1985 December 14

[MALACHTOS, J.]

DEMOS ARESTI,

Plaintiff,

v.

MANTOVANI AND SONS LTD.,

Defendants.

(Admiralty Action No. 63/74).

Employer's liability—Negligence of an employer—Scope of employer's duty—Where the operation is simple and the decision how it shall be done has to be taken frequently it is natural and reasonable that it should be left to the foreman or workmen on the spot—The employee must take reasonable care in doing his work—Stevedore trying to remove a heavy box by pushing it with his hands backwards and without asking for help from his fellow stevedores—Box tipped as the floor of the ship's hold was sliding towards the centre—Stevedore entirely to blame for the accident.

Personal Injuries—General Damages—Stevedore aged 58, intra-articular fracture of distal end of right radius involving the wrist joint, immobilisation of fracture for one month, permanent moderate limitation in the movements of the injured wrist, probability of future development of post traumatic arthritis, a fair amount of pain and suffering for the first few days after the accident, slight deformity and soft tissue periarticular thickening of right wrist, transient episodes of aching after heavy lifting or similar acts, moderate restriction of pre-accident ability to carry out jobs entailing repetitive resisted wrist movements—In the circumstances an award of £850 for general damages is reasonable.

Admiralty—Loading and unloading of ship—The question who

is the person responsible for loading or unloading of a ship depends on the facts of each case.

The plaintiff is a stevedore by profession. On 7.1.1974 while he was engaged with other stevedores in the hold of the ship "Esperia" unloading general cargo the plaintiff was injured in his right hand and as a result he brought this action for general and special damages for personal injuries and losses he sustained by reason of the defendants' alleged negligence or breach of statutory duty. The defendants were the shipping agency which had engaged the plaintiff to work as a stevedore on board the said ship.

The said accident occurred as follows: The plaintiff tried to remove a very heavy box by pushing it with his back holding it with his hands backwards without asking for the help of anyone of the other stevedores working with him at the time and without having a proper look out. As the floor of the hold towards the direction of its centre was sliding, the box tipped and the plaintiff's right hand was caught between the box he was holding and another box.

By reason of the said accident the plaintiff sustained the injuries hereinabove described.

The defendants denied negligence and alleged that in any event they are not liable for the accident as they were simply the agents of the owners of the said ship, who would have been disclosed by the defendants upon request and in any event could have been easily ascertained by reference to the shipping register.

Held, dismissing the action (1) As it was said by Lord Oaksey in *Winter* v. *Cardiff Rural District Council* [1950] 1 All E.R. 819 at 822-23 an employer of labour "should employ competent servants, should supply them with adequate plant and should give adequate directions as to the system of work or mode of operation, but this does not mean that the employer must decide on every detail of the system of work or mode of operation.... Where the

operation is simple, and the decision how it shall be done has to be taken frequently it is natural and reasonable that it should be left to the foreman or workmen on the spot". And as it was decided in *Evripidou* v. *The Cyprus Palestine Plantations Co. Ltd.* (1970) 1 C.L.R. 132 an employee must take reasonable care in doing his work and cannot saddle his employer with the consequences of his own carelessness in the performance of his duties. In the light of the above principles the plaintiff is entirely to blame for the accident.

(2) If the plaintiff had not been entirely to blame for the accident, the defendants would have been liable as the question as to who is responsible for the loading and unloading of a ship depends on the facts of the particular case; the facts established by the evidence in the present case, namely that the person responsible for the unloading of the cargo was an employee of the defendants and that the stevedores were paid by them, give sufficient indication, that the defendants were acting either as independent contractors or as agents for an undisclosed principal.

(3) On a full liability basis an award of £850.- for general damages is reasonable.

Action dismissed.
No order as to costs.

Cases referred to:

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

Nicos Panayi v. *Georghios S. Galatariotis and Sons Ltd.* (1971) 1 C.L.R. 416;

Winter v. *Cardiff Rural District Council* [1950] 1 All E.R. 819;

Christos Pericleous v. *Co.—Marine Ltd. and Another* (1977) 1 C.L.R. 315.

Admiralty Action.

Admiralty action for special and general damages for personal injuries the plaintiff sustained while working on board the S/S "Esperia."

B. Vassiliades, for the plaintiff.

Y. Agapiou, for the defendants.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The plaintiff in this Admiralty Action, a stevedore by profession, claims against the defendants, a shipping agency, special and general damages for personal injuries he sustained on the 7th January, 1974, while working on board the S/S "Esperia" lying at the time in the port of Limassol.

By application dated 5.1.1974, a certain Agathoklis Chrysostomou an employee of the defendants, applied to the Labour Office of Limassol for the allocation of 40 stevedores to work on board the "Esperia" on the 7th January. 1974. This is the usual way by which shipping agencies are supplied with stevedores to work for loading and unloading ships in the Limassol port.

The plaintiff was among the 40 stevedores who obtained work on the aforesaid ship and while engaged with other stevedores in the hold unloading general cargo, was injured in the right hand. At the Limassol hospital, where he was taken for treatment, the examination revealed an intra-articular fracture of the distal end of the right radius involving the wrist joint, which was confirmed by X-ray. The fracture was immobilised in plaster for a period of one month. As a result of the above injury the plaintiff suffered pain and moderate limitation in the movements of the injured wrist, which will be permanent, and was unable to work for two months.

He instituted the present proceedings against the defendants as the owners and/or charterers and/or agents of undisclosed owners and/or occupiers of the said ship.

In the petition the plaintiff alleges that on 7.1.74 in the course of his employment, while working on the said ship in the hold, and assisting two other stevedores of the defendants in removing a heavy wooden box, in order to place it in a sling to be unloaded, it fell and/or rolled and/or tipped on to the plaintiff's arm as a result of which he suffered serious injuries, loss and damage.

One of the particulars of negligence of the defendants alleged in the petition is that of allowing and/or permitting the plaintiff and/or the other employees to lift and or handle boxes which were of excessive weight and size.

The defendants in their answer deny that they were at the material time the owners or charterers or occupiers or agents of undisclosed owners of the ship "Esperia," but were only the agents of the owners of the said ship, who would have been disclosed by the defendants upon request which was never made to them. Furthermore, the defendants allege that the owners of the ship "Esperia" could easily be ascertained by reference to the Shipping Register existing for this purpose or by enquiring from the Cyprus Ports Authority as the said vessel calls at Cyprus regularly.

The defendants also deny that they were negligent or in breach of statutory duty and entirely without prejudice allege that the accident in question was solely caused and/or contributed to by the negligence of the plaintiff who tried to remove the box in question by pushing it with his back and holding it in a way that he could not safely remove it and without asking for the assistance of the other stevedores.

When the case came on for hearing, the question of special damages was agreed on a full liability basis in the sum of £200.- and so evidence was adduced only on the

question of liability and general damages.

In support of his case the plaintiff gave evidence himself and called only one witness, namely, Michalakis Pambou, a stevedore, who, at the material time, was employed with him on the said ship in the same hold.

As to how the accident occurred, the plaintiff stated that on the 7th January, 1974, he was in a group of five stevedores in the hold of the ship "Esperia", unloading general cargo, including large wooden boxes of about 100 to 150 okes each. The method engaged in unloading this cargo was by way of a sling in which they placed the merchandise and after hooking the sling on to the hook of the winch, it was lifted to the surface, through the hatch. As there was a lot of merchandise in the hold, there was not enough room to place the sling straight directly under the hatch and so they had to place it to the side of the hold. After filling it with the merchandise, the winch used to lift the sling a little and remove it towards the centre of the hatch in order to be lifted up to the surface. At the material time, a wooden box was placed in the sling in order to lift it a little and take it sideways towards the centre of the hatch. In view of the fact that another box was in the way, the plaintiff proceeded to remove it in order to make room for the load in the sling to pass. While he was engaged in removing this wooden box the winch had already started taking the sling towards the centre of the hatch. In so doing, the box in the sling knocked on to the box which the plaintiff was removing, as a result of which the said box tipped and his right hand was injured.

Michalakis Pambou, in giving evidence as P. W. 2, described the accident as follows: "In this case I got the hook of the winch, I pulled it in order to hook the sling of boxes which were in the hold. At the time I placed it in position I looked through the hatch to see the winchman because he is the man who guides the winch driver. At that time the plaintiff, together with another stevedore, were trying to remove a box in order to place it in another sling. The box, which was in the sling proceeded towards them and

knocked on a box which moved towards the box on which the plaintiff, with the other stevedore was working, and injured his hand. Then we called the winchman to stop. Then we noticed the plaintiff who was pulling his hand from in between the two boxes."

In cross examination, however, both the plaintiff and his witness admitted that they made written statements, after the accident, where they gave an entirely different version. The plaintiff in cross examination admitted that while he was pushing the box with his back and holding it with his hands backwards, due to the fact that the surface of the hold was in a "V" shape, sliding towards the centre, the box tipped and knocked on to another box and his hand was caught in between the two boxes.

In his written statement, which he made three days after the accident, P.W.2, Michalakis Pambou, in describing the accident stated the following: "Demos Aresti was trying to push a box with his back and had his hands backwards. The box then slided and scratched him on his right hand."

As to how the accident occurred I must say, straight away, that I do not accept the version given by the plaintiff and P. W. 2 in their examination in chief and I find that it happened more or less in the way they described it in their written statements and in their cross examination. There is no doubt that the plaintiff tried to remove a very heavy box by pushing it with his back holding it with his hands backwards without asking for the help of anyone of the other stevedores who were working with him at the time in the hold and without having a proper look out. In so doing, due to the fact that the floor of the hold towards the direction of its centre was sliding, the box tipped and his right hand was caught in between the box he was holding and another box and was injured.

In the case of *Ermioni Evripidou* v. *The Cyprus Palestine Plantations Co. Ltd.*, (1970) 1 C.L.R. 132, it was decided that an employee must take reasonable care in doing his

work and cannot saddle his employer with the consequences of his own carelessness in the performance of his duties.

In a subsequent case that of *Nicos Panayi* v. *Georghios S. Galatariotis and Sons Ltd.*, (1971) 1 C.L.R. 416 the Court in dismissing the appeal against the judgment of the District Court of Limassol dismissing the action brought by the appellant against the respondents for damages in respect of injuries which he suffered in the course of his employment with them, while handling a bundle of iron bars in an open depot of the respondents, referred to the following passage from the judgment of Lord Oaksey in *Winter* v. *Cardiff Rural District Council* [1950] 1 All E.R. 819 at pages 822-23:

> "In my opinion, the common law duty of an employer of Labour is to act reasonably in all the circumstances. One of those circumstances is that he is an employer of labour, and it is, therefore, reasonable that he should employ competent servants, should supply them with adequate plant, and should give adequate directions as to the system of work or mode of operation, but this does not mean that the employer must decide on every detail of the system of work or mode of operation. There is a sphere in which the employer must exercise his discretion and there are other spheres in which foremen and workmen must exercise theirs. It is not easy to define these spheres, but where the system or mode of operation is complicated or highly dangerous or prolonged or involves a number of men performing different functions, it is naturally a matter for the employer to take the responsibility of deciding what system shall be adopted. On the other hand, where the operation is simple and the decision how it shall be done has to be taken frequently, it is natural and reasonable that it should be left to the foreman or workmen, on the spot."

Applying the above principles to the facts and circum-

stances of this case I came to the conclusion that the plaintiff is entirely to blame for the accident.

Before concluding my judgment, I shall briefly deal with two questions in case an appeal is filed against this judgment.

The first question is whether the defendants should be held liable for damages to the plaintiff had he not been found entirely to blame for the accident. The answer to this question is in the affirmative. It is clear from the evidence adduced that the defendants were at the time agents of an undisclosed principal. In the case of *Christos Pericleous* v. *Co-Marine Ltd., and Another*, (1977) 1 C.L.R. 315, it was decided that as to who is responsible for the loading or unloading of a ship depends on the facts of the particular case.

In the case in hand, the fact that the defendants applied and were allotted stevedores by the Labour Office, the person responsible for unloading the ship in question was their employee and the stevedores were paid by them, give sufficient indication that they were doing the unloading either as independent contractors or as agents for undisclosed principal.

The second question to be decided is the amount of general damages on a full liability basis. The plaintiff in giving evidence on this issue stated that at the time of the accident he was not a member of the association of stevedores but a casual stevedore and his wages were £3.- per day. At the time he was giving evidence he stated that he became a member of the association and a regular stevedore and his daily wages were £3.800 mils per day.

As to the condition of the right wrist of the plaintiff, no oral evidence was adduced and two medical certificates were produced and put in evidence, by consent, the one on behalf of the plaintiff and the other on behalf of the defendants.

The relevant part of the first certificate reads as follows:

"I examined on the 24.3.75 with a view to ascertaining his right wrist's present condition and the nature of the functional impairment, if any, which remains in his case.

Present objective condition:-

The fracture is soundly united, but there is a slight deformity and soft tissue periarticular thickening of the right wrist. There is still some limitation of the terminal degrees of dorsi-palmar flexion and if the movements are forced it causes him pain.

The grip of his right hand is firm but it cannot be sustained for long, especially if used from an obtuse angle entailing forearm rotation movement.

Opinion: The injury he suffered justifies a good deal of pain initially for 4-6 days followed by inconvenience and discomfort resolving gradually over three months.

It is fourteen months since the accident and good function has now been restored to his right wrist.

However:

1. The mild residual deformity.

2. The restriction of the terminal degrees of motion and the peri-articular soft tissue thickening.

Indicate in this right handed man moderate restriction of his pre-injury ability to carry out jobs that entail repetitive resisted wrist movements, and supports his complaints of episodes of aching and stiffness in

the injured joint after heavy use and during changeable weather.

Late development of post-traumatic arthritis in the disrupted joint is probable."

The relevant part of the second certificate reads as follows:-

"At the time of the examination he complained of aching of the right wrist after prolonged heavy lifting.

On examination on December 5th 1975 the findings were the following:

1. No deformity of the right wrist on inspection.

2. Slight thickening of the right wrist on palpation.

3. Mild limitation of the range of dorsi and palmar flexion.

4. No circumferential difference between the two arms and forearms.

5. Satisfactory gripping power of the right hand.

6. X-rays of the right wrist, taken in this office, show consolidation of the fracture with some irregularity of the articular surface.

Opinion: This patient sustained an injury to his right wrist at work, twenty-three months ago. He had to put up with a fair amount of pain and suffering for the first few days, gradually subsiding over the following couple of months. The injury resulted in mild stiffness of the wrist joint (as compaired to the average and not to the opposite wrist, which was also injured in the

past) and will cause the patient transient episodes of aching after heavy lifting or similar acts. Because of the intra-articular nature of the injury and the presence of irregularity of the articular surface, post-traumatic arthritis may develop in the future."

Taking into consideration the medical certificates, the age of the plaintiff, who was at the time of the accident, 58 years old, his pain and suffering and all other relevant factors, I came to the conclusion that in the present case an award of £850.- as general damages is a reasonable amount.

As I found, however, that the plaintiff is entirely to blame for the accident, I dismiss this action but on the question of costs I make no order.

Action dismissed with no order as to costs.