

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. B355/1995

BETWEEN	JERMAINE BUTLER	PLAINTIFF
A N D	HUGH ROSE	DEFENDANT

Mrs. Gordon-Townsend for Plaintiff

Mr. H.S. Rose for Defendant

HEARD: February 22, 24 and March 5, 1999

RECKORD, J.

This is an action for negligence. The Plaintiff claims that while working in the Defendant's workshop he sustained injury to his left thumb from a malfunctioning machine - a Lathe.

The Plaintiff testified that while at work along with another employee, both working on separate machines, his colleague indicated to him that his machine was malfunctioning - He went over to his colleague who by then had switched off his machine and began examining it. He observed that the guards were not in place and that the gears were exposed. The machine had been used all day without the guards.

While looking at the machine his colleague switched it on. "I was standing in front of the machine and bending over - one of the fingers of my left hand got in touch with the machine where the guard was not in place". I was not doing anything while investigating the machine.

I had my hands by my side. My thumb caught between two gears and piece of my left thumb was cut off. He complained to Mr. Rose, his boss, who sent him to seek medical attention.

He went to a private doctor and got treatment. Two days later he went to Dr. Gloria Ford as the finger got swollen and pained him and it had a foul smell, Dr. Ford examined his finger, dressed it and gave him tablets for the pain. He visited for 4 or 5 times and went to Dr. Emran Ali twice - He paid \$800.00 to Dr. Ali for medical report and \$600.00 for treatment. He paid \$300.00 for each

visit to Dr. Ford. He could not work for 3 - 4 months because of the injury.

Mr. Rose paid him a salary while he worked with him - it would depend on the amount of work that he did.

"The guard on the machine would cover the gears. If the guards were on my hand would not come in contact with the gears".

When cross examined the Plaintiff said he was not working on the machine. He was familiar with machines of that sort. The gear was to the left side of the machine and the operator is close to the gears. His colleague was standing beside him, he examined it for couple minutes then his colleague turned on the machine. The switch is on top of the machine. As he was bending over looking at the machine his finger got between the 2 gears. He was not deliberately using his fingers to touch the gears while examining the machine. His hands were by his side while examining the machine.

His colleague never told him he was going to turn on the machine. After the injury he found out that three of the teeth in the gears were missing.

The Defendant testified on his own behalf. He knew the Plaintiff for a number of years. At one time he was apprenticed to him. To where the gears are the Plaintiff would have to put his hand around there into the machine. Just passing and looking at machine one could not get damaged by it. He denied that the Plaintiff was employed to him. He gave him job work from time to time when he passing his shop.

He admitted that the guards were not on the machine - they had been taken off for the gears to be examined - He was aware that the guards were not in place. When he gave the Plaintiff a job he would tell him what to do, supply him with material and control the way he does it - He admitted that the Plaintiff worked part-time for him and he regarded him as an apprentice.

Mrs. Townsend submitted that from the very nature of the work that the Plaintiff did there was a contract of service with

the Defendant. From the evidence of the Defendant himself he was negligent as he in breach of duty to provide safe system of work - The machine was unsafe without the guards. Further she submitted that the Plaintiff was not guilty of contributory negligence.

Mr. Rose for the Defendant admitted at the outset that the Plaintiff was employed to the Defendant at the time of the injury. The issue he submitted was whether or not there was negligent conduct on the part of the Defendant and whether it caused the accident. For injury to take place the Plaintiff must have done something deliberate for his finger to get into the gear. Without negligent conduct on the part of the Plaintiff no accident could have occurred whether or not guard was on the machine.

Findings

At common law an employer owes a duty of care to his employees to provide a safe place of work, safe equipment and a safe system of work.

I find that the machine which injured the Plaintiff was mal-functioning and the guards had been removed by the other employee in order to examine the gears.

I further find that in the course of the examination that the co-worker switched on the machine and that the Plaintiff's thumb was caught up in the gears and the tip of the thumb was cut off.

From the evidence I find that the Plaintiff was an employee of the Defendant and to him the Defendant owes the Plaintiff a special duty to see that reasonable care was taken to provide the employee with safe fellow-servant, safe equipment, safe place of work and access to it and safe system of work. This duty to see that reasonable care is personal to the employer and therefore non-delegable. (See the 14th edition of Clarke and Lindsell on Tort chapter 13, paragraph 965.)

The Plaintiff was familiar with machines of that nature. He had been using them for over three years. He knew of its danger when used without the guards in place. How then did the hand of the Plaintiff get into the machine. The Plaintiff could

give no explanation. It was just himself and his co-worker were present around the machine - He said he never deliberately put his hand in the machine.

I find that the Plaintiff failed to act like a reasonable prudent man might and must therefore be guilty of contributory negligence. The responsibility was as much his to look after his own safety as it was Defendant's to see that his employee was in no position of danger.

I find both men to blame equally for this accident and accordingly I so apportion blame worthiness between them.

Assessment of Damages

Special Damages

Medical Expense	-	Dr. Ford	\$ 900.00
		Dr. Ali	650.00
Loss of earnings	-		
12 weeks @ \$700			8,400.00
Transportation			180.00
Medical Report			850.00
			<u>\$10,980.00</u>

General Damage

Plaintiff suffered injury to the tip of the left thumb - He is right handed. This action ought to have been filed in the Resident Magistrate's Court where he could have been adequately compensated.

This injury is far less serious than the cases referred to by counsel for the Plaintiff, therefore the awards will be considerably less than claimed.

For pain and suffering the damages is assessed at \$100,000.00

In summary judgment for the Plaintiff with damages assessed as follows:

Special Damages - \$10,980.00

with interest @ 6% per annum from 22/2/94 to 5/3/99.

General Damages \$100,000.00 with interest @ 6%p.a. from 14/11/95 to 5/3/99.

Cost to the Plaintiff to be agreed or taxed.

In view of the finding of contributory negligence against the Plaintiff he would recover only half of this award.