NMCS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT C.L. H-011/1987

BETWEEN	SAMUEL HARTLEY	PLAINTIFF
A N D	GRAY'S INN SUGAR FACTORY LIMITED	DEFENDANT

Mr. R.S. Pershadsingh Q.C. and A. Mundell for Plaintiff.

Mr. W. Scott for Defendant.

Heard: 16th November, 1992, 18th November, 1992, 7th April, 1994, 19th September, 1994, 21st September, 1994 and 8th December, 1995.

Ellis J:

The plaintiff claims damages for injury to his left eye which he suffered on the 8th of June, 1983. He says that on the relevant date, whilst "taking up" work in his capacity as a field supervisor in the employ of the defendant a "puff of wind" blew cane leaves across his left eye causing injury and consequential blindness.

The plaintiff says that the incident occurred during reaping time when the canes ought to have been trimmed from the interval - a lane for access between cane fields. The canes had not been trimmed and he was not given any safety clothing and in the circumstances, he alleges that his injury was due to the defendant's negligence and breach of the requirements of the Factories Act.

He claims as Special Damages an amount of $7,409.00 for medical, domestic, and transportation expenses and loss of earnings.

In answers to questions put to him in cross examination the plaintiff denied telling Dr. Mangue Chin that he had a cataract in his left eye. He says he had never before seen a puff of wind like the one which blew the cane leaves into his face.

The plaintiff called Roderick Neish, George Christie and Samuel Brown to support his claim. McNeish gave evidence of seeing when the "puff of breeze" blew the canes on the plaintiff. He said that the canes had not been trimmed. Although he was about ½ chain from where the plaintiff was he was not troubled by any cane leaf.

Christie said nothing of assistance to the matter.

Samuel Brown a cane cutter stated that canes were always trimmed before 1983. However since 1983 when a Mr. McGregor became Manager the cane were not trimmed.

In cross examination he said that it was not everytime the canes were trimmed for reaping.

The defendant by an amended Defence denies being negligent or in breach of the Factories Act in that the cane field the site of the incident is not a factory with the meaning of the statute.

The defendant attributes the plaintiff's injury to his own negligence solely or contributarily. Moreover the defendant pleads that the circumstances of the injury was an Act of God and were reasonably unforeseeable and out of the control of the defendant.

Levi McGregor, the then manager of the defendant's cane fields and sugar factory, stated that in 1983 he had over twenty years experience in the sugar industry. During those years he had been Cane Production Manager at Frome and General Manager at Gray's Inn.

Mr. McGregor spoke to the presence of the intervals between the cane fields which were 15 ft. wide and facilitated the passage of cane trailers. He said the practice in the Sugar Industry and which was adopted at Gray's Inn, was to trim canes just before burning the fields for reaping. This practice was a precaution against fire spreading from one field to the other.

In 1983 Gray's Inn cultivated a strain of cane the "H.J. 42." This strain of cane grew erect without lying down or overlapping and presented no impedement to free passage on the intervals. The canes were never trimmed for any length of time prior to burning since if canes are so treated and remained so for anytime, they become sour with consequential reduction of sucrose content and less yield in sugar.

In all his years in the sugar industry he has never heard of the type of incident which the plaintiff described. He was cross examined by Mr. Pershadsingh. He maintained that the canes cultivated at the time grew to 6 to 8 ft. tall with leaves 4-5 ft. long. Also, those canes are not pruned in the sugar industry.

That was the case for the Defendant.

Liability

Mr. Scott for the defendant submitted that there was no legal duty owed to the plaintiff in the circumstances.

The circumstances of the accident were not foreseeable and that negated defendant's liability. In any event, the defendant had adopted the generally accepted practice prevailing in the Jamaican Sugar Industry, and particularly so at the Gray's Inn cane fields.

Therefore, there was no negligence. Moreover he submitted that the plaintiff an experienced worker contributed his injury.

Mr. Scott contended that a canefield the site where plaintiff was injured is not a factory within Section 2 of The Factories Act. In that light he argued that there can be no liability for breach of The Factories Act.

Counsel also argued that the event which resulted in the plaintiff's injury was an Act of God against which no human foresight could provide and involved no obligation of responsibility for its consequences.

For the plaintiff Mr. Pershadsingh Q.C. submitted that The Factory Act is wide in its scope enough to cover a canefield. Any breach of the defendant's duty is relation to the safety of a worker in that canefield comes within the Factories Act.

In his view, the defendant was winding down its operation of growing and processing sugar cane and therefore had no intention of trimming the cane leaves. That is negligence. Mr. Mundell, also for the plaintiff, continued where Mr. Pershadsingh left off. He argued that the practice prior to 1982, was to keep intervals between the cane fields clear. This he said was because it was foreseen that workers had to traverse those intervals.

He said that since cane leaves waiver in the wind and particular since the canefield was near the sea the likelihood of wind blowing the cane leaves was very strong. Those circumstances, Mr. Mundell argued, demanded care on the part of the Defendant for the safety of the plaintiff.

On the defendant's submission that the event which caused the plaintiff's injury was an Act of God, Mr. Mundell said it should be rejected as it was the defendant who created the dangerous condition.

There is no doubt that the event which caused the injury to the plaintiff is rather strange. The plaintiff himself during his many years as an employee on the farm never experienced such an event.

The unique nature of the event does not, in my opinion, per se remove the question of negligence. It is therefore necessary to consider the circumstances.

The plaintiff contended that the cane leaves ought to have been trimmed so as to ensure unimpeded passage on the interval. The cane leaves, he said, were previously trimmed but were not trimmed on the relevant date.

The defendant's argument was that the practice in the Sugar Industry was to trim cane leaves just before burning for reaping to prevent the spread of fire.

I accept the defendant's argument. In the nature of an operation of a cane field leaves are not trimmed to ensure access on any interval they are trimmed to prevent fire. I hold that the leaves not being trimmed was no negligent act of defendant.

If I am wrong in so accepting and holding, the decision in the case of Bolton and Others v. Stone [1951] 1 ALL E.R. 1078 also allows me to find that the defendant was not negligent. The House of Lords in that case held "for an act to be negligent there must be, not only a reasonable possibility of its happening but also of injury being cause thereby."

Lord Porter in his speech also said "It is not enough that the event should be such as can reasonably be foreseen. The further result that injury is likely to follow must also be such as a reasonable man would contemplate before he can be convicted of actionable negligence. Nor is the remote possibility of injury enough. There must be sufficient probability to lead a reasonable man to anticipate it. The existence of some risk is an ordinary incident of life, even when wll due care has been, as it must be, taken."

I adopt the cited portion of Lord Porter's speech. When I apply it to the facts of this case I find;

(i) there was no reasonable possibility of the accident happening. It was not and could not have been reasonably foreseen;

(ii) no reasonable person could have anticipated the plaintiff's injury;

(iii) the plaintiff's injury came within the risk as an ordinary incident of his work in a canefield.

On those findings I hold that the Defendant was not negligent and the plaintiff's case fails.

In the light of my findings I do not find it necessary to consider any other point raised in the submissions of Counsel.

Therefore, I award judgment to the defendant with costs to be agreed or taxed.

If I had found for the plaintiff, on a consideration of decided cases, I would have awarded him general damages in an amount of $250,000.00 with interest at 1% from the 2nd March, 1987. That amount would include damages for pain and suffering and loss of amenities. I would also have awarded him $7,409.00 as Special Damages with interest at 1% as of 8th June, 1983.