192

COPY

HADDIN v. OTOMATA SAW-MILLING CO.LTD.

REASONS FOR JUDGMENT

Port Moresby

MANN C.J. The plaintiff whilst an employee of the defendant company and working at the defendant's sawmill, was seriously injured as a result of an accident and the present action is for damages for alleged negligence. The plaintiff was normally employed as a supervisor of the logging operations conducted in the bush and it was his responsibility to handle logs and arrange for them to be brought to the sawmill. At the time the sawmill was being reorganized and a new milling plant was being established in the bush. This involved erection of a number of buildings and of the main sawmill itself, the installation of the necessary machinery and so on.

The evidence showed that a good deal of improvisation was going on. The partly constructed mill was being used to produce materials to complete the structural work necessary to complete the buildings, including accommodation for employees. An essential piece of equipment was a windlass, referred to in the evidence as a winch, designed to roll logs up an incline on to the platform from which the travelling carriage of the Canadian saw was operated. Until the winch was installed logs had to be placed upon the saw-carriage by hand. The mechanic and general expert responsible for the constructional work, one Herbert, constructed the winch out of an old motor vehicle engine and a few other components. The apparatus, as appears from the photographs was very well constructed and is obviously a most workmanlike piece of machinery well adapted to the purpose for which it was intended, However, as Mr. Herbert explained in his evidence, the installation was incomplete. It was obvious to him that the machinery required a guard but it is not practicable to erect a guard until an installation is completed and tested in operation. The main drive-shaft of this equipment consists of the tailshaft of the original motor vehicle which carried, a few inches below the spline at the rear end of the gear-box, a grease nipple of the ordinary pattern. It appears likely that the projecting end of this grease nipple was pointing forward in the direction of rotation thus providing the aspect of a circular saw with one hooked tooth. Such a piece of mechanism presents a most obvious danger and a ready comparison

between it and a circular-saw blade of comparable diameter requires only consideration of the formula - speed of rotation x number of teeth. Mr. Herbert fully appreciated this and made it clear that he would not regard this revolving shaft as safe until a proper guard was fitted and it was his intention before the sawmill came into normal use, to fit a guard.

The Managing Director, Mr. McLean, had been directly supervising the operations at the mill and it appears that upon him fell the direct responsibility of implementing the employer's obligation to provide a safe system of work. The evidence was very meagre as to some of the most important aspects of the case at this point, but it does appear from the plaintiff's evidence that when the accident happened Mr. McLean was absent from the mill and had left it, under some loose sort of arrangement, to Mr. Herbert and to the plaintiff to carry on in his absence and keep things going.

On the occasion when the accident occurred the plaintiff was dressed in long trousers and boots with heavy nails in the soles and generally was suitably dressed for the role which his employers normally required him to play. He noticed that the native employee, who normally operated the winch, was having difficulty in starting the engine, apparently because the batteries were weak and he came to render assistance to save unnecessary drain on the battery's power. He started the engine himself and then for some reason which is not explained, commenced to operate the winch for the purpose of drawing logs up to the saw-carriage. Meanwhile the native employee who normally operated the winch, was looking after the main engine which drives the Canadian saw. The only inference that I can draw is that the part which was thus played by the plaintiff was normal and reasonable, and in the course of his duties and according to his instructions from Mr. McLean, in the light of the circumstances which led to his taking this action.

There is no evidence to suggest that the plaintiff knew of any particular danger or that he knew of the existence of the grease nipple. He was at one stage standing with one foot on the steel chassis members supporting the engine and it is possible that the nails in his boots caused his foot or feet to slip; however the evidences gives no justification for drawing any such inference, nor does it really explain in any satisfactory way, how the accident subsequently happened. There is no position in which the plaintiff could have been standing in which his clothing could have become caught by the grease nipple on the revolving shaft. As a matter of conjecture one might

imagine that the plaintiff slipped or fell and the plaintiff in fact made some effort to show that a log, irregular in shape, rolled backwards on the skids, causing such a jerk on the rope that he was thrown off balance. Although I accept the plaintiff's bona fides on this question, I think that in the circumstances in which the accident happened it is very unlikely that he would have time to form any impression of what was happening to him or why. He has very frankly told the Court all that he could.

It is clear that a jerk on the winch cable would not have moved the winch machinery over any appreciable distance,but it is possible that a jerk would transmit a shock setting up a momentary vibration which could have thrown the plaintiff off balance if his foothold were precarious. The evidence is not however sufficient for me to form any conclusion as to this and all I can find is that for some reason not satisfactorily explained the plaintiff whilst operating the winch, moved from a position in which there was no possibility of his clothes being caught in the shaft to a position in which one of his trouser legs came in contact with the grease nipple on the revolving shaft, with the result that the plaintiff was suddenly and violently thrown down on to the ground whilst the trouser leg was rapidly wound-up on the shaft. When the plaintiff recovered his awareness of his surroundings, he was standing about 30 feet away from the shaft with no trousers on, was suffering great pain and was bleeding profusely from the groin. He was taken to hospital for treatment.

I find on the evidence that the machinery in its state at the time of the accident was in fact very dangerous to anybody who by some chance might come into a position in which his clothes or any part of his body might become caught by the revolving grease nipple. The danger was known and understood by the employee who constructed the apparatus. It was the Company's obligation to see that this equipment was safe and although this responsibility could not be delegated so as to absolve the employers, the duty to see that unsafe equipment was not used, or to take whatever precautions were needed to ensure that the users were safe, during the make-shift period of the sawmill's operations, fell naturally upon Mr. McLean. There is no evidence that he made any attempt to prevent the use of this equipment or that the plaintiff was under any restraint in relation to its use. The employer's obligation extends to guarding against such casual slips and omissions as are likely to occur from time to time in the course of a day's work. In the absence of any suggestion that the plaintiff was engaged in some extraordinary enterprise or was doing anything other than operating equipment which he was well qualified to understand, I find that the plaintiff's injury was caused by a slip or fall or some other accidental movement which occurred in the ordinary course of his duty.

The defendant endeavoured to set up a plea of contributory negligence but the evidence does not support this on any count. It was established that native employees are not allowed to wear lap-laps and are required to wear shorts whilst working in the sawmill. There was no evidence of any prohibition against Europeans wearing long trousers and there seems to me to be nothing improper or unreasonable in the way in which the plaintiff was attired, having regard to the normal range of his duties. Many shortcomings on the part of the plaintiff were suggested but not proved. The onus is on the defence and I find that the plea of contributory negligence is not made out.

There remains the question of damage. The plaintiff has suffered considerable pain and severe lacerations, his left testicle was completely removed apparently by the revolving grease nipple and the right testicle became embedded in tissue, which will as a matter of common medical experience result in sterility in due course if the plaintiff is not already sterile. He was faced with conflicting medical advice. Plastic surgery could restore him to a condition in which he had some reasonable prospect of retaining his fertility, assuming that he was fertile, but on the other hand the operation if not entirely successful or if it occasioned further damage, might produce complete sterility. The plaintiff has so far chosen to leave the right testicle where it is and has been patched up as well as surgery can manage. Some attempt was made to establish that the plaintiff is already sterile, but the whole basis upon which it was sought to prove this point was so unsatisfactory and would involve recalling witnesses, that I refused leave to recall evidence on this point which should have been part of the plaintiff's case in the first instance. In any case this evidence appeared to me to add nothing to the expert evidence already before the Court, as to the normal consequences of the situation in which the plaintiff finds himself. The plaintiff may well be advised on medical grounds to have a further operation in the future. There is no way of proving now that he was fertile before the accident but since only five per cent of males in his age and health group are sterile, the only reasonable inference that I can draw is that he was fertile.

He has in fact suffered permanent injuries of a serious character and these will affect his activities but in all probably will not materially affect his earning capacity, at least the evidence does not establish any prospective loss. I think that the question of damage is in consequence very much at large.

Taking into account the pain and suffering, the permanent nature of his injury, and the fact that he has been reduced in all probability permanently from a condition of probable fertility to one of practically certain sterility, and having regard also, so far as I can in spite of the paucity of evidence, to the fact that his enjoyment of life in the future will in all probability be affected, I think that the best estimate that I can make of the general damages suffered by the plaintiff is £1000.

ORDER : Judgment for the plaintiff for

£620	
64.	5. 0
20.	2. 6
92.	5. 0
200.	0. 0
1000	
£1996.	12. 6

with costs to be taxed.

Stay 21 days.

Port Moresby, 3rd May 1961.