Rajendran a/l Palany v Dril-Quip Asia Pacific Pte Ltd
[2001] SGCA 37

Case Number : CA 126/2000

Decision Date : 11 May 2001

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Utehkumar Seethuraju and Gokula Kannan (SK Kumar & Associates) for the appellant; Simon Yuen (Tan & Lim) for the respondents

Parties : Rajendran a/l Palany — Dril-Quip Asia Pacific Pte Ltd

Civil Procedure – Pleadings – Defence – Contributory negligence – Requirement for defence to be specifically pleaded – O 18 r 8(1) Rules of Court

JUDGMENT:

Grounds of Judgment

1. The appellant, who was an employee of the respondents since January 1994, sustained personal injuries in the course of his work on 15 May 1998 and brought an action to claim damages from his employers, the respondents, for a breach of duty. The learned trial judge found that the injuries were caused by the work carried out on that day by the appellant on the instruction of the respondents. However, the trial judge also found that the appellant had contributed to the injuries sustained to the extent of 60% and thus reduced the quantum of damages which the appellant was entitled to by the same proportion. As agreed at the commencement of the trial, assessment of damages was to be undertaken later by the Registrar. Being dissatisfied with the determination that he was contributorily negligent, the appellant appealed. At the conclusion of the hearing of the appeal, we set aside the finding of contributory negligence and held that the respondents were 100% liable for the injuries. We now give our reasons.

The facts

2. The appellant, aged 33 at the time of the incident, was employed as an Assembly Mechanic with the respondents, who were in the business of, inter alia, manufacturing and repairing oilfield and gas field machinery equipment. The appellant started work with the respondents in January 1994 as a General Helper. The equipment included heavy and long pipes and connector forgings ("connectors"), which were metal rings used to connect the ends of metal pipes. Each connector weighed about 45 kilograms.

3. On 15 May 1998, the appellant, together with one other worker, Raman, was instructed to stack and move connectors which were then lying at the respondents yard at No 3, Tuas Avenue. He started work that day at 8.00am. He was instructed by the respondents Operations Manager, Mr Doug Harrison, to load the connectors onto pallets, up to five levels high. The connectors were separated at each level by a wooden plank. When each pallet was fully stacked, it was to be moved away by the use of a fork-lift.

4. On that day, there was considerable urgency in getting the connectors removed to other designated places as the space in the yard on which the connectors were then placed was needed to receive and store a huge quantity of long pipes which were scheduled to arrive by trucks the next morning, at about 11.00am, from the Port of Singapore under police escort. Thus the removal of the connectors had to be completed before the long pipes arrived. As the trial judge found "all possible delays had to be avoided, as the trucking out times and their arrivals were all pre-arranged; no changes could be made without a lot of trouble and inconvenience."

5. At about 10.00am that day, having noted that the pace of stacking of the connectors by the appellant and Raman were not as rapid as Mr Harrison had wished, he brought two other workers to help them. Still later, upon returning to the site at about 2.30pm, he noticed that only about half the quantity of connectors had been stacked and he also noticed that they had used the forklift to stack the connectors onto the pallets. As the process of using the forklift to stack the connectors was slow, he asked them to lift and stack the connectors manually. Realising then that there were only 2 hours left before knock-off time for the workers, Mr Harrison set an example himself by getting into the act and helping in the stacking.

6. The trial judge found that the workers, upon seeing Mr Harrison "putting his shoulder to the plough", understandably exerted themselves far more than they would have done otherwise. They tried to keep up with Mr Harrisons rate of stacking. The work was eventually done. But what is important to note is that Mr Harrison is a much larger and stronger person, with a height of 6 feet 4 inches. The other workers, including the appellant, did not have this kind of physique.

7. It is clear that the work of stacking the connectors was a heavy one as it involved lifting them onto the pallets. There was evidence that all the workers, including the appellant, were instructed on how to go about stacking the connectors to bend their knees, instead of their back, when lifting the connectors. Nevertheless, the trial judge found that the respondents did not have in place a safe system of work in an emergency such as this, where a deadline had to be met. He said:-

> Knowing that the pipes were arriving, more workers could have been employed to clear, stack and palletise the connectors. They should have started earlier and the heavy work could have been done without unduly straining the back of the workers. When a worker was rushed, he was prone to short circuit the process of bending his knees and lifting the connectors. If more workers had been deployed, then Mr Harrison could have insisted that two workers lift each connector and stack them, especially stacking them at the 4th and 5th level, which inevitably strained the backs of the workers.

8. On the next day, 16 May 1998, Mr Harrison offered the workers, including the appellant, overtime work relating to the unloading and stacking of the 60 feet long pipes. Although the appellant was, because of the previous days strenuous work, suffering a severe backache, he nevertheless volunteered because he was needed to drive the larger forklift.

9. The trial judge accepted the medical evidence adduced that the appellant suffered a prolapse of the disc on 15 May 1998 as a result of having to stack the heavy connectors under extreme pressure of time.

10. Having come to the conclusion that in the circumstances the respondents had failed to provide a safe system of work, the trial judge nevertheless held the appellant to be contributorily negligent and was 60% to be blamed. His reasons were:-

11. However, the (appellant) should not have tried so hard and so long. His overtime work, driving the forklift exacerbated his prolapse, and he should have stopped. Nobody forced him to work, though he must have felt some pressure in view of the urgency and the shortage of manpower.

The appeal

12. On this appeal, the appellant raised two main points. First, the trial judge was wrong to have found the appellant contributorily negligent, when the respondents had not pleaded contributory negligence in their defence. Second, even if it was correct for the court to have held that the appellant was guilty of contributory negligence, the trial judge erred in apportioning 60% of the blame onto the appellant.

Question of pleading

13. We will commence the consideration of this question by first examining the pleadings. In the statements of facts, after reciting the facts, the appellant alleged that the injuries were caused by a breach of the statutory duties imposed on the respondents under the Factories Act. In the alternative, the appellant alleged that the respondents, as employers, had failed to take reasonable care for the safety of the appellant. Among the particulars of negligence pleaded were:-

> (b) Failing to provide any or any adequate precautions for the safety of the Plaintiff when he was engaged upon the said work;
>
> (c) Failing to provide any or any adequate measures to prevent workers from being injured when carrying heavy objects;
>
> (g) Failing to provide and maintain a safe system of work.

13. In their defence filed, the respondents alleged that the appellant had been manually lifting the connectors to pallets since he was first employed. The respondents denied any breach of the statutory duties under the Factories Act. They also denied any common law negligence. This was all that they averred:-

> The defendants say that it had provided training and demonstration to all its workers to use their legs strength rather than this back which lifting forging connectors on to pallets. In the course of work Mr Dong Harrison personally lifted connector forgings using the safe method as a reminder to all workers to use such safe method.
>
> The defendants say that the Plaintiffs injury was grounded upon a degeneration of the Plaintiffs lumbar discs (L1, L2, L4 and L5) which is a natural process. Such a degeneration of the lumbar discs made it pone to prolapse by any sudden exertion to the back such as bending to pick up moderately heavy objects either during work or outside the work-place. Save that the Plaintiff was engaged in manual work up to 19 May 1998 the defendants deny that the manual work was the cause of the (appellants) injury.

14. In common law, contributory negligence had no place. A plaintiffs case would be dismissed if it was caused, in part, by his own negligence. The rigours of the common law were eventually mollified by the English Law Reform (Contributory Negligence) Act 1945, the precursor of s 3(1) of the Contributory Negligence and Personal Injuries Act (Cap 54), under which the court is given the power to apportion liability between the tortfeasor and the victim where it is shown that the victim is partly responsible for the injury or loss.

15. Order 18 r 8(1) of the Rules of Court prescribes what should be pleaded and it reads

> 8 (1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality
>
> > (a) which he alleges makes any claim or defence of the opposite party not maintainable;
> >
> > (b) which, if not specifically pleaded, might take the opposite party by surprise; or

> (c) which raises issues of fact not arising out of the preceding pleading.

16. *In Drinkwater & Anor v Kimber* [1952] 21 QB 281, Singleton LJ said that the section in the 1945 Act did not create a right of action; it only removed an obstacle. In *Nance v British Columbia Electric Rly Co Ltd* [1951] AC 601 at 611 Lord Simon referred to "contributory negligence" as a defence.

17. A case which seems to be on point is *Fookes v Slaytor* [1979] 1 All ER 137. There, the plaintiff, who suffered injuries as a result of a highway accident, sued the driver of the other vehicle. The defendant failed to file any defence and did not attend the trial. The County Court judge found the plaintiff one-third to blame and reduced the damages awarded accordingly. On appeal, the Court of Appeal held that the defence of contributory negligence was only available if it was pleaded. In the absence of such a plea, the judge had no jurisdiction to make a finding of such negligence on the part of the plaintiff. Sir David Cairns, who delivered the leading judgment of the court, said:-

> The opposite view [i.e. that contributory negligence need not be pleaded] would mean that a plaintiff in any case where contributory negligence might possibly arise, even though it was not pleaded, would have to come to court armed with evidence that might be available to him to rebut any allegation of contributory negligence raised at trial. It is true that in the ordinary case it would not be likely to involve anything beyond the evidence he would be giving to establish negligence on the part of the defendant, but circumstances are reasonably conceivable in which it might be.

18. In the Supreme Court Practice 1999, the learned authors, relying on the authority of *Fookes v Slaytor,* state (at 18/8/9):-

> Contributory negligence must be specifically pleaded by way of defence to a plaintiffs claim for negligence, and in the absence of such a plea, the trial judge is not entitled to find that the plaintiffs negligence had contributed to the accident.

19. We have set out in 13 above, the defence of the respondents. Essentially two points were made. First, the appellant, like the other workers, were properly instructed as to how they should lift the connectors to stack them. Second, the injury was brought about by a degeneration of the appellants lumber disc rather than by the manual work he was required to do. As an allegation of contributory negligence is a defence, it should have been pleaded and particulars in support thereof given. While we would not go so far as to say that unless the term "contributory negligence" is expressly mentioned in the pleadings, that defence will not be given consideration by this court, the facts pleaded must be sufficiently clear that the defendant is alleging that the plaintiff is responsible, at least in part, for the injuries which gave rise to the action. The very object of pleadings is to enable both parties to come to court prepared to answer what the other side alleged. The parties are not expected to come prepared for possible issues. No party should be allowed to take the other by surprise.

20. In the present case, not only had the respondents failed to plead contributory negligence on the part of the appellant, no facts were even alleged which could constitute contributory negligence. The basis upon which the court below found the appellant to be contributorily negligent was that he voluntarily accepted overtime work which aggravated the injury. This fact was not pleaded by the respondents as a basis for contributory negligence. The respondents were in possession of records which showed that the appellant worked overtime on 16 May 1998. They knew he worked the next day. But unless this fact was pleaded, there was no way the appellant could prepare himself to answer it adequately. Accordingly, in our judgment, the judge below was not entitled to find that the appellant was contributorily negligent.

Judgment

21. In the premises, we allowed the appeal and held that the respondents were 100% liable and should bear the full costs, here and below. The security for costs (with any accrued interest) shall be refunded to the appellant.

Question of apportionment of blame

22. However, we would like to mention in passing that, even if the pleading point had not been taken up by the appellant, we would have allowed the appeal on the ground that the apportionment of liability determined by the court below was plainly erroneous. On the finding of the court below, the appellant was held 60% to blame because he agreed to accept overtime work. But the learned judge below recognised that, to an extent, he accepted it because of a sense of responsibility when he himself said the appellant "must have felt some pressure in view of the urgency and the shortage of manpower."

23. The court below found the respondents negligent for failing to provide a safe system of work. The fault of the appellant was in accepting the overtime work when he had experienced pain the day before in rushing, together with the other workers, to stack and remove the connectors from the yard. While we recognised that the money he would earn in doing overtime work no doubt played a part in his final decision, the judge also recognised that his sense of responsibility also played a part in that decision to accept overtime work. In these circumstances, it was our view that the degree of blameworthiness which could be attributed to the appellant was really minimal. The overtime work involved driving a larger forklift and did not involve the lifting of heavy objects like the connectors.

Sgd:	Sgd:	Sgd:
Yong Pung How	L P Thean	Chao Hick Tin
Chief Justice	Judge of Appeal	Judge of Appeal

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