1981 October 12

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

TRYFON KYRIACOU,

Appellant-Plaintiff,

v.

EMILIOS ELIADES Ltd.,

Respondents-Defendants.

(*Civil Appeal No.* 5971).

Negligence—Master and servant—Safe system of work—Principles applicable—What is a safe system of work depends on the circumstances of each case and is a matter of common sense and common prudence–Loading of refrigerator on vehicle—Injury to employee upon getting on vehicle in order to push refrigerator further inside—Not established that employers failed to operate a proper and safe system of work—And no room justifying interference with the findings of fact made by the trial Judge, based on the credibility of witnesses, or with conclusions drawn therefrom.

The appellant-plaintiff was employed by the respondents-plaintiffs as driver and delivery man and his duties were to load on respondents' delivery vehicle electric appliances such as cookers and refrigerators, assisted by another person, and unload them to the place of delivery. On June 30, 1977, with the assistance of a fellow employee, he loaded a refrigerator of normal size on respondents' vehicle. When they placed it on to the case of the vehicle they both pushed it to an arm's length inwards whilst standing on the ground. Appellant then got on to the case of the vehicle in order to push the refrigerator further inside but as soon as he got thereon he fell down and fractured his left wrist. The trial Judge dismissed his action for damages for personal injuries due to the respondents' negligence having found that the appellant fell down from the vehicle as soon as he climbed up on its case and not when he pushed the refrigerator, as alleged by him, and that as a result he suffered the injuries complained of; that the work was not complicated in itself and that the appellant had done that type of work several times

in the past; that there had not been established that the refrigerator was too heavy for him to push; that there was room around the refrigerator sufficient for him to move about in a safe way and carry out his job safely; and that there had not been established that the respondents in their capacity as employers failed to operate a proper and safe system of work or that they ordered the appellant to work at an unsafe place which resulted to his fall from the vehicle in question and his injuries or that they were in any way negligent.

Upon appeal by the plaintiff, which turned on the findings of fact based on the credibility of the witnesses as accepted by the trial Judge and conclusions drawn therefrom:

Held, that bearing in mind the evidence on its totality, the nature, both of the appliance and vehicle on which same was to be loaded as well as the manner in which the work was done there is no room justifying interference by this Court either with the findings of fact, made by the learned trial Judge and based on the credibility of the witnesses as evaluated by him, or with the conclusions drawn thereon; that, particularly, there is no reason to interfere with the rejection of the allegation of the appellant that he fell when he pushed forward the refrigerator; that what is a proper system of work is a matter that depends on the circumstances of each case and is a matter of common prodence and loading a refrigerator on a lorry or vehicle of that kind, did not really call for anything further than the way in which the situation was to be handled in this case; accordingly the appeal must fail.

Appeal dismissed with costs.

Cases referred to:

Perentis v. *General Constructions Co. Ltd. and Others* (1981) 1 C.L.R. 1 at p. 10;

Wilsons & Clyde Coal Co. Ltd. v. *English* [1938] A.C. 57;

Watt v. *Hertfordshire County Council* [1954] 2 All E.R. 368;

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

Speek v. *Thomas Swift & Co.* [1943] 1 All E.R. 539;

General Cleaning Contractors v. *Christmas* [1952] 2 All E.R. 1114.

Appeal.

Appeal by plaintiff against the judgment of the District Count of Paphos (Demetriou, S.D.J.) dated the 31st May,

1979, (Action No. 337/78) whereby his claim for damages for personal injuries suffered by him on account of the negligence and/or breach of statutory duty by the defendants employers was dismissed.

C. Melas, for the appellant.

E. Korakides, for the respondents.

A. Loizou J. gave the following judgment of the Court. This is an appeal from the judgment of a Judge of the District Court of Paphos, by which the claim of the appellant for damages for personal injuries suffered by him on account of the alleged negligence of, and or breach of statutory duty by, the defendants' employers was dismissed with costs.

The grounds of appeal on which same was argued are the following:

"(a) The judgment of the Trial Court was wrong and/or was based on wrong criteria.

(b) The trial Judge made a wrong valuation of the evidence adduced.

(c) The conclusions drawn by the Trial Judge and the judgment based thereon are contrary and or not justified by the evidence adduced".

This appeal in effect turns on the findings of fact based on the credibility of the witnesses as accepted by the trial Judge and the conclusions drawn therefrom.

The facts of the case are very simple. The appellant, a man of 29 years of age, was employed by the respondents as driver and delivery man. His duties were to load on the respondents delivery vehicle the goods purchased by a client which usually consisted of electric appliances, such as cookers and refrigerators, assisted for the purpose by another person, who usually was the person in charge of the shop of the respondents at Paphos. After that he would drive the vehicle to the place of delivery and there find somebody to help him unload.

On the 30th June 1977, a client bought a refrigerator of a normal size and the appellant assisted by the person in charge of the shop of the respondents at Paphos, loaded it on the case

of their vehicle which was described as being of a kind somehow larger than the ordinary pick-up. The floor of its case, was corrugated so that the goods might slide inwards with a mere pushing. When the refrigerator in question was placed on to the case of the vehicle, both the appellant and the said employee of the respondents pushed it to an arms length inwards whilst standing on the ground. He got then on to the case of the vehicle and pushed the refrigerator further inside whilst the latter turned to collect a protecting package that would be placed around the refrigerator during its transportation. At that moment and in fact as soon as he got thereon the appellant fell down and fructured his left wrist.

The reasons advanced by the appellant for his fall were that there was not enough room for him to stand on the case and because the refrigerator was too heavy to be pushed inwards by him alone. The manner the two employees of the appellant worked at that time was the same as done on numerous occasions in the past.

From the evidence adduced the learned trial Judge found that it had been established that the appellant fell down from the pick-up as soon as he climbed up on its case and that as a result he suffered the injuries complained of; that the work was not complicated in itself and that the appellant had done that type of work several times in the past. He rejected the reasons given by the appellant for his fall and said that he was not prepared to accept as neither there had been established that the refrigerator was too heavy for him to push, nor that there was no room around the refrigerator sufficient for him to move about in a safe way and carry out his job safely. The learned trial Judge went on to say that what he had to decide was whether "the fall of the plaintiff was due to the system of work concerning the loading of the pick-up in question when the accident occurred or whether any negligence" could be attributed to the respondents.

On the evidence as accepted by him and guided by the correct legal principles pertaining to the issue the learned trial Judge found that there had not been established that the respondents in their capacity as employers failed to operate a proper and safe system of work or that they ordered the appellant to work at an unsafe place which resulted to his fall from the vehicle

in question and his injuries or that they were in any way negligent.

With regard to the duties of an employer to use a safe system of work, we had the opportunity of saying in the case of *Antonakis Perentis* v. *General Constructions Co. Ltd. and others* (1981) 1 C.L.R. p. 1 at p. 10, the following:-

> "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 to 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 circumstances of the case".

Reference may also be made to some of the authorities that the learned trial Judge thought useful to quote in his judgment, namely, what was said in *Wilsons & Clyde Coal Co. Ltd.* v. *English* [1938] A.C. 57 where Lord Wright took the view that the primary duty of the master is to take reasonable care for the safety of his servant in all the circumstances of the case. As to the safety owed by the master to his servant, it has been held to be threefold:

(a) to provide a competent staff,

(b) to supply adequate materials (such as proper machinery, plant, appliances etc.) and

(c) to institute and maintain a proper and safe supervision where necessary. The nature of the employment must be considered.

In *Watt* v. *Hertfordshire County Council*, [1954] 2 All E.R. 368 Denning, L.J. said:

> "It is well settled that in measuring due care one must balance the risk against the measures necessary to eliminate the risk".

Also Lord Oaksey said in *Paris* v. *Stepmay Borough Council* [1951] 1 All E.R. 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 ordinary 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 ordinary prudent employer would take".

What exactly is meant by a safe system of work has never been precisely defined. It was held in *Speak* v. *Thomas Swift & Co.* [1943] 1 All E.R. p. 539 that:-

"A system of working may consist of a number of elements and what exactly it must include will depend entirely on the facts of the particular case".

What may also be noted, is the pronouncement of Lord Oaksey in *General Cleaning Contractors* v. *Christmas* [1952] 2 All E.R. 1114 which reads as follows:

"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 reasonable safe system of work themselves. Workmen are not in the position of employers. Their duties are not performed in the calm atmosphere of a board-room 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".

Learned counsel for the appellant has directed the strength of his argument against the findings of the trial Court and in particular that with regard to the weight of the refrigerator and the manner in which the appellant was expected to carry out his work particularly the pushing of the said appliance further inside the case of the vehicle by himself assisted by another person. Bearing in mind, however, the evidence on its totality,

the nature, both of the appliance and vehicle on which same was to be loaded as well as the manner in which the work was done we find that there is no room for us justifying our interference either with the findings of fact, made by the learned trial Judge and based on the credibility of the witnesses as evaluated by him, or that the conclusions drawn thereon; particularly we find no reason to interfere with the rejection of the allegation of the appellant that he fell when he pushed forward the refrigerator, which as the learned trial Judge said fell short to establish that the refrigerator was too heavy to be pushed by one person or that the system followed was in fact defective.

What is a proper system of work is a matter that depends on the circumstances of each case and is a matter of common sense and common prudence and loading a refrigerator on a lorry or vehicle of that kind, did not really call for anything further than the way in which the situation was to be handled in this case.

We, therefore, dismiss the appeal with costs.

Appeal dismissed with costs.