

1981 May 5

[A. LOIZOU, DEMETRIADES, SAVVIDES, JJ.]

DINOS ARSENIU NICOLAIDES LTD.,

Appellants-Defendants,

v.

CHARALAMBIA A. NICOU, AS ADMINISTRATRIX OF THE
ESTATE OF THE DECEASED ANDREAS NICOU FTANOU,

Respondent-Plaintiff.

(Civil Appeal No. 5874).

*Master and servant—Negligence of master—Duty owed by employer
to employee—To take reasonable care for the latter’s safety—
And not to subject him to “unnecessary risk”.*

5 *Negligence—Master and servant—Labourer working in trench 9½ ft.
below surface of site—Death of labourer through collapse of
trench—Failure of employers to emplace side boards in the trench—
Exposed labourers to unnecessary risk at work in breach of
employers’ duty of care—Employers liable in negligence.*

10 *Damages—Fatal accident—Dependency—Death of labourer aged
53—Weekly earnings of deceased C£14—Weekly value of depen-
dency of widow the only dependant, assessed at C£5 with a multi-
plier of 8—Reasonable in the circumstances.*

15 Andreas Nicou Ftanou (“the deceased”) a married man aged
53 met with instantaneous death in the course of his employment
with the appellants, a firm of building contractors, when a
trench in which he was working collapsed. The trench was
9½ ft. below the surface of the site, being at its base 2½ ft. long
and 3 ft. wide. In proceedings by the administratrix of his
20 estate the trial Court found that as a matter of ordinary prudence
the defendants ought to have taken the elementary precaution
to provide side boards before requiring their workers in the
position of the deceased to descend in the trench; and that
they “exposed the deceased, their employee, to unnecessary
25 risk at work in breach of their duty of care and are answerable
in damages”. In assessing the damages the trial Court took

into consideration the age of the deceased and his weekly earnings, which were C£14, and awarded an amount of C£750.— for loss of expectation of life. Regarding the value of the dependency the trial Court on the basis of the weekly earnings concluded that the weekly value of the dependency of the widow, who was the only dependant, was C£5 per week; and with a multiplier of 8 it arrived at the figure of C£2,080 from which it deducted the amount of C£150 which the widow would be entitled by way of inheritance from the award for loss of expectation of life and adjudged the amount of C£1930.

Upon appeal by the employers against the finding of the trial Court on the issue of liability and against the finding concerning the weekly value of the dependency:

Held, (1) that on the findings of the trial Court which were duly warranted by the evidence before it, its conclusion that the appellants exposed the deceased, their employee, to unnecessary risk at work in breach of their duty of care and they were answerable in damages to the respondent, was correct in fact and in law; and that, therefore, there is no justification for this Court to interfere with the finding of liability in this case.

(2) That the amount of C£5 per week as weekly value of the dependency of the widow was reasonable in the circumstances; and that, therefore, there is no reason to interfere with the assessment of the damages which is correct both from the legal and factual point of view; accordingly the appeal must fail.

Appeal dismissed.

Cases referred to:

Perentis v. General Constructions Co. Ltd. & Others (1981)
1 C.L.R. 1.

Appeal.

Appeal by defendants against the judgment of the District Court of Famagusta (Pikis, P.D.C. and Constantinides, D.J.) dated the 30th June, 1978 (Action No. 228/77) whereby they were adjudged to pay to the plaintiffs the sum of C£2,755.— as damages after having been found liable in negligence for the death of Andreas N. Ftanou caused by injuries he sustained in the course of his employment with the defendants.

E. Vrahimi (Mrs.) with *P. Solomonides*, for the appellant.
A. Lemis, for the respondent.

A. LOIZOU J. gave the following judgment of the Court. This is an appeal from the judgment of the Full District Court of Famagusta, sitting at Larnaca, by which the appellants as defendants before it, were adjudged to pay the amount of
5 C£1,930.—for the benefit of the widow of the deceased Andreas Nicou Ftanou and C£825.—for the benefit of his estate having been found liable in negligence for his death caused by the injuries he sustained in the course of his employment with them.

10 The deceased was a married man of 53 years of age and the appellants a firm of building contractors by whom he was employed as a labourer at a building site in Salamis area where they were laying the foundations for the erection of a building.

15 On the morning of the 4th July, 1973, the first day of his employment with them, the deceased and two of his colleagues, were sent down to clear a large trench and empty it of water and soil, so that concrete would be laid to fill same. It was by all accounts a large trench 9 1/2 ft. below the surface of the site, being at its base 2 1/2 ft. long and 3 ft wide. Some ten
20 minutes later, the trench collapsed and the deceased was buried in the mud and as far as one could deduce from the evidence adduced, he met with instantaneous death. The Famagusta Fire Brigade were notified and arrived at the scene shortly afterwards, but it took them some time to release the deceased from his trap. He was taken to Famagusta Hospital but he
25 had died because of the injuries suffered from the collapse of the trench.

The trial Court on the evidence before it and after referring to the various authorities governing such cases, came to the following conclusions:

30 “Therefore, as a matter of ordinary prudence the defendants ought to have taken the elementary precaution to provide side boards before requiring their workers in the position of the plaintiff to descend in the trench and clear it. Mr. Andreas Tsoundas (P.W.4), a Safety Inspector of Buildings
35 of the Ministry of Labour testified, like the aforementioned witness, that the ground was unsteady consisting of earth and “arghylllos” (homato-arghillodes) necessitating the taking of preventive measures against the possibility of collapse such as the emplacement of side boards or alterna-

tively the giving of an outward direction to the sides of the trench.

We accept the evidence of witnesses Doukanaris and Tsoundas and reject that of Mr. Mavrides regarding the make up of the soil and as a fact that the ground was made of earth and 'arghylls' likely to collapse, a state of affairs that reasonably necessitated the taking by the defendants of protective measures such as those suggested by the aforesaid witnesses to guard against the risk of accident such as the one that happened. It was an easy matter to take these measures that ought to have been taken as a matter of prudence. In our judgment the defendants exposed the deceased, their employee, to unnecessary risk at work in breach of their duty of care and are answerable in damages. What amounts to an unnecessary risk was discussed by the Supreme Court in *Savvas Athanassiou v. The Attorney-General of the Republic* (1969) 1 C.L.R. 160".

It has been the case for the appellant that the trial Court failed to take into consideration whether the emplacement of side boards was reasonably practicable or reasonable in view of the fact that the process of emplacing such side boards entailed greater risk than work without them; and also that it was wrong in its finding or inference that the giving of an outward direction to the sides of the trench as a preventive measure was reasonably practicable or reasonable and in any event such finding or inference was not warranted by the adduced evidence before the Court. We do not agree with these contentions as there was ample evidence before the trial Court to arrive at these inferences. This is apparent from the passage from its judgment just quoted and the references therein to the witnesses on whose testimony it relied.

In the case of *Antonakis Perentis v. General Constructions Co. Ltd. & Others* (1981) 1 C.L.R., p. 1, we had this to say with regard to the employer's duties towards his employees at p. 10:

".....The employer's duties towards his employees are manifold but in so far as relevant to the present case they are that he must take reasonable care to establish and enforce a proper system or method of work, to provide

competent staff of men, suitable machinery, adequate supervision and safe premises for work. All these constitute a general duty of an employer towards his servants to take reasonable care for his servants' safety in all the
5 circumstances of the case".

In the present case and on the findings of the trial Court which were duly warranted by the evidence before it, we find that its conclusion that the appellants exposed the deceased, their employee, to unnecessary risk at work in breach of their
10 duty of care and that they were therefore answerable in damages to the respondent, was correct in fact and in law and there is no justification for us to interfere with the finding of liability in this case.

We come now to the next issue, the award of damages. In
15 that respect the trial Court took into consideration the age of the appellant and his weekly earnings and assessed the amount payable to the estate of the deceased for loss of expectation of life at C£750.—for which amount there has been no dispute. To this amount it added the agreed amount of C£75.—as representing funeral and testamentary expenses. What has been
20 disputed, however, was the weekly value of the dependency. The trial Court on this issue concluded on the basis of the weekly earnings of the deceased being C£14.—, that the weekly value of the dependency of the widow, the only dependant found
25 by it to exist, was C£5.—per week, which, in our view, was reasonable in the circumstances. With a multiplier of 8 chosen in the circumstances of the case, it arrived at the figure of C£2,080.—from which it deducted the amount of C£150.—which the widow would be entitled by way of inheritance from
30 the award for loss of expectation of life and adjudged the amount of C£1,930.—in favour of the dependant widow. We find no reason to interfere with the assessment of the damages which is correct both from the legal and factual point of view.

For all the above reasons this appeal is dismissed with costs.
35 *Appeal dismissed with costs.*