1981 May 22

[TRIANTAFYLLIDES, P., L. LOIZOU, DEMETRIADES, JJ.]

LEONTIS CHRISTOFOROU,

Appellant-Defendant,

v.

SPIROS SOLOMOU,

Respondent-Plaintiff.

(*Civil Appeal No.* 5965).

Negligence—Master and servant—Safe system of work—Principles applicable—Apportionment of liability—Principles on which Court of Appeal acts—Building works—Fall of labourer from platform constructed by using empty barrels, bricks and planks of wood—Finding of trial Court that way platform constructed did not constitute a safe system of work sustained—Apportionment of liability (75% *on employer and* 25% *on labourer*) *upheld.*

Breach of statutory duty—Building works—Platform of more than ninety centimeters constructed by using empty barrels, bricks and planks of wood—Breach of regulation 15(4) *of the Building and Works of Engineering Construction* (*Safety, Sanitation and Welfare*) *Regulations*, 1973.

The respondent was employed by the appellant as a workman. At the material time he was about to descend to the floor of the corridor from a platform which had been constructed by using empty barrels, bricks and planks of wood; and just when he had stepped off, with one foot, from a plank at the top part of the platform the said plank moved from its place with the result that the respondent, who still had his other foot on that plank, lost his balance and fell to the floor, and the plank fell on top of him. In an action by the respondent against his employer for damages the trial Court found that in the way in which the platform had been constructed it did not constitute a safe system of work and, therefore, the appellant was guilty of negligence to the extent of 75% and was adjudged to pay the amount of C£420 as damages.

The trial Court further found the appellant guilty of breach of a statutory duty in that the said platform had been constructed in a manner contravening regulation 15(4) of the Building and Works of Engineering Construction (Safety, Sanitation and Welfare) Regulations, 1973, which were made under the Factories Law, Cap. 134, especially as the height of the platform was more than ninety centimeters, instead of the maximum of sixty-one centimeters permitted under the aforesaid regulation.

Upon appeal by the employer:

Held, that an employer who does not provide a safe system of work for his workmen, is liable in negligence; that the finding of the trial Court was duly warranted, in the circumstances of this case, on the basis of the evidence adduced; that in the light of the principles governing interference by this Court with the apportionment of liability for negligence (see, *inter alia, Antoniou* v. *Sergis* (1979) 1 C.L.R. 169) this Court has not been persuaded that the trial Court was wrong in apportioning only 25% of the responsibility for the accident to the respondent; accordingly the appeal must fail.

Appeal dismissed.

Cases referred to:

Vassiliko Cement Works Ltd. v. *Stavrou* (1978) 1 C.L.R. 389;

Antoniou v. *Sergis* (1979) 1 C.L.R. 169;

Ioannou v. *Tokkaris* (1979) 1 C.L.R. 509;

Kika v. *Lazarou* (1979) 1 C.L.R. 670.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (HjiConstantinou, S.D.J.) dated the 7th May, 1979 (Action No. 5311/77) whereby he was ordered to pay to the plaintiff the amount of C£420.– as special and general damages in respect of injuries which he suffered in the course of his employment with the plaintiff as a workman.

A. Paikkos, for the appellant.

Ant. Lemis, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant, who is a building contractor, has appealed against the judgment of the District Court of Nicosia by means of which he was ordered to pay to the respondent the amount of C£420, as special and general damages, in respect of injuries which were suffered by the respondent in the course of his employment by the appellant as a workman.

The total amount of damages, as assessed by the trial Court, was C£560 (C£160 special damages and C£400 general damages), but it was reduced by 25% as it was found by the trial Court that the respondent was guilty of contributory negligence to that extent.

The accident, in which the respondent was injured, occurred on October 21, 1977, in the corridor of a building which was being erected by the appellant as a building contractor.

At the material time the respondent was about to descend to the floor of the corridor from a platform which had been constructed by using empty barrels, bricks and planks of wood. Just when the respondent had stepped off, with one foot, from a plank at the top part of the platform the said plank moved from its place with the result that the respondent, who still had his other foot on that plank, lost his balance and fell to the floor, and the plank fell on top of him.

The trial Court found that in the way in which the platform had been constructed it did not constitute a safe system of work and that, therefore, the appellant was guilty of negligence.

That an employer, who does not provide a safe system of work for his workmen, is liable in negligence has been repeatedly laid down, as for example, in *Vassiliko Cement Works Ltd.* v. *Stavrou*, (1978) 1 C.L.R. 389.

Furthermore, the trial Court found the appellant guilty of breach of a statutory duty in that the said platform had been constructed in a manner contravening regulation 15(4) of the Building and Works of Engineering Construction (Safety, Sanitation and Welfare) Regulations, 1973, which were made under the Factories Law, Cap. 134, especially as the height of the platform was more than ninety centimeters, instead of

the maximum of sixty-one centimeters permitted under the aforesaid regulation.

We are of the view that the above finding of the trial Court was duly warranted, in the circumstances of this case, on the basis of the evidence adduced.

Nor have we been persuaded that the trial Court was wrong in apportioning only 25% of the responsibility for the accident to the respondent. The principles governing interference by this Court with the apportionment of liability for negligence have been referred to, on many occasions, in cases such as, *inter alia*, *Antoniou* v. *Sergis*, (1979) 1 C.L.R. 169, *Ioannou* v. *Tokkaris*, (1979) 1 C.L.R. 509 and *Kika* v. *Lazarou*, (1979) 1 C.L.R. 670, and in the light of such principles, which we need not repeat in this judgment, we cannot intervene, in the present case, in favour of the appellant.

For all the foregoing reasons this appeal fails and is dismissed accordingly with costs.

Appeal dismissed with costs.