85/127

2nd DECEMBER, 1985

Docherty -v- The Jersey Gas Company Limited

DEPUTY BAILIFF: This case arises from an unhappy accident that occurred on the 11th July, 1983, when the plaintiff was painting a butane storage vessel and its' supporting frame - or cradle as we have had it called in this hearing - which is in the defendant's compound at La Collette.

He gave evidence that in the course of that day, he was attempting to paint the lower part of the cradle, which is, to use his own measurements, some eighty inches from the ground. To do that operation, he was standing on a tressel table which was made up of two tressels, which themselves had been put together in the workshops of the defendant company, and across which were laid two ordinary standard scaffolding planks. There was no difficulty about reaching the height of the plate which had to be painted, but there was some difficulty, in as much as the scaffold tressel was almost too high for the work, so that in order to see how he was doing, that is to say, how the paint was being applied to the base, which in fact was a plate, he had to bend his head, and look at the plate as he was painting it, and therefore, he had to crouch more by using the tressel scaffold, than if he had been using some other apparatus, to which I will come to in a moment.

At one stage in the operation, he bent down to put his paintbrush into the paint pot to get some more paint. As he straightened himself up, his head came into contact with either the vessel itself or the cradle. He was temporarily dazed. He fell off the tressel scaffold, and injured his left foot, or ankle.

We are only concerned to day with the issue of liability. The law, in relation to the duty of an employer has been considered by this Court on many occasions, but the most succinct version of it is to be found in the case of Tavella and Roncoroni reported in 1964 Jersey Judgements at page 405, where the Court says this:-

"Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affaires would do, or doing something which a prudent and reasonable man would not do".

The fact that it is the duty of an employer to provide a safe system of working is not contested," - as indeed Mr Bailhache doesn't contest it - "but this duty is not an absolute duty; it is a duty to take reasonable care to provide a reasonably safe system, and what is a reasonably safe system must be considered in relation to the nature of the employment and its inherent risks, and if a workman sustains injury through an inherent risk of the employment, the employer is not liable in the absence of negligence. As was said by Lord Tucker in General Cleaning Contractors Ltd. v. Christmas (1952) 2 all E.R. 1110, at p. 1117, "Their (the employers') only duty is to take reasonable steps to provide a system which will be reasonably safe, having regard to the dangers necessarily inherent in the operation".

That passage of the Jersey Court was based, I have little doubt on a passage which was cited in the Court of Appeal, in Parks against the Smethick Corporation, a case decided on the 15th May, 1957, and reported in local Government reports. I'm afraid I do not have the page number, but on the 4th page of the extract, at the bottom of the page, appears the following paragraph:-

"The general duty of an employer to an employee is well known, and has been authoratively laid down over and over again in the House of Lords. In Paris and Stepney Borough Council, which was an appeal case in 1951, at pages 38, 57 and at page 301, Lord Oaksey in his speech put it thus:

"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. And further", he said, " The standard of care which the law demands is the care which an ordinarily prudent employer would take in all the circumstances.

The only other authority to which I need refer is again the same case, which was concerned with the liability of Smethick Corporation towards one of its employees who was an ambulance driver. The same Court, at the end of its judgement, said this; and it was in fact the judgement of Morris L.J.:

"In my judgement, the situation that we are considering here, was not one that required the laying down of a detailed system. The work of ambulancemen is work that involves an infinate variety of different situations and circumstances".

We think that that is applicable here. This is not the sort of case which requires a detailed system of work. The intricies of painting these vessels and the little places which have to be reached, by a reasonably skilled and sensible workman, does not, in our opinion, require a detailed direction as to how those places are to be painted.

Looking at the Order of Justice, however, the plaintiff alleges in his particulars, a number of matters with which I must deal. The plaintiff had worked for some four years for the defendant company, and he was a relief shift worker, that is to say, he did a bit of painting, and more or less anything which he was ordered to do, even including, we were told by the management supervisor, Mr Fountain, the sweeping of the yard, on occasions. He was therefore a person accustomed to doing general painting work. As I say, in the particulars of negligence, it is alleged firstly under paragraph 3(a) that the defendant is negligent in that it provided equipment, that is tressel scaffolding, unsuitable and/or unsafe for the purpose of carrying out the painting work. The evidence, on the contrary even from the workmen themselves and particularly from the plaintiff, is that the scaffold was indeed safe, and therefore Mr Docherty himself said that he didn't feel in the slightest worried when actually being on the scaffold,nor did it move when the accident occurred, and it wasn't as a result of it moving that he fell off, it is a result, as I have said, of his striking his head, and therefore paragraph 3 (a) is not substantiated.

Paragraph (b): "failed to provide equipment which was suitable and safe for the purpose of carrying out the said painting work" and paragraph (c): "failed to provide a ladder or stepladder or other equipment allowing work to be carried out at variable heights".

There is a conflict of evidence, whether there was a three foot ladder on the site which would have enabled it to be placed inside - we were told - the outside part of the cradle, so that the workman could adjust the height of his painting accordingly, or whether it was not there at all. There is also a conflict of evidence about a two foot short two step 'raiser' - which I can call it for the moment, which enabled a workman to place these two steps made of a wooden frame against the building for a short time, and it is suggested that the absence particularly of the three foot ladder, was a form of negligence, and that it should have been provided, and should have been insisted upon to be used.

Because we have found that the platform is safe, and from what we are going to say in a moment, we do not think it necessary to pronounce on the conflict of evidence as to whose evidence we accept in this case.

Clearly, at the beginning of the operation, these two items, the three foot ladder and the two foot raiser - were there. But whether they were there at the time of the incident or not, is, we think not (indistinct) for us to decide.

(d) under the particulars, is an allegation that the defendant company failed to provide safety helmets. We think this does not succeed either under this ground, because it is clear to us that safety helmets are only necessary on any site, given an industrial site, where there is a danger of items falling down on the workmen. This was not a case where that could apply and therefore that cannot be a ground on which to found liability.

(e) is "failed to instruct or advise properly or at all, the plaintiff as to how to safely carry out the said painting work"

(f) and (g), "failed to supervise properly or at all, the plaintiff while carrying out the said painting work and failed to provide or organise a safe system of work, or failed to ensure that any such systems may have been provided, organised or followed; theseare realy inter-related matters.

As far as (e) is concerned, Mr Fountain the works supervising manager has said that there was a discussion with the workmen before the job was commenced, some weeks before the accident, and the only precise instructions he gave them was to take care that they didn't fall off the tressel. There was some discussion as to how they should carry out the work, but there was no detailed instruction as to what part of the equipment they should use, and this is a case, we think, which is similar to the one I have cited of the ambulance man where it was not necessary to detail each and every operation , and to tell the man how each and every part of the items to be painted had to be done.

So far as organising a system of work, or failing to ensure that such system was followed or supervision of it, on the contrary, Mr. Brekan said - and he was the shop steward - that the men could be trusted to carry out the work. Indeed we think they could, and in this connection we refer to the extract from Salmon, the 14th edition cited by Mr Bailhache on page 677:-

"But there are certainly cases in which an emloyer is entitled to rely on a skilled man being sensible enough to avoid a danger of which he has been warned".

Well, of course this is not a case where there was a danger to be warned, but it was obvious that if you stood up suddenly in a relatively cramped condition, you might well bang your head. I read on:-

"The relationship between employer and skilled worker is not equivalent to a nurse and imbeciled child or a matron and patient or schoolmaster and pupil".

And here was a plaintiff who was a skilled man in the sense that he'd had experience of this kind of work before - painting - although it is true that it was only the second day that he was on the actual site. We are satisfied that the employer was entitled to rely on him being sensible enough, and it seems to me stretching at a point to say that where a workman has to paint in a cramped space, that by itself is such an inherent danger that there should be special steps taken to avoid the possibility that he might bang his head. Indeed, one of the witnesses said that the banging of heads was quite common, in this particular work, and there was a certain amount of 'language' used as a result of it.

We are satisfied that the plaintiff has not established his case,and accordingly, we find for the defendant company, with costs, taxed.

As I say, this is an unhappy case, it's unfortunate that this accident did happen, and we indeed sympathise with the plaintiff, but he has not succeeded in establishing in law a claim which is sustainable.