were placed, was not safe and that the accident was the result of the negligence of defendants 1 to replace the planks with planks of regular thickness or place them in such a way as to avoid the possibility of their slipping when one had to step on them; that defendants 1 were in breach of their common law duty to provide a safe system of work a fortiori in the present case where the attention of the cargo officer of the defendants 1 and their foreman, Tsoukas, was drawn to the defects of the system of work and who instead of making efforts to set it right, they ordered the workmen to proceed with the work or leave; and that, accordingly, plaintiff has proved negligence on the part of defendants 1.

On the question whether the plaintiff was guilty of contributory negligence:

(1) That though both defences did not plead specifically contributory negligence defendants alleged in their pleadings that the accident was the result of plaintiff's negligence and gave full particulars of the alleged negligence; that no objection was taken on this point by the plaintiff; and that in the way the pleadings were drafted he was not taken by surprise because full particulars of negligence were given therein.

(2) That no evidence was called by the defendants to contradict the evidence adduced by the plaintiff and establish any negligence on his part; that, therefore, the plaintiffs have not proved any of their allegations of negligence on the part of the plaintiff; and that, accordingly, the plaintiff was not guilty of any contributory negligence (pp. 376–79 post).

On the question of damages:

Held, that the early retirement of the plaintiff from his well remunerated job is considered as the most serious item of his claims for general damages because if he retires from such job at least five years before his time and even if he is lucky enough to find another type of light job he will, nevertheless, suffer considerable loss of his daily earnings; that taking into consideration that an allowance must be made for contingencies which might upset the plaintiff's future prospects, such as illness, accident etc., and for the fact that compensation is paid at once in a lump sum, whereas his earnings would have spread over many years, the damages in respect of such prospective loss of future earnings due to an early retirement from the work he is now carrying out, taking at the same time into account any prospect of securing a lighter work at a much lower remuneration, are assessed at £4,000; that to this amount there must be added a further sum of £1,500 for pain, suffering, discomfort which the plaintiff suffered and continues to suffer and will suffer in the future due to the development of osteoarthritis and the after effects of his injuries thus making a total of £5,000; that adding to this the sum of £850 agreed special damages, there is reached the figure of £6,350; and that, accordingly, judgment is given for plaintiff against defendants 1 for £6,350 special and general damages, with costs.

On the question of costs:

Held, that defendants 2 are entitled to their costs, in view of the fact that the claim against them failed; that plaintiff, however, in the circumstances of this case, rightly had to bring the action against both defendants because he was not in a position to know which of the defendants was in fact and in law his employer, a matter which became even more obscure in view of the line of defence of defendants who were trying to throw the blame on each other; that the expenses of defendants 2 were increased as a result of the conduct of defendants 1 who though well aware that defendants 2 were their agents all along and were acting on their behalf, they decided at the last moment to change course and tried to exonerate themselves by throwing the blame on defendants 2 without substantiating such allegation by any evidence; that defendants 2 rightly issued a third party notice against defendants 1 claiming to be indemnified for any loss or damage which they might suffer and for which defendants 1 were responsible; that taking all the above into consideration and the third party notice issued by defendants 2, this Court has reached the conclusion that defendants 2 are entitled to recover their costs for defending this action from defendants 1; and that an order for costs is made accordingly.

Action against defendants 2 *dismissed. Judgment for plaintiff for* £6,350 *against defendants* 1. *Order for costs as above.*

Cases referred to:

Hamp v. *Warren* [1843] 11 M.W. 103;

Re Kerly [1901] 1 Ch. 469;

Shelton v. *Brown etc. Ltd.* [1953] 2 All E.R. 894;

Nigerian Produce Marketing Co. Ltd. v. *Sonora Shipping Co. Ltd.* (1979) 1 C.L.R. 395 at pp. 409 and 410;

Wilsons & Clyde Coal Co. v. *English* [1938] A.C. 57 at pp. 81 and 86;

Wilson v. *Tyneside Window Cleaning Co.* [1958] 2 All E.R. 265;

Speed v. *Thomas Swift & Co. Ltd.* [1943] 1 All E.R. 539 at p. 541;

Paris v. *Stepney Borough Council* [1951] 1 All E.R. 42 at p. 50;

General Cleaning Contractors v. *Christmas* [1952] 2 All E.R. 1110 at p. 1114;

Crookall v. *Vickers–Armstrong Ltd.* [1955] 2 All E.R. 12;

Lewis v. *High Duty Alloys Ltd.* [1957] 1 All E.R. 740;

Haynes v. *Qualcast (Wolverhampton) Ltd.* [1958] 1 All E.R. 441;

Nolan v. *Dental Manufacturing Co. Ltd.* [1958] 2 All E.R. 449;

Davie v. *New Merton Board Mills Ltd.* [1958] 1 Q.B.D. 210 at p. 219;

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

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

Djemal v. *Zim Israel Navigation Co. Ltd. and Another* (1967) 1 C.L.R. 227 and on appeal (1968) 1 C.L.R. 309;

Panayi v. *Galatariotis & Sons Ltd.* (1971) 1 C.L.R. 416;

Louca v. *Cyprus Mines Corporation* (1970) 1 C.L.R. 185;

Georghiou v. *Jovanis* (1980) 1 C.L.R. 102 at p. 108;

Charalambous v. *Gargour Co.* (1980) 1 C.L.R. 138 at p. 147;

Fardon v. *Harcourt–Rivington* [1932] All E.R. Rep. 81 at p. 83;

Stapley v. *Gypsum Mines Ltd.* [1953] 2 All E.R. 478;

Williams v. *Liverpool Stevedoring Co.* [1956] 2 All E.R. 69;

Christodoulou v. *Menicou and Others* (1966) 1 C.L.R. 17 at pp. 31 and 32;

Quintas v. *National Smelting Co. Ltd.* [1961] 1 All E.R. 630 at p. 643;

Kyriacou v. *Aristotelous* (1970) 1 C.L.R. 172 at p. 178.

Admiralty Action.

Admiralty action for special and general damages for personal injuries sustained by the plaintiff whilst employed on the ship "STELVIO" as a result of the negligence and/or breach of statutory duty by the defendants.

A. Lemis, for the plaintiff.

G. Michaelides, for defendants 1.

St. McBride, for defendants 2.

Cur. adv. vult.

SAVVIDES J. read the following judgment. Plaintiff was a stevedore employed in the loading and unloading of ships in the port of Famagusta and now he is carrying out the same job in the port of Limassol since the Turkish invasion and occupation

of Famagusta. On April 14, 1972, while working on the ship "STELVIO" owned by defendants 1, he was severely injured. For the loss, pain and suffering, and permanent partial incapacity consequent upon his injuries, plaintiff brought the present action against the shipowners, defendants 1, and their local agents, defendants 2, for negligence and/or breach of statutory duty claiming special and general damages.

The writ of summons was issued on 24.9.1973 and service was effected on defendants 1 on 12.4.1976 and on defendants 2 on 28.5.1976. At the time of service, the writ of summons had already expired having not been served within a period of one year from the date of its issue and having not been renewed in the meantime. The question whether service after the expiration of 12 months of its validity or after any extended period amounts to a nullity or mere irregularity appears to be finally settled. The decisions in *Hamp.* v. *Warren* [1843] 11 M.W. 103 and *Re Kerly* [1901] 1 Ch. 469 fully support the view that such writ does not become a nullity but the service after expiration of the period of its validity amounts to mere irregularity. In *Shelton* v. *Brown etc. Ltd.* [1953] 2 All E.R. 894 it was held that service after the expiration of the validity of a writ is mere irregularity which may be waived by the entry of an unconditional appearance.

The principles concerning the validity of a writ after its expiration have been reviewed by this Court in *Nigerian Produce Marketing Co. Ltd.* v. *Sonora Shipping Co. Ltd.* (1979) 1 C.L.R. 395 at pp. 409 and 410.

The defendants in the present action entered unconditional appearance thus waiving any objection which might have been arisen from service of an expired writ.

By his petition filed on 2.9.1976 plaintiff alleges that defendants No. 1 were the owners and/or occupiers and/or persons having control of the ship "STELVIO" and that defendants No. 2 were their servants or agents. It is his allegation that the accident was the result of the negligence of the defendants and/or breach of statutory duty by them as employers, to maintain a safe system of work. Particulars of negligence and breach of duty are set out in paragraph 6 of the petition which briefly are to the effect that defendants failed to provide and maintain a safe system of work and also failed to take any or adequate precautions for the safety of the plaintiff

notwithstanding the fact that complaints were made to the responsible foreman and/or servants of the defendants in that respect and who ignored such complaints. As a result of such accident the plaintiff suffered the injuries set out in paragraph 7 of the petition with which I shall deal explicitly later in this judgment when having to deal with the question of damages.

Both defendants entered a joint appearance on 13.5.1976 and filed a joint defence admitting that defendants 1 were the owners of the ship "STELVIO" and that defendants 2 were their agents and/or servants and also that at the material time plaintiff was employed by defendants 1 denying at the same time any negligence or breach of duty on their part and alleging that the accident was the result of the negligence of the plaintiff.

On the day fixed for the hearing of the action, counsel appearing for both defendants, applied for leave to withdraw as counsel for defendants 1, which, leave, was granted to him on the ground that conflict of interest arose between the defendants, obviously due to conflict of interest between the Insurance Companies covering each defendant respectively. Defendants 1, as a matter of fact, were represented at the hearing by another counsel. Both counsel for defendants then applied for the adjournment of the hearing, submitting at the same time an oral application for leave to amend their defence by withdrawing their previous joint defence and filing new separate defences. Counsel for plaintiff did not object to such amendment and as a result an order was made accordingly.

By their amended defences, the contents of which are similar in nearly all respects to each other, save allegations by the one defendant against the other that the plaintiff was employed by the other and that the relationship of master and servant did not exist between such defendants and the plaintiff but between the other defendants and the plaintiff. Defendants further denied any negligence on their part alleging that the accident was the result of the whole or part negligence of the plaintiff, particulars of which are set out in paragraph 5 in both answers. Defendants concluded their defences alleging under paragraphs (7) in both defences, that—(a) if any negligence is found, such negligence is the negligence of the other defendants adopting in that respect the allegations of negligence of the plaintiff against such other defendants, and (b) alternatively, should the plaintiff be found

to be entitled to judgment against both defendants, the Court is prayed to apportion its judgment accordingly.

It is clear from the amended defences and the course followed by the defendants that they decided at that stage to separate their line of defence. The ones trying to exonerate themselves from liability as masters of the plaintiff and alleging that plaintiff was the servant of the other defendants and vice versa.

After the filing of his defence counsel for defendants 2 served defendants 1 with a third party notice, claiming full contribution in respect of any sum which the plaintiff may recover against them, having regard to the responsibility of defendants 1, for such damages, on the ground that the negligence of defendants 1 was the cause for or contributed to the accident.

In the course of the hearing the special damages claimed by plaintiff for medical fees, travelling expenses, medicines, loss of earnings as from 14.4.72 to 20.9.72 and diminution of earnings as from 20.9.72 to the day of hearing were agreed at £850.–. Counsel further agreed that the medical reports of the doctors who had examined the plaintiff be accepted without calling them as witnesses. Such reports are:

(a) the report of Dr. Savvides, dated the 2nd February 1973 who treated the plaintiff at the Famagusta Hospital, (*exh.* 1),

(b) the report of Dr. Zambarloukos dated the 5th March, 1973, who examined the plaintiff on the 5th March, 1973, (*exh.* 3)

(c) the report of Dr. Tornaritis dated the 5th April, 1977, who examined the plaintiff at the request of the defendants on the 4th April, 1977 (*exh.* 2).

At the hearing, plaintiff and two other witnesses testified as to the accident, the system of work provided by the defendants and the injuries suffered by the plaintiff and the average income of the plaintiff as a stevedore. Defendants 1 adduced no evidence and the only witness called by defendants 2 was their Manager.

The issues which pose for determination in the present action are:

(a) Whether the defendants or either of them are guilty for negligence in respect of the accident.

(b) Whether there was contributory negligence on the part of the plaintiff.

(c) What is the reasonable compensation to be awarded to the plaintiff in the circumstances of this case in case the defendants or either of them is found liable.

Before dealing with the issues before me, I shall deal with the legal question of the duty of the master towards his servants to provide a safe system of work.

The duty of the master towards his servant to provide a safe system of work, finds its roots deep into the Common Law. The Common Law has from early times imposed a duty on the master to take fitting care to see that the servants, jointly engaged with him in carrying on his work or industry, shall not suffer injury, either in consequence of his personal negligence, or through his failure properly to superintend and control the undertaking in which he and they are mutually engaged. A breach of this duty causing personal injury has always given the servant a right of action for separation. For his own personal negligence, a master was always liable and still is liable at Common Law. (Vide Halsbury's Laws of England, Third Edition, Vol. 25, p. 505, para. 969).

The primary duties as to safety owed by a master to his servant have been said to be threefold: (1) To provide a competent staff; (2) to supply adequate materials (such as proper machinery, plant, appliances, etc.); and (3) to institute and maintain a proper and safe supervision where necessary. (Vide *Wilsons & Clyde Coal Co.* v. *English*, [1938] A.C. 57 per Lord Wright at p. 81 and per Lord Maugham at p. 86). To these must be added the obligation to observe all statutory regulations enacted for the workman's safety.

"It is no doubt convenient", said Parker L.J. in *Wilson* v. *Tyneside Window Cleaning Co.* [1958] 2 All E.R. 265 "to divide that duty into a number of categories; but for myself, I prefer to consider the master's duty as one applicable in all circumstances, namely, to take reasonable care for the safety of his men or, as Lord Harschell said in the well-known passage in *Smith* v. *Baker & Sons*, [1891] A.C. 325, to take reasonable care so to carry out his operation as not to subject those employed by him to unnecessary risk.

....."

As to what is meant by "safe system of work", Lord Greene M.R. had this to say, in *Speed* v. *Thomas Swift & Co. Ltd.*, [1943] 1 All E.R., p. 539, at p. 541:-

> "What exactly is meant by 'a safe system of working' has never, so far as I know, been precisely defined. The provision of such a system falls within the master's province of duty; .....
>
> .....
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> A system of working may consist of a number of elements and what exactly it must include will, it seems to me, depend entirely on the facts of the particular case".

Also per Lord Oaksey in *Paris* v. *Stepney Borough Council*, [1951] 1 All E.R., p. 42, at p. 50:-

> "The duty of an employer towards his servant is to take reasonable care for the servant's safety in all the circumstances of the case ..... The standard of care which the law demands is the care which an ordinarily prudent employer would take in all the circumstances. As the circumstances may vary infinitely, it is often impossible to adduce evidence of what care an ordinarily prudent employer would take."

In *General Cleaning Contractors* v. *Christmas*, [1952] 2 All E.R. 1110, it was said (per Lord Oaksey) at p. 1114:-

> "It is, I think, well known that ..... work people are frequently, if not habitually, careless about the risks which their work may involve. It is in my opinion for that very reason that the Common Law demands that employers should take reasonable care to lay down a reasonably safe system of work. Employers are not exempted from this duty by the fact that their men are experienced and might, if they were in the position of an employer, be able to lay down a reasonably safe system of work themselves. Their duties are not performed in the calm atmosphere of board-rooms with the advice of experts. They have to make their decisions on narrow window-sills and other places of danger and in circumstances in which the dangers are obscured by repetition.
>
> ....."

In Halsbury's Laws of England, 3rd Edition, Vol. 25, p. 513,

paragraph 980, under the heading "*Adequate supervision*", it reads:

> "Since it is the duty of the master to take care not to expose his servants to any unnecessary risk, he may be under an obligation to provide effective supervision to ensure that reasonable safety precautions are carried out."
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> (*Wilsons and Clyde Coal Ltd.* v. *English* [1938] 3 All E.R., 628, at p. 640, per Lord Wright).

Where, therefore, there is an obvious risk of injury unless a preventive safety device is used by the servant, the master's duty extends not only to providing the device (*Paris* v. *Stepney Borough Council* [1951] 1 All E.R., 42), but also to taking reasonable measures to see that his workmen use it. (*Crookall* v. *Vickers Armstrong Ltd.* [1955] 2 All E.R. 12; *Lewis* v. *High Duty Alloys Ltd.* [1957] 1 All E.R., 740; *Haynes* v. *Qualcast (Wolverhampton) Ltd.*, [1958] 1 All E.R. 441; *Nolan* v. *Dental Manufacturing Co. Ltd.* [1958] 2 All E.R., 449).

Reading from 'The Law of Master and Servant' 5th Edition, (1967), by Francis Raleigh Batt, at p. 432:-

> "Two recent cases upon 'safe system of work' re-affirm two important principles. First, whether an employer has taken reasonable care or not—is always, and must ultimately remain, a question of fact: *Qualcast (Wolverhampton) Ltd.* v. *Haynes*, [1959] 2 All E.R., 38, A.C. 749, 760, 761). On a question of fact, one is not bound by authority. (Vide [1959] A.C. 753, per Lord Radcliffe.)
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> Secondly, the evidence of experts though of great weight, is not conclusive, and in considering whether an employer has failed in his duty of care, it is immaterial whether it was an act of commission or an act of omission: The sole question is: Has there been a failure to exercise reasonable care? As Lord Somervell observed, in the *Cavanagh case* (*Cavanagh* v. *Ulster Weaving Co. Ltd.* [1960] A.C. 145, 167 [1959] 2 All E.R., 745):
>
> > '..... the fewer the formulas the better will be the administration of this branch of the law in which circumstances in one case can never be precisely similar to those in another.' "

It is further clearly established that an employer's duty to take reasonable care for the safety of his employees is a duty personal to him, of which he cannot divest himself by entrusting the performance of it to a servant or agent however competent. (*Wilson & Clyde Coal Co. Ltd.* v. *English* (*supra*). The same principle was reiterated by Jenkins L.J. in *Davie* v. *New Merton Board Mills Ltd.* [1958] 1 Q.B.D. 210 at p. 219).

The principles as to the duty of the master towards his servants to provide a safe system of work and that such duty is personal to the employer and cannot be divested from, have been well established by our Supreme Court in a number of cases (vide *Athanassiou* v. *The Attorney-General of the Republic* (1969) 1 C.L.R. 160, *Evripidou* v. *Cyprus Palestine Plantations Co. Ltd.* (1970) 1 C.L.R. 132, *Djemal* v. *Zim Israel Navigation Co. Ltd. and Another* (1967) 1 C.L.R. 227 and on appeal (1968) 1 C.L.R. 309, *Panayi* v. *Galatariotis & Sons Ltd.* (1971) 1 C.L.R. 416, *Louca* v. *Cyprus Mines Corporation* (1970) 1 C.L.R. 185. Also, two recent decisions on accidents which occurred on ships in which most of the authorities are reviewed: *Georghiou* v. *Jovanis* (1980) 1 C.L.R. 102 and *Charalambous* v. *Gargour & Co. Ltd.* (1980) 1 C.L.R. 138. In *Georghiou* v. *Jovanis* (*supra*) Hadjianastassiou, J., had this to say at p. 108:

> "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.
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> 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 *Charalambous* v. *Gargour & Co.* (*supra*) Hadjianastassiou, J. at p. 147 in dealing with the negligence of the defendants which arose as a result of breach of their duty of care found as follows:

"There is no doubt that the foreman of the defendant company was warned of the danger as to the presence of the plastic bands, but he refused to take any steps for the safety of the working conditions there. Indeed, the foreman went even further and repudiated the conduct of the employees in telling him what to do. Once, therefore, the duty to exercise reasonable care is personal to the master, and he entrusted its performance to his foreman he is vicariously liable for any negligence on the part of the foreman appointed in performing that duty. I would reiterate that once the possibility of the danger emerging was reasonably apparent then to take no precautions was negligent on the part of the master."

With the above in mind, I am coming now to consider the first issue before me.

Plaintiff and his witness Antonis Yianni Skatos (P.W.3) described the system of work which was provided by the defendants and the surrounding circumstances of the accident as follows:

On April 14, 1972, plaintiff together with a gang of stevedores, were loading boxes of oranges in the hold of the ship "STELVIO". Before they started their work the lower part of the hold had already been loaded and covered by iron sheets which were shining. The boxes of oranges were placed on pallets and were lowered into the hold by a crane. As soon as each pallet was lowered in the hold, the stevedores had to lift such boxes from the pallets and carry them to the far end of the hold where they had to stack them in tiers on top of each other. After they completed one row, they had to proceed with the stacking of boxes on a second row and so on till the whole cargo was loaded. The boxes of the first tier of each row, that is, the one which was nearer to the floor of the hold, had to be

placed on wooden planks (dunnage) which were placed parallel to each other to allow the boxes rest on them. The reason for using these planks was to allow ventilation of the boxes which were nearer to the floor.

Before the loading started, it was the duty of the cargo officer of the ship, an employee of defendants 1 who was responsible for the loading in the hold to place the planks in their position for the boxes to be stacked on. Each wooden box contained oranges and was weighing about 40 okes. The stevedores had to lift such box from the pallet holding each box with their arms and supporting it on their bellies and had to move slowly within the hold in such position up to the place where the boxes were to be stacked. When plaintiff and the other stevedores went into the hold to start loading, they noticed that the planks which were placed on the floor were of irregular size and thickness and were not placed properly, a fact which was making their work dangerous. Plaintiff and the other stevedores remarked to the cargo officer of the ship about that and, also, that it was dangerous for them to work under such conditions. In reply, he asked them to carry on with the work and that the planks would remain as they were placed. They also protested and drew the attention of the foreman, Xenis Tsoukas, who went down into the hold, saw the situation and ordered them to carry on with their work, otherwise they had to leave. After the plaintiff and his colleagues found no response to their protest and once they had to comply with the orders given to them to carry on the work under those conditions, they started work. The space which was left between the planks was ranging from 8 inches to 1 1/2 ft. a fact which necessitated the stepping of the workmen on the planks whilst proceeding from the pallets towards the end of the hold to stack the boxes. As the plaintiff was walking slowly and carefully holding the box in his arms and he stepped on one of the planks, the plank slipped and as a result he lost his balance and fell down forcibly and was injured.

Plaintiff admitted in his evidence that he was an experienced stevedore with long experience in such kind of work and that he had been engaged in similar kind of work many times in the past. This was the first time that he noticed that the planks were not fit for such purpose and were placed in an improper way and this is the reason he drew the attention of the responsible officer of the ship and of the supervising foreman to this fact.

As to the reason why plaintiff brought the action against both defendants, plaintiff explained the mode of their engagement in each particular case as follows:

Before customs porters were allotted to work they had to go to the Labour Office for directions as to the post in the harbour where they were going to work. A list was exhibited there, indicating where and for whom they were going to work. On April 14, 1972, he noticed on such list that he was going to work for defendants 2. Upon arriving at the port, the foreman of defendants 2 instructed him to go for work on S/S "STELVIO" which belonged to defendants 1. The work in the hold was carried out under the supervision and the instructions of an officer of the ship who was the person in charge of the loading in the hold.

The fact that the name of defendants 2 appeared on the list at the Labour Office and the instructions he received from the foreman of defendants 2 to proceed for work on S/S "STELVIO" gave him the impression that he was employed both by defendants 2 and by defendants 1 to whom the ship belonged. He admitted, however, in his evidence that he did not know whether defendants 2 were employing him for their own account or whether they were acting as agents for account of defendants 1. Mr. Oumberto Mantovani, the Manager of the Famagusta office of defendants 2 gave evidence as to the employment of the stevedores and the position of the plaintiff vis-a-vis the defendants. He described the relations of defendants 1 with defendants 2 as those of a principal and agent. Defendants 2 were the agents in Cyprus of defendants 1 and when employing any labourers or doing any work in connection with any ship belonging to defendants 1, and in this case anything connected with the ship "STELVIO" they were acting in their capacity as agents for the account of defendants 1. All expenses paid by them either by way of wages or disbursement expenses were made for the account of defendants 1 and defendants 2 were re-imbursed on production of bills. The responsibility for the loading and storage of the boxes of oranges in the hold of the ship was upon the master and the cargo officer of the ship who were employees of defendants 1. The dunnage (the planks used for stacking boxes on them) were the property of the ship and were supplied by the ship for use for such purpose. Defendants 2 had no control over the stevedores or anybody working on the ship during the

loading or unloading operations. Such stevedores were provided by defendants 2 as agents of defendants 1, but they had to work under the supervision and orders of the master and the cargo officer of the ship. The only connection of defendants 2 with the labourers was that defendants 2 were paying their wages as agents of defendants 1 and the bill for such wages was sent to defendants 1 who were settling it. The only person who was on the ship as a regular employee of defendants 2 was a clerk called the "water clerk" who is a kind of a liaison officer between the cargo officer and the labourers acting as interpreter when so required. The deck foreman, Tsoukas to whom complaints were made according to the plaintiff as to the conditions of the work, though engaged by defendants 2, he was employed for the account of defendants 1 and any payments made to him and the other porters engaged was made by defendants 2 as agents and for the account of defendants 1. Defendants 2 had no authority on the ship to give any orders as to the mode of the carrying out of the work or to provide the means of carrying out such work which was the entire responsibility of the master and the cargo officer of the ship who is the person co-ordinating the work and instructing the labourers how and where to work.

The evidence of Mr. Mantovani stands uncontradicted and I accept such evidence as true and reliable evidence. It is abundantly clear from such evidence that defendants 2 were acting all along as agents of defendants 1. It was their duty as agents, to provide any labourers required by defendants 1 for work on their ships. Any payments of wages, though effected through the channel of defendants 2, were in fact so paid for the account of defendants 1. Defendants 2 had no say as to the mode of carrying out the work by the labourers or a duty to provide the necessary means for the carrying out of such work. Both, according to the evidence of the plaintiff and his witnesses and that of Mr. Mantovani for defendants 2, the work in the hold had to be carried out under the orders and supervision of the cargo officer of the ship who was the servant of defendants 1. All necessary appliances, for carrying out the work and the whole system of the operation was the responsibility of such officer. Furthermore, the deck foreman, Tsoukas who was also responsible for the work of the gang of stevedores in the hold and of all other porters engaged on the ship, were at the material time a servant in the employment of defendants 1.

As I have already found, the accident was caused by the fact that one of the planks on which plaintiff stepped, slipped. Such plank and all the means provided for the work in the hold of the ship were the property of defendants 1 and defendants 1 had full control over them. Defendants 2 were merely doing what was expected of them to do under their contract of agency acting at all times for and on behalf of their principals. I, therefore, find that defendants 2 are not to blame in any event for this accident.

On the evidence before me which stands uncontradicted by defendants 1, I am satisfied that the condition of the planks and the way they were placed, was not safe and that the accident was the result of the negligence of defendants 1 to replace the planks with planks of regular thickness or place them in such a way as to avoid the possibility of their slipping when one had to step on them. I find that defendants 1 were in breach of their common law duty to provide a safe system of work a fortiori in the present case where the attention of the cargo officer of the defendants 1 and their foreman, Tsoukas was drawn to the defects of the system of work and who instead of making efforts to set it right, they ordered the workmen to proceed with the work or leave.

In the result, I find on the first issue that plaintiff has proved negligence on the part of defendants 1.

Having dealt with the first issue, I come now to consider the second issue before me, that of contributory negligence if any, on the part of the plaintiff.

Though both defences are not drafted in a way as to state clearly that the accident "was caused or contributed to by the negligence of the plaintiff (see Bullen and Leake's Precedents of Pleadings 12th Edition, page 1269 (F. 1129, 1130) and Atkin's Court Forms 2nd Ed. Vol. 29 p. 6 (F. 46) nevertheless, the defendants alleged in their pleadings that the accident was the result of plaintiff's negligence and gave full particulars of the alleged negligence. In *Christodoulou* v. *Menicou and others*[1] which was also a case in which "contributory negligence" was not specifically pleaded, the Court, after dealing in length with

1. (1966) 1 C.L.R. p. 17.

Order 19, rule 13 and its corresponding English Order 19, rule 15 (of the then in force English Rules prior to their revision ever since) and the authorities referred to in the Annual Practice as to the need of specifically pleading "Contributory Negligence" concluded as follows (Per Zekia, P. at page 35):-

> "It will thus be seen that the defendants did not use the conventional words 'or contributed to' by the negligence of the plaintiff, but they expressly denied any negligence and they expressly pleaded that the injury was the result of her own negligence as set out in detail in the particulars. That is to say, in substance they pleaded contributory negligence to the full extent. Although we consider that contributory negligence should be specifically pleaded and particulars of the alleged negligence given in the defence, we do not think that in the way that the defence was drafted in the present case the plaintiff was, in any way, taken by surprise because full particulars of the defendants' defence were actually given in their pleading. The case was fought throughout on that basis, and the record of the proceedings does not show that any objection was taken on plaintiff's behalf to the leading of evidence by the defendants to prove contributory negligence".

In the present case as well, no objection was taken on this point and in the way the pleadings were drafted, the plaintiff was not taken by surprise because full particulars of negligence are given therein.

The position as to contributory negligence in Cyprus is the same as in England and our section 57 of the Civil Wrongs Law, Cap. 148, reproduces the provisions of the English Law Reform (Contributory Negligence) Act, 1945. The principle is well established and has been followed for years. Even though a servant, however, succeeds in establishing that his master's breach of duty was a cause of his injuries, he may, nevertheless, be found guilty of contributory negligence if there has been an act or omission on his part amounting to negligence, which has in fact caused the damage of which he complains. Where the breach of duty on the part of the master and the servant's own negligence are found to be material causes of the servant's injury, responsibility has to be apportioned between them upon the general principles of negligence. (Vide Halsbury's Laws

of England, 3rd Edition, Vol. 25, p. 515, para. 983, where reference is made as to the test for determining who is responsible for an accident to *Stapley* v. *Gypsum Mines Ltd.*, [1953] 2 All E.R., 478, which case was followed and referred to in *Williams* v. *Liverpool Stevedoring Co.*, [1956] 2 All E.R. 69).

In *Christodoulou* v. *Menicou and others* (*supra*) at p. 17, Zekia, P. in considering the issue of contributory negligence said at pp. 31 and 32:

"The effect of the Caswell decision[1] is that the standard of negligence is in all cases not an absolute standard but is dependant upon the attendant circumstances, and in the case of contributory negligence consisting of neglect of one's own personal safety the Court must have regard to the distractions 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. The *Caswell* case was considered and applied in *Davies* v. *Swan Motor Co.* (*Swansea*) Ltd., [1949] 1 All E.R. 620, where it was held that, in any event, to constitute contributory negligence it was not necessary to show that the conduct of the passenger amounted to the breach of any duty which he owed to the defendant, but it was sufficient to show a lack of reasonable care by the passenger for his own safety. 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 had 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 the *Davies* case (*supra*) at page 627 said: 'In arriving at the conclusion at which I do arrive, I conceive it to be my duty to look at the whole facts of the case as they emerged at the trial both of the action and of the third party proceedings, and then, using common-sense, to try

1. Caswell v. Powell Duffryn Associated Collieries Ltd., [1939] 3 All E.R. 722.

fairly to apportion the blame between the various participants in the catastrophe for the damage which the deceased suffered'. See also page 629 of the Report.

The *Davies* case, which showed that the common sense approach had to be adopted, was referred to with approval in a recent case by the Court of Appeal in England: See '*The George Livanos*' (1965), 'The Times' Newspaper, December 14".

As it was said by Willmer, L.J. in *Quintas* v. *National* Smelting Co., Ltd. [1961] 1 All E.R. 630 at p. 643:

"The problem of apportioning blame where there has been fault on both sides is one that has been familiar in the Admiralty jurisdiction for fifty years. It has long been held to be a matter primarily for the discretion of the trial Judge, who finds the facts, and who has the advantage of seeing the participants at first hand and assessing the degrees of their responsibility".

In *Kyriacou* v. *Aristotelous* (1970) 1 C.L.R. 172 the judgment on the question of contributory negligence reads as follows (Per Hadjianastassiou, J. at p. 178):

"I would like further to add that the question of the apportionment of blame is often one of impression and not susceptible to precise calculation. As Lord Wright said in *British Fame* (*Owners*) v. *Macgregor* (*Owners*) [1943] A.C. 197 at p. 201:–

'It is a question of the degree of fault depending on a trained and expert judgment considering all the circumstances, and it is different in essence from a mere finding of fact in the ordinary sense. It is a question not of principle or of positive findings of fact or law, but of proportion, of balance and relative emphasis, and of weighing different considerations; it involves an individual choice or discretion, as to which there may well be differences of opinion by different minds".

Coming now to the facts of the case before me, after considering the totality of evidence adduced, I am not satisfied that the defendants have proved any of their allegations of negligence on the part of the plaintiff. Plaintiff was, according to his evidence

and that of his witnesses, moving very slowly and carefully in the hold, holding a heavy box in his arm which was leaning against his belly and he was stepping slowly on the planks placed by the servants of defendants 1 and that as soon as he placed his leg on one of the planks, such plank, without any fault on his part, slipped, causing the plaintiff to fall down and be injured. Plaintiff as an experienced stevedore, and his companions, noticed that the planks were of irregular shape and were not properly placed, thus creating a possibility for an accident and complained in that respect to the responsible officer of defendants 1 who, instead of minimizing any risk of accident, ordered the plaintiff and his companions to work in the condition the planks were set by the cargo officer of the ship under the threat that if they did not wish to carry on, they had to leave from the work. No evidence was called by the defendants to contradict the evidence adduced by the plaintiff and establish any negligence on the part of the plaintiff.

In the result, I find on the second issue in favour of the plaintiff that he was not guilty of any contributory negligence.

Having found that the defendants 1 are wholly to blame for the accident, I am coming now to consider the last issue before me, that is, what is the reasonable compensation to be awarded to the plaintiff as general damages, once the question of special damages has been agreed upon.

The plaintiff was 36 years of age at the time of the accident. He was a regular customs porter working as a stevedore. As a result of the accident, his left leg was fractured and he was removed to the Famagusta Hospital where he was kept as an in-patient for treatment for about two weeks. His leg was placed in plaster and was sent home from where he used to visit the hospital as an out-patient for a total period of five months. He was out of work for five months. As a result of the accident he had considerable pain during the period of the first five months and he still feels pain at the injured part nearly every day due to the nature of his work which is a rather heavy type of work. He has to stand for long hours carrying heavy loads and straining of his leg causes him pain which pain, instead of diminishing is increasing with time.

In cross-examination it was put to the plaintiff by counsel for

defendants 2 that his permanent partial incapacity was assessed by the Social Insurance Fund at 20 per cent which was admitted by the plaintiff and as a result of which he is getting a compensation of £5 per month. There is no allegation, however, neither in the pleadings nor any argument was advanced in the addresses of counsel for the defendants that the amount of general damages has to be reduced taking into consideration any compensation received by the plaintiff from the Social Insurance Fund for partial permanent incapacity.

According to the evidence of Panayiotis Sheittanis (P.W.2), the Secretary of the Union of Porters and Stevedores employed in the Harbour, the earning of a stevedore in List 'B' position, in which plaintiff was, ranged in November, 1973 from £12–£15 per day with an increase of 5 per cent as from the 1st January, 1980, plus any increase in the cost of living. Stevedores in List 'B' work regularly at an average of 18–20 days per month. In 1972 when the accident occurred, the average income of the plaintiff was £2,500–£3,000 a year. At that time, he was working full time because his name was included in the 'A' list stevedores of which were working every day. His name was included in the 'B' list after he came to Limassol as a refugee. So, according to the evidence of this witness, in November, 1979 the average income of plaintiff was between £3,000–£4,000. After the lapse of five months plaintiff returned back to his previous work and has continuously been employed without interruption and without any diminution of earnings.

According to the report of Dr. Savvides dated the 2nd February, 1973 (*exhibit* 1) when the plaintiff was admitted in the hospital, he was suffering from compound fractures of the left ankle. An X–Ray taken at the time, showed a spiral fracture of the left fibula, about 2 inches above the ankle, a fracture of the tip of the medial malleolus, a fracture of the posterior lip of the articular surface of the tibia (posterior malleolus), lateral displacement and rotation of the talus and diastasis of the inferior tibiofibular ligament. There were two tiny puncture wounds on the anterior and posterior surface of the medial malleolus respectively. The plaintiff was operated on the same day under general anaesthesia and the fracture reduced and immobilised in plaster. The plaster was replaced on the 26th April, 1972 and the patient was discharged from the hospital on the following day, after 13 days stay at the hospital, and then he was followed

up as an out-patient. The fracture united in a reasonable position about three months after the accident and the plaster was removed then. The patient continued to have pain and swelling of the left ankle and leg for some time thereafter and was advised to avoid standing or walking and keep his affected leg in a crep bandage. He was eventually allowed to go back to work on the 11th September, 1972. This doctor mentions in his report, concerning the past history of the plaintiff, that the plaintiff had been involved in another accident ten years earlier as a result of which he suffered injuries to his left elbow which is now permanently ankylosed at 30 per cent. The condition of the plaintiff as on 2nd February, 1973, is described as follows:

> "The patient still complains of pain and swelling at the affected ankle, especially after a few hours of hard work, such as when lifting cases or working the cranes.
>
> There is still much indurated swelling in the region of the medial malleolus of the left ankle and slight wasting of the muscles of the left calf. Movements at both ankle joints are as follows: Dorsiflexion/Plantarflexion: Right 1/30, left. 10/30 degrees.
>
> Inversion/Eversion at the subtalar joints: Right 30/10, left 20/5 degrees."

The opinion of this doctor about the condition of the plaintiff contained in the same report is as follows:

> "This was a very severe injury to the left ankle joint and although a very reasonable reduction has been achieved, the original anatomical position of the joint has not been attained. This is why the patient still has symptoms, which I do not think that, with time, they will improve appreciably. They interfere and they will keep interfering with his work as a stevedore. Furthermore, as the last X-Rays show, degenerative changes are beginning to develop in the left ankle. These will continue to become worse and in a few years' time fully fledged osteoarthritis will set in this joint. When this occurs, he will find it extremely difficult to continue at his present job, and he will have to retire or

change to a lighter job, I estimate at about five to ten years before his time."

According to the medical report of Dr. Zambarloukos dated the 5th March, 1973 (*exhibit* 3), after he examined the plaintiff clinically and radiologically the following objective findings are reported:

"A crushing injury of his left ankle associated with compound fractures of the lower end of fibula (lateral aspect of the joint) the medial malleolus (medial aspect of the joint) and a fracture of the posterior malleolus of tibia, dislocation of the talus and two puncture wounds one at the anterior and the other at the posterior aspect of the medial malleolus."

The opinion of this doctor according to *exhibit* 3, is as follows:

"This heavy harbour labourer secondary to the crushing injury of his left ankle ended with a painful ankle (a weight bearing joint), atrophy of the calf muscles, stiffness of the ankle joint, weak foot, complicated by osteoarthritis which will be the progressive type. He continues his present job with a severe handicap and a real risk at work but I believe that soon he will be forced to look for a job with a minimal physical effort and little walking or standing required."

Both these reports describe the condition of the plaintiff at a time which was more than six years prior to the hearing of this action and no recent examination by the said doctors has taken place.

The only medical report nearer to the date of the hearing was that of Dr. Tornaritis who examined the plaintiff at the request of the defendants. Such report dated the 5th April, 1977 (*exhibit* 2) contains the following findings:

" 1. Obvious thickening of the left ankle on inspection and palpation.

2. Dorsi—and plantar flexion are equal to the opposite side.

3. Mild limitation of inversion and eversion.

4. One cm. circumferential muscle wasting of the left lower thigh.

5. Two cm. circumferential thickening of the left ankle.

6. Squatting is possible.

7. X-Rays of the left ankle, taken in this office show consolidation of the fractures and the presence of osteoarthritic changes; there is bridging of the two bones of the lower leg, about two inches above the joint. X-Rays of the left ankle, taken for comparison, show milder osteoarthritic changes".

The opinion of Dr. Tornaritis about the condition of the plaintiff, according to this report, is as follows:

"This patient sustained a nasty injury to his left ankle in an accident at work five years ago. He had to put up with a fair amount of pain and suffering initially, gradually diminishing over the following two to three months. The anatomical and functional results are reasonably satisfactory. Mild stiffness and muscle wasting persists, inspite of the length of time that has elapsed since the injury; there is also the obvious thickening around the joint. Because of the presence of the osteoarthritic changes, the prognosis of the future has to be a very guarded one; even though he has been able to continue his work for several years without too much discomfort, it is likely that in the future the symptomatology and the pain and discomfort will become more pronounced."

It is evident from the report of Dr. Tornaritis that the prognosis of Dr. Savvides was correct that degenerative changes started developing sinch February, 1973 and in a few years time fully fledged osteoarthritis would have set in the affected joint which would have made it extremely difficult for the plaintiff to continue in his present job and he would have to retire from such job about five to ten years before his time. Also, the opinion of Dr. Zambarloukos that the stiffness of the ankle joint was complicated by osteoarthritis of the progressive type and that soon he would be forced to look for a job with a minimal physical effort and little standing or walking were correct in the light of the report of Dr. Tornaritis.

The opinion of all three doctors and their prognosis appears to be in agreement regarding the future effect of the injuries of the plaintiff in his working capacity. It appears from such

reports that the plaintiff, now 42 years old, will have to retire from a well remunerated type of work he is now doing as a stevedore on ships earning £3,000–£4,000 per year, plus an increase of 5 per cent as from January, 1980 and also an increase of 18 per cent of the cost of living since last November and with prospects of future increases, and look for a lighter job involving less physical effort and obviously less remunerative than his present job. Dr. Savvides gave such early retirement as likely to be five to ten years. I consider this as the most serious item of his claims for general damages. Because if the plaintiff retires from such job at least five years before his time and even if he is lucky enough to find another type of light job he will, nevertheless, suffer considerable loss of his daily earnings.

Taking into consideration that an allowance must be made for contingencies which might upset the plaintiff's future prospects, such as illness, accident etc., and for the fact that compensation is paid at once in a lump sum, whereas his earnings would have spread over many years, I assess the damages in respect of such prospective loss of future earnings due to an early retirement from the work he is now carrying out, taking at the same time into account any prospect of securing a lighter work at a much lower remuneration, at £4,000. This figure can also be reached on what was put to the plaintiff in cross-examination and admitted by him that a 20 per cent permanent partial incapacity was assessed by the Social Insurance Office, though such incapacity might have had much higher effect on his earning capacity, due to the nature of his work and his remuneration and calculating such incapacity for an average period of seven years of his earnings, (Dr. Savvides mentioned in his report five to ten years early retirement) on his to-day income of £3,600–£4,800 (average £4,200) with prospects of increase. The figure of £3,600–£4,800 is found from the evidence of P.W.2. In November, 1979 the yearly income of the plaintiff was £3,000–£4,000 plus an increase of 5 per cent as from January and a further 18 per cent increase of the cost of living as from November, 1979 till to-day. To this amount I have to add a further sum of £1,500 for pain, suffering, discomfort which the plaintiff suffered and continues to suffer and will suffer in the future due to the development of osteoarthritis and the after effects of his injuries thus making a total of £5,500. Adding to this the sum of £850 agreed special damages, I have reached the figure of £6,350.

In the result, I give judgment for plaintiff against defendants 1 for £6,350 special and general damages, with costs. Costs to be assessed by the Registrar.

Coming now to the question of costs of defendants 2, I find that defendants 2 are entitled to their costs, in view of the fact that the claim against them fails. Plaintiff, however, in the circumstances of this case, rightly had to bring the action against both defendants because he was not in a position to know which of the defendants was in fact and in law his employer, a matter which became even more obscure in view of the line of defence of defendants who were trying to throw the blame on each other. The expenses of defendants 2 were increased as a result of the conduct of defendants 1 who though well aware that defendants 2 were their agents all along and were acting on their behalf, they decided at the last moment to change course and tried to exonerate themselves by throwing the blame on defendants 2 without substantiating such allegation by any evidence. Defendants 2 rightly issued a third party notice against defendants 1 claiming to be indemnified for any loss or damage which they might suffer and for which defendants 1 were responsible.

Taking all the above into consideration and the third party notice issued by defendants 2, I have reached the conclusion that defendants 2 are entitled to recover their costs for defending this action from defendants 1. In the result, I make an order for costs accordingly.

Costs to be assessed by the Registrar.

Judgment and order for costs as above.