1987 March 18
[DEMETRIADES, J.]

MILTIADES ERODOTOU

Plaintiff

v

1 SHOHAM (CYPRUS) LTD.,
2 NICOS ASIMENOS AND ANTONIS FANTOMAS,
IN THEIR PERSONAL CAPACITY AND ON BEHALF OF ALL MEMBERS OF THE LIMASSOL PORTERS ASSOCIATION,

Defendants

(Admiralty Action No. 157/80)

Master and servant – Loan of servant – Negligence of stevedores selected by second defendants at the request of the first defendants – System of work controlled by an employee of the first defendants – Plaintiff injured by reason of such negligence – The first and not the second defendants responsible for such negligence

Damages – General damages – Personal injuries – Plaintiff aged 61 sustaining concussion, laceration of his nose and left eyebrow, haematoma of both eyes, haematoma and abrasions of left leg, sprain of left ankle, depression of 4th and 5th cervical vertebrae with 1st degree spondylolisthesis of C4 on C5 – Complaints for pins needles and weakness of both upper limbs – Already suffering from severe osteoarthritis of the cervical spine – Neck collar kept for 7 months – Total incapacity for work for 7 months – Met with another accident in January 1982 – After period of total incapacitation and until such other accident he was missing work 3 or 4 times a month – £1,750 for pain, suffering, inconvenience (during the period from 26.6.79, when the accident occurred until January 1982) and some loss of wages – Special damages including loss of wages for the said period of incapacitation agreed at £1,343

The first defendants are a shipping agency, which acts in Cyprus on behalf of shippers and owners of cargo and ships. The second defendants are the officers of a non corporate organization formed by approximately 90 stevedores, who are known as belonging to the so called «class A list» having the privilege of being the first to be selected for employment for the loading and unloading of ships. When a person requires the services of stevedore the practice is for him to apply to the District Labour and Social Insurance Officer and ask to be supplied with the number of stevedores required. The application is passed to the second defendants who assign a number of named stevedores from the said list and when none from the said list is available they allocate persons who belong to the «B» list of stevedores

On the 26 6 79 the first defendants applied as aforesaid to be supplied with three gangs of stevedores, each of them consisting of eleven stevedores, for unloading the cargo on board the ship «PARADISE MOON» The plaintiff was one of the stevedores named by the second defendants Whilst he was engaged in the work of unloading the said cargo, working with the gang on the quay, a sack, which was part of a load that had been raised from the hold of the ship and lowered over a trolley that was on the quay, fell on plaintiff's head and, as a result, the plaintiff sustained the injuries hereinabove described The special damages were agreed at £1,343

Having analysed the evidence the Court reached the conclusion that the cause of the accident was the negligence of the stevedores, who were working in the hold of the ship in that they failed to make sure that none of the sacks would get loose and fall out of the load The question that arose for determination is who was the employer of the said stevedores The question of the quantum of the general damages remained, also, in issue

Held, (1) In deciding who is the master of a servant, whose wrongful act is in question, many difficulties arise as an employee who is lent or hired to another employer may have two masters, but in law he can only have one master controlling his work at any given time The subject is analysed in Charlesworth on Negligence, 6th Ed , p 44, para 76 and the leading authority is the case of *Mersey Docks and Harbour Board v Coggins and Quiffiths (Liverpool) Ltd and McFarlane* [1946] 2 All E R 345, recently applied in *Bhoomidas v Port of Singapore Authority* [1978] 1 All E R 956

(2) It is clear from the evidence that the stevedores, who were working in the hold, were selected by the second defendants at the request of the first defendants The person who had the overall responsibility for the implementation of the system of work, that is how the "shampani" would be loaded and how the load would be raised from the hold was an emloyee of the first defendants The sack fell because it was not properly tied by the «shampani»

(3) In the light of such evidence and the said authorities the first defendants are to blame for the accident The second defendants who merely provided the first defendants with the stevedores are not to blame

(4) Having in mind the age of the plaintiff, that he was already suffering from severe osteoarthritis of the cervical spine and that, after his seven months' incapacitation, he was not able to work continuously, the general damages for pain, suffering, inconvenience and some loss of wages would be assessed at £1,750. The agreed sum of £1,343 would be added, making the total £3,093

(5) As the action against the second defendants was unjustified, there can be no Bullock's order as to their costs.

Judgment for £3,093 against the first defendants with costs. Action against the second defendants dismissed with costs against plaintiff.

Cases referred to:

Mersey Docks and Harbour Board v. Coggins and Griffiths (Liverpool) Ltd. and McFarlane [1946] 2 All E.R. 345;

Bhoomidas v. Port of Singapore Authority [1978] 1 All E.R. 956.

Admiralty action.

Admiralty action for damages for injuries sustained by the plaintiff whilst engaged in the unloading of the ship «Paradise Moon».

C. HadjiPieras, for the plaintiff.

M. Montanios, for defendant No. 1.

V. Tapakoudes, for defendant No. 2.

Cur adv. vult

DEMETRIADES J. read the following judgment. The plaintiff, a stevedore of list B', claims damages for injuries he sustained on the 26th June, 1979, whilst employed in the unloading of the cargo loaded on the ship «PARADISE MOON» which was anchored at the port of Limassol.

In the course of the hearing of the action counsel for the parties informed the Court that the plaintiff would, on a full liability basis, be entitled to the sum of £200.- for medical and transport expenses, plus £1,143. - for loss of wages for seven months.

Having heard the evidence adduced I find that the following are facts that cannot be disputed:

The first defendants are a shipping agency which acts in Cyprus

on behalf of shippers and owners of cargo and ships.

The second defendants are the officers of a non corporate organization which has been formed by approximately 90 stevedores. These stevedores monopolise the loading and unloading of cargo on ships that call at ports in the Republic and are known as belonging to the so called «class A' list». They have the privilege of being the first to be selected for employment for the loading and unloading of ships. When there is demand for more stevedores, the second defendants call for work those that are registered in what is known as the «class B' list».

When persons require the services of stevedores for the loading or unloading of cargo, the practice is for them to apply in writing to the District Labour and Social Insurance Officer of the Ministry of Labour and Social Insurance, stationed at the port the ship calls, and ask that they are supplied with the number of stevedores they so require. Their application is then passed to the second defendants who assign for each work a number of named stevedores from the A' list and when no stevedore from this list is available, they allocate persons who belong to the B' list.

According to an agreement reached by the shipping agents, the second defendants and the Labour Office, the persons requesting the services of stevedores, included in both lists, must have a valid insurance, covering them for injuries caused during the time the stevedores render their services.

As it appears from the evidence of Mr. Loukis P. Louca, a Director of the first defendants, they, on the 26th June, 1979, applied to the District Labour and Social Insurance Officer posted at Limassol, to supply them with three gangs, each of them consisting of eleven stevedores, for the unloading of the cargo loaded on board the ship «PARADISE MOON».

According to the evidence of this witness, his company was acting as agents for a shipping company which is based in New York, U.S.A., and which was the charterers of the ship. This fact, according to him, was never disclosed by the first defendants to anybody concerned in these proceedings. Mr. Louca further said that the New York shipping company reimbursed them in full for

the costs of the unloading of the cargo.

It is an undisputed fact that the plaintiff sustained injuries as a result of the fall on his head of a sack that was in a load that had been raised from the hold of the ship and lowered over a trolley that was on the quay.

I shall later refer to the injuries sustained by the plaintiff.

As the special damages to which the plaintiff would be entitled, on a full liability basis, i.e. medical, transport expenses, plus loss of wages for seven months, have been agreed at £1,343.-, the issues that remain for the Court to decide are-

(a) Who is liable for the injuries sustained by the plaintiff and who was his employer, and

(b) general damages.

I now propose to deal with the first issue.

As I have earlier said, the plaintiff was injured as a result of the fall on his head of a sack containing sesame. He was, at the time of the accident, standing on the quay with raised hands in order to place the load that had been lowered by the winch of the ship at the right place on a trolley. When the sack fell on him he had not touched the load or in any way interfered with it. The evidence of the plaintiff as to how the accident occurred is supported by that of his colleague Georghios Panteli (P.W.2) and Defence Witness Loukis Louca.

Counsel for the defendants submitted that the system of work applied on the day of this accident was a safe one and that it had been used for years and that had the plaintiff not rushed from the cart, where he ought to be, before it was safe for him to push the cargo to its place, he would not have met with the accident. For this reason, counsel for defendants No. 1 submitted, the plaintiff was solely to blame for this accident and, alternatively, he substantially contributed to it as he was not ignorant of the risks that existed.

Before proceeding to answer the above submissions I shall give a description of the system of work employed by the gang of stevedores on the quay. This summary is based on the evidence of

Andreas Ttinis, the employee of the first defendants in charge of the loading and unloading of cargo at the Limassol port.

According to the evidence of this witness before the gang, which is employed on the quay, can start work, there must be on the quay two trolleys; the one is used as a protective one and the other is used for the loading of the cargo which is unloaded from the ship. Both trolleys are provided by the second defendants. One of the trolleys, to which I shall refer to as the trolley, is connected with a tractor which towes it to and from the warehouses. The other trolley, which I shall call the stand, is permanently there and is used by the stevedores on the quay for protection and safety so that they do not stand underneath the load that is lowered from the ship.

At the time of the lowering of the load, the stevedores must wait on the stand. When a load is lowered, the winchman brings it above the trolley and when the load reaches a height of approximately 2 1/2 - 3 meters above it, the 'koumandos' and the stevedores will call out to the winchman to lower the load further down to a height which is usually in level with the chest of the stevedores who are on the stand.

This procedure is followed for two reasons (a) it avoids risks to the stevedores and (b) it prevents the breaking of the load in case it falls violently on the trolley. It further helps the stevedores to place the load at the right place by having a better control of it. According to the witness, it is when the load reaches this second height that the stevedores can move from the stand onto the trolley.

Having regard to the evidence of Mr. Ttinis, it is clear that all concerned with the unloading were aware of some kind of danger during the unloading or else there would be no necessity for the stand which is described as «protective». Undoubtedly this stand was, if my understanding of the evidence is correct, necessary (a) as a stepping stone to the trolley when the load was ready to be placed on it and (b) for protection from the swinging of the load whilst it was lowered by the winch to such a height from the platform of this trolley or of the load already placed on it that the quay stevedores could manoeuvre it safely in order to place it in

the right position on the trolley.

In my view, the evidence of Mr. Ttinis does not support the submission of counsel for the first defendants that the plaintiff was solely to blame or that he contributed to the accident. As I have earlier said, the accident occurred because one of the sacks got loose from the bundle of the load that has been taken out of the hold of the ship and fell on the head of the plaintiff. What caused it to free itself from that bundle must, therefore, be investigated and one should consider the evidence of what went down in the hold of the ship when the load was prepared for lifting and then lowering it onto the quay.

Michalis Aspri, a class B' stevedore, described how the load was prepared in the hold of the ship. He said that in the hold there were sacks of sesame. These sacks were put on what is known as a 'shampani' so that they could be lifted from the hold and then lowered onto the quay. This 'shampani' is a long and wide ribbon on which the sacks of sesame were placed. It consists of two ribbons, the two ends of which are on each side sewed together. The 'shampani', the width of which is three feet, is placed on the floor of the hold, the sacks are loaded on it and then its one end is passed through the other end and is then hooked on the sling or the two ends of it are hooked on the sling. Lifting of the load is also done if the two ends of the 'shampani' are tied together and then hooked on the sling. The 'shampani' gets tied round the sacks when it is lifted by the winch.

In the light of the evidence adduced, I find that the stevedores who prepared the load in the hold of the ship were negligent in that they failed to make sure that none of the sacks would get loose and fall out of the load.

Having reached this conclusion, the next question that calls for decision is who was the employer of the stevedores that tied the load in the hold of the ship.

On this issue the evidence is that the second defendants lent themselves, as well as stevedores of the B' list, to persons or bodies that require their services for the loading and/or unloading of cargo on or from ships.

In deciding who is the master of a servant, in this case of the stevedores in the hold of the ship, whose wrongful act is in question, many difficulties arise as an employee who is lent or hired to another employer may have two masters, but in law he can only have one master controlling his work at any given time.

In Charlesworth on Negligence, 6th ed., p. 44, para. 76, there are stated the following:

«*Servant of one employer lent to another employer.* A servant may be the general servant of one person, and yet his services may be temporarily put at the disposal of another, who may be described as the particular employer. In such a case, although the general employer may pay the servant, select him for the work in question and have the power of dismissing him, the particular employer may in some circumstances be liable for the servant's negligence while engaged in his particular employment.»

And at p. 46 para. 78 Charlesworth, supra, summarises the law on the subject as this may be derived from the case-law as follows:

«1. The presumption is that the servant remains the servant of the general employer, the burden of proof being on those who assert the contrary. This burden is a heavy one but it can be discharged in exceptional circumstances.

2.The employer at the material time is that employer who can tell the servant not only what he has to do, but also the way in which he is to do it. If the servant when doing the negligent act is merely exercising the discretion vested in him by the general employer and not obeying detailed directions given by the particular employer, he remains the servant of the general employer.

3. The contract between the employers may provide that the servant shall be the servant of the particular employer. This contract is not conclusive. It cannot be used 'to contradict the fact, if it is the fact, that the complete dominion and control over the servant has not passed from one to the other'.

4. If the servant is not employed to work or drive any machine,

vehicle or animal belonging to the general employer, it is easier to find that he has become the servant of the particular employer

5 When the servant is employed to work or drive any machine, vehicle or animal belonging to the general employer, he exercises the discretion in its management delegated to him by the general employer and, subject to what is stated above, remains the servant of the general employer»

The leading authority on the subject which was applied in the recent case of *Bhoomidas v Port of Singapore Authority*, [1978] 1 All E R 956, is the case of *Mersey Docks and Harbour Board v* Coggins and Griffiths *(Liverpool)* Ltd and McFarlane, [1946] 2 All E R 345, in which it was held-

«(i) The question of liability was not to be determined by any agreement between the general employers and the hirers, but depended on the circumstances of the case, the proper test to apply being whether or not the hirers had authority to control the manner of the execution of the relevant acts of the driver

(ii) The board, as the general employers of the crane driver, had failed to discharge the burden of proving that the hirers had such control of the workman at the time of the accident as to become liable as employers for his negligence, since, although the hirers could tell the crane driver where to go and what to carry, they had no authority to give directions as to the manner in which the crane was to be operated. The board were, therefore, liable for his negligence»

Viscount Simon in his judgment said (at pp 348, 349) -

«It is not disputed that the burden of proof rests upon the general or permanent employer – in this case the board – to shift the prima facie responsibility for the negligence of servants engaged and paid by such employer so that this burden in a particular case may come to rest on the hirer who for the time being has the advantage of the service rendered. And, in my opinion, this burden is a heavy one and can only be discharged in quite exceptional circumstances.

..... If, however, the hirers intervene to give directions as to how to drive which they have no authority to give, and the driver pro hac vice complies with them, with the result that a third party is negligently damaged, the hirers may be liable as joint tortfeasors.»

Lord Porter in delivering his judgment in the same case approached the problem by expressing his opinion as follows (at p. 351):-

Many factors have a bearing on the result. Who is paymaster, who can dismiss, how long the alternative service lasts, what machinery is employed – all these questions have to be kept in mind. The expressions used in any individual case must always be considered in regard to the subject matter under discussion, but among the many tests suggested I think that the most satisfactory by which to ascertain who is the employer at any particular time is to ask who is entitled to tell the employee the way in which he is to do the work upon which he is engaged. If someone other than his general employer is authorised to do this, he will, as a rule, be the person liable for the employee's negligence. But it is not enough that the task to be performed should be under his control, he must also control the method of performing it. It is true that in most cases no orders as to how a job should be done are given or required. The man is left to do his own work in his own way, but the ultimate question is not what specific orders, or whether any specific orders, were given, but who is entitled to give the orders as to how the work should be done. Where a man driving a mechanical device, such as a crane, is sent to perform a task, it is easier to infer that the general employer continues to control the method of performance since it is his crane and the driver remains responsible to him for its safe keeping.»

It is clear from the evidence adduced that the stevedores, who were entrusted with the making up of the load in the hold of the ship, were selected by the second defendants at the request of the first defendants and, according to Mr. Ttinis, the person who has the overall responsibility for the implementation of the system of work, that is how the 'shampani' was to be loaded and how the load was to be raised from it, was an employee of the first

defendants, namely Takis Erodotou. Mr. Ttinis admitted that the sack fell because it apparently was not properly tied by the 'shampani'.

In the light of this evidence and the authorities to which I have made reference, I find that the first defendants were the persons who, through their employee Erodotou, controlled the method used in the loading of the 'shampani'. They, therefore, are to blame for this accident and not the second defendants who were merely the people who took upon themselves the right to provide the first defendants with the stevedores required by the latter for the unloading of the cargo.

Having reached the above conclusions I find that the plaintiff was not in any way to blame for the accident.

I now come to the last issue, namely that of the general damages to which the plaintiff is entitled.

As a result of the fall on his head of the sack, the plaintiff was injured and was taken to the Limassol Hospital. There, Dr. Adamou, the orthopaedic specialist who examined the plaintiff, found that he was suffering from -

1. Concussion,
2. lacerations of his nose and left eyebrow,
3. haematoma of both eyes,
4. haematoma of left leg,
5. abrasions of left leg,
6. sprain of the left ankle,
7. depression of the bodies of 4th and 5th cervical vertebrae with 1st degree spondylolisthesis of C4 on C5.

According to the doctor, the plaintiff further complained that he was suffering from pins and needles and weakness of both upper limbs.

The plaintiff was treated with a cervical collar, analgesics and rest. He remained in the Hospital as an in-patient for three days. He then left and attended a private clinic in Limassol.

It is an admitted fact that the plaintiff, as a result of the accident, remained unemployed for seven months.

As it appears from two later medical reports, the first signed by Dr. Andreou and E. Georghiou and the second by the same two doctors plus Dr. Adamou, the plaintiff, at the time he met with his accident, was 61 years old and suffering from severe osteoarthritis of the cervical spine, which was not connected with the accident.

The first of these reports, which is dated the 17th June, 1983, reads:

«Mr. Myltiades Erodotou was treated with a neck collar for a period of seven months.

This type of fracture the patients usually wear a collar for a period of four months but in view of the pre-existing osteoarthritis of his cervical spine the neck collar was kept for over a period of seven months.»

The second medical report was prepared, as it appears from the record in the file of these proceedings, on the 17th June, 1983, and it reads:

«JOINT STATEMENT OF MEDICAL EXPERTS OF THE LITIGANTS

«1. We agree on the type of injuries sustained by the plaintiff as reported in the attached report of Dr. Andreas Adamou, Orthopaedic Surgeon in the Limassol Hospital.

2. The X-ray findings of severe osteoarthritis of the cervical spine are not connected with the accident and is a pre-accident condition.

3. The period of plaintiff's total incapacity is seven months.

4. The plaintiff will suffer attacks of pain and stiffness over his neck in the future. He will also feel weakness of his hands, mainly after heavy manual work. These complaints will be due partly to the injury to the neck and partly to the pre-existing osteoarthritic condition.»

Considering the condition of the plaintiff, as it appears from the medical reports, and that in January 1982 he met with another accident whilst employed in the same type of work, I find that what

I have to decide is the amount of damages to which he is entitled for pain and suffering during the seven months of inability to work and the period up to January 1982 during which, he also alleged, that because of the after–effects of his injuries he missed work three to four times a month

Having in mind the age of the plaintiff at the time of the accident, that he was already suffering from severe osteoarthritis of the cervical spine and that, after his seven months' incapacitation he was not able to work continuously I assess the general damages to which he is entitled for pain, suffering inconvenience and some loss of wages at £1 750 -

If this amount is added to the agreed sum of £1,343,- for special damages the plaintiff is entitled to judgment for £3,093 -

The judgment for this amount is against the first defendants as the plaintiff has failed to prove that the second defendants were negligent for the accident which caused his injuries

In the result, there will be judgment in favour of the plaintiff and against the first defendants for £3,093 - with costs

The action against the second defendants is dismissed

With regard to the costs of the second defendants I find that since the plaintiff was not justified in pursuing his action against them, I cannot make a bullock's order The plaintiff, therefore, must pay their costs for defending this action

Costs of plaintiff against the first defendants and the costs of the second defendants against him to be assessed by the Registrar

Judgment against defendant No 1 for £3,093 with costs
Action against defendant 2 dismissed with costs