[2024] JMSC Civ 76

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2016HCV01795

BETWEEN	**ORAL MAISE**	**CLAIMANT**
AND	**JAMAICA BEVERAGES LIMITED**	**DEFENDANT**

IN OPENCOURT

Mr. Everton J. Dewar instructed by Everton J. Dewar & Co. Attorneys-at-Law for the Claimant

Mrs. Denise Senior-Smith instructed by Oswest Senior-Smith & Company for the Defendant

HEARD:25th of April, and the 12th of July 2024

Negligence - Occupier's Liability Act - Breach of Duty of Care - The Claimant alleges that he fell from the steps of the Employer's Truck which were wet due to heavy rains - Whether the employer failed to provide a safe system of work.

THOMAS, J.

Introduction

[1] In this claim, the Claimant, Mr. Oral Maise is seeking damages from the Defendant, Jamaica Beverages Limited, his former employer, for injuries sustained during the course of his employment. In his Claim he alleges that the injuries were sustained from a fall, during the process of loading and exiting from one of the Defendant's trucks. Mr. Mais contends that his fall was due to the failure of the Defendant to provide proper safety equipment in circumstances where it rained heavily, causing the steps of the truck to be

wet, which caused him to slip and fall. He is seeking damages in negligence and/or breach of duty of care under the Occupier's Liability Act.

[2] By his Amended Particulars of Claim filed on the 20th of June 2017, he detailed the particulars of negligence as follows:

> "(i) Failing to take any reasonable care to see that the Claimant would be reasonably safe in using the premises;
>
> (ii) Failing to implement and or provide or enforce any comprehensive safety training program on how to pack truck for the Claimant while in his employment;
>
> (iii) Exposing the Claimant while he was engaged upon his work to a risk of damage or injury;
>
> (iv) Faling to pay any or sufficient heed to the safety of the Claimant while on the course of his employment;
>
> (v) Causing or permitting the work area to be in an unsafe and dangerous state, in that someone including the Claimant was likely to get injured;
>
> (vi) Failing to take any reasonable care to see that the Claimant would be reasonably safe in using the premises;
>
> (vii) Exposing the Claimant while he was engaged upon his work to a risk of damage or injury;
>
> (viii) Failing to take adequate or effective precautions to ensure that the work area was safe for use by the Claimant;
>
> (ix) Directing or instructing the Claimant to truck; close the door without having due regard for the Claimant's safety and that it was safe to do so.
>
> (x) Failing to ensure and/or take such reasonable steps and/or precaution to ensure that the work was properly supervised;
>
> (xi) Failing to have due regard for the safety of its employees/trainees employed to the Defendant, in particular the Claimant while engaged upon his work;

(xii) Failing to provide proper steps for the Claimant to use in order to enter and exit the motor truck;

[3] He detailed his injuries as follows:

(a) Fracture Left Distal Radius (undisplaced);

(b) Abrasion to head;

(c) Let wrist mildly swollen and mildly tender lower distal radius;

(d) Range of movement in left hand limited by pain.

[4] In his Particulars of Special damages, he pleads the following:

(i)	Medical Expenses	$ 23,0000.00
(ii)	Transportation	$ 5,000.00
(iii)	Extra help (11 weeks at $5,000 per week)	$ 55,000.00
TOTAL		$ 83,000.00

The Defence

[5] The Defendant, Jamaica Beverages Limited contends that;

> At no time did it create a risk of danger or damage to the Claimant. It was the Claimant who failed to take care, to ensure that, when he was exiting the truck, his foot was properly positioned on the step of the truck, and not having done so, the Claimant fell causing the injuries he sustained.

[6] The Defendant particularized the negligence of the Claimant as:

(a) Failing to ensure that he properly placed his feet on the rail or step before stepping;

(b) Failing to ensure that he took any or any adequate precaution for his own safety when exiting the truck;

(c) Failing to use the step or rail provided alongside the rear side of the truck for the exiting of the truck.

Liability
The Claimant's evidence

[7] The Claimant in his witness statement, which was allowed to stand as his evidence in chief states that at the material time, in December 2012. he was employed to the Defendant as a picker reporting directly to the Warehouse Manager and Warehouse Supervisor. He signed a contract of employment on the 21st of December 2012 setting out his duties.

[8] The Claimant asserts that his duties as a picker from December,2012 was to go into the warehouse and put orders together for invoices given to him by the supervisor. He would stack goods on the pallets. After they are stacked on the pallets, they would be checked off by the checkers. After this, the forklift operator would collect the pallets and take them out to the delivery area in the warehouse for the pallets to be loaded onto the trucks. He also arranged the damaged products into an area in the warehouse. He contends that the loading of the truck was the job of the loaders.

[9] He further states that on the night of Thursday, July 31, 2014 he was instructed along with other co-workers by the warehouse manager, Mr. Michael Moore, to assist with the loading of the trucks in the delivery area because the Defendant had fired all the loaders who were responsible for loading the trucks. He was told that he would be fired if he refused to obey his instructions.

[10] The Claimant also states that he was not given any training on safety steps and procedures for loading a truck, nor was he provided with a safety belt or guidelines for loading goods onto a truck or for entering and exiting the truck according to its specifications.

[11] He also asserts that ;The defendant failed to provide the necessary safety work gear, such as gloves and slip-resistant shoes, required for loading trucks; The defendant did not provide a towline or additional support, for safely loading goods into the truck, though they knew it was unsafe for one person to handle it alone; The defendant placed him in an unsafe and

dangerous work environment by removing him from his contracted assignment as a picker and ordering him to work in another area without providing any training for this new assignment, despite knowing the risks involved.

[12] He states that on the night of Friday, August 8, 2014, at 8:58 pm, he was ordered by his supervisor Nicole Cameron Stewart, as instructed by the manager, Mr. Michael Moore, to stop his usual work, and go to load a truck parked in the delivery area; The truck was being driven by the Defendant's servant or agent, Mr. Beason, and was parked in the delivery area for trucks on the Defendant's property; That night, it was raining heavily, and both the ground and the truck steps were wet;. Under duress and the fear of losing his job and not being able to provide for his family, he reluctantly obeyed the instructions of the Defendant's servant or agent and began loading the truck.

[13] He contends that the Defendant's servant/agent knew that that the truck steps were very wet and that the working conditions and area were not safe for him to be loading the truck. The possibility of him injuring himself was great from slipping and falling in the area which was dangerous or from off the truck's wet steps; Further, they did not provide him with any proper working gears to work in that dangerous and unsafe work environment, such as slip-resistant shoes.

[14] The Claimant's evidence is that the Defendant failed to take steps to ensure that his working area was safe, by using a towel, or any other material such as saw dust, to absorb the water which was on the truck steps; He was left alone to finish loading the truck and to close the door of the truck, without the use of a step ladder, or any safety harness, which could be hooked independently, to ensure that if he slipped from the truck, it would prevent him from falling to the ground.

[15] He further asserts that the truck had no safety railings for him to hold onto; After loading the truck, he realized that the doors at the back of the truck could not close; He was instructed to climb into the truck and fix the problem and close the doors; He had to step onto what appeared to be a step on the left side of the truck and then climb around to enter the truck; He climbed into

the truck and fixed the problem; However, as he was not provided with a ladder and had no safe way of exiting, he exited the truck the same way he entered which was dangerous and the Defendant knew this.

[16] The Claimant says that he knew that as a picker, he was replaceable, and it would be difficult for him to find another job; He had no choice but to obey the instruction; He started to exit the truck by stepping onto the steps he used to enter the truck, when his shoes slipped on the wet steps causing him to fall backwards to the ground landing on his buttocks and hitting the back of his head and left hand; He tried to ease the pain by lying down on an empty pallet; He made a report of the accident to his supervisor; His wrist was swollen. He was told to go home later that night.

[17] During cross examination, after being shown his employment contract, the Claimant agrees that the contract states that, in addition to his key responsibilities, he was to do any other duties that were assigned by his employer from time to time.

[18] In response to the suggestion that, the goods that were being placed in the truck were placed on pallets, and then placed on theforklift, and Mr. Dwayne put them in the truck with the forklift, he said “not all the goods. He agrees that it was Dwayne who asked him to fix the goods that was blocking the door of the truck so that it could be closed.

[19] He says further, that after fixing the cool running water that was preventing the door from being locked, he exited the truck by using the steps. He went on to say that when he was exiting the truck, one foot was on the surface of the truck, and the other foot was on the step of the truck. He was asked if it was when he had one foot on the surface and one foot on the step of truck he fell. He responded by saying “yes.” He agrees that he gave a report to his supervisor. This report dated the 13th of August 2014, was admitted into evidence

[20] He admits that the truck from which he fell, was similar to that in the photograph shown to him by Defence Counsel. He agrees that no ladder was needed for entry and exit to and from the truck he was loading. He agrees that he did not need a safety belt to exit the truck. He further agrees that gloves were not needed.

[21] He disagrees with the suggestion that he did not need specific training to enter or exit that kind of truck. He agrees that as a picker he would have been wearing hard shoes that were specifically for work. He however says he was not sure if these same hard shoes were worn by the loaders. He agrees that nowhere in his report which he provided to his employer five days after the incident, did he mention that it was raining, or that the step of the truck was wet. But he insists that it was raining, and that the truck's step was wet.

[22] He denies the suggestion that he fell off the truck because he was not careful in exiting the truck. He denies the suggestion that it was because the steps were not wet why there was no need for him to notify anyone of the truck being wet. He was asked if when he said he slipped on the wet surface of the truck, if he slipped inside the truck. He response is that he slipped when he was coming down. One foot was on the surface of the truck and one foot was on the step when he fell.

[23] He was further asked if he missed his step. His response was, "I cannot specifically say it is because I missed my step, I was coming down from the truck that's when I fell."

[24] The Courts ought certain clarifications, to which the Claimant gave evidence that, in stepping from the truck to the step, the step was a leg length below the truck. He also says that the ground was a leg length below the step. He further says that he could comfortably step from the truck to the step and from the step to the ground.

The Evidence of the Defence

[25] The sole witness for the Defendant is Mr. Naim Kahn. In his witness statement which was allowed to stand as his evidence in chief, Mr Kahn states that he was employed to the Defendant Company as the Logistics Manager at the material time. He asserts that he operated from the Defendant's Bog Walk Office in Saint Catherine. He further say that; before being transferred to the Bog Walk office in 2012, he worked at the Naggo Head Industrial Complex; When he left that location, he went to Bog Walk where he was the Warehouse Manager; When he started working with the Defendant, he was the Credit Manager, then the Human Resource Manager and then Warehouse Manager.

[26] He also states that; he is very familiar with the loading area at the Naggo Head Industrial Complex as well as the trucks owned by the defendant used for the delivery of goods; He knew the manager, Michael Moore, the General Manager, at the time in August 2014. The Defendant has a procedure for loading the trucks. Once an invoice has been generated for goods purchased, the goods are removed from the warehouse and put outside at a specific location to be checked off. After they are checked off, they are loaded on the trucks.

[27] He says that; the trucks are loaded by using a forklift; In the middle of the forklift there is a slight bend to prevent the goods from falling out; The loading is done from the sides and not the back of the truck. The forklift carries the pallet of goods and load them onto the truck There are steps to go up on both sides of the truck; The pallet is 4 by 4 in terms of dimensions. A pallet can be loaded on the truck full or not full. Sometimes the goods are wrapped as one huge package coming straight from the factory or as different cases of goods on a pallet.

[28] He also says that; once a truck is loaded there is not much space between the pallet and the door; The surface to his knowledge is kept dry; The goods are properly sealed, wrapped with plastic and packed to prevent them from falling; The goods come from the factory in Trinidad and are not unpackaged or opened

[29] He further says that; he was not present when the incident occurred on the 8th day of August 2014; The incident was investigated by the insurers for the Defendant; The Claimant provided two versions in writing about what happened the day he was injured.

[30] During cross examination he states that; the majority of the trucks were owned by the company; Others were owned by outside contractors; The trucks that the Company owned were box body trucks like the one in the photograph; The surface of the trucks were always kept dry as the rain could not get inside because they were covered; He is unable to speak to any training given to the Claimant. He agrees that at times some of the juice would burst but this was rare

The Issues

[31] It has not been challenged that at the material time of the alleged incident that an employer -employee relationship existed between the Claimant and the Defendant. Consequently, the issues to be addressed involve the common law duty of negligence and the statutory obligations prescribed by the Occupiers Liability Act.

Therefore, the issues which arise in this case are:

i. Whether the Defendant owed the Claimant a duty of care as his employer?

ii. Whether the Defendant failed in its duty of care to provide a safe system of work for the Claimant

iii. Whether as an Occupier, the Defendant failed to take reasonable care for the Safety of the Claimant being present on its premises at its invitation

iv. Whether it was the Defendant's breach of its duty of care that caused the injuries sustained by the Claimant?

The Law

[32] In the case of ***Caparo Industries plc v Dickman*** [1990] 1 All ER 568 Lord Bridge of Harwich elucidated the law of negligence as follows:

> ***"What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of 'proximity' or 'neighbourhood' and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for*** **the benefit of the other." (See page 573-574)**

[33] Regarding the duties of an Occupier of premises in relation to visitors to that premises, Section 3 of the **Occupiers' Liability Act** stipulates that:

> *"(1) An occupier of premises owes the same duty (in this Act referred to as the "common duty of care") to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor by agreement or otherwise.*
>
> *(2) The common duty of care is the duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purpose for which he is invited or permitted by the occupier to be there".*

[34] The common law duty of an employer to his employee is outlined in the case of ***Paris v. Stepney Brough Council [1951]*** A.C. 367 at 384. This includes the provision of a competent staff, adequate plant and equipment, a safe place and , system of work ,adequate supervision, and adequate directions. The extend to which the employer is responsible for putting in place a safe system of work is directly proportional to the complexity of the task to be performed. (See the cases of ***Winter v Cardiff Rural District Council*** [1951] 1All ER 819;and***Davie*****v New Merton Board Mills Ltd**., [1959] 1 All ER 340).

SUBMISSIONS

On behalf of the Claimant

[35] Counsel for the Claimant made the following submissions.

> "In determining whether an occupier has discharged his common law duty of care, regard must be had to all the circumstances. It will therefore be a question of fact whether a defendant as an occupier failed to take reasonable care forthe safety of his visitor." He relies on the case of ***Victoria Mutual Building Society v Barbara Berry*** Supreme Court Civil Appeal No. 54/2007

[36]] In addressing the law of negligence, he submits that it is settled law that in every claim for negligence, in order to succeed, the Claimant must prove on a balance of probabilities:

i. That a duty of care was owed by the Defendant to the plaintiff;
ii. There was a breach of that duty by the Defendant; and
iii. That the plaintiff suffered damage as a result of that breach.

He relies on the case of ***Blyth v Birmingham v Waterworks Co***. [843607] ALL E.R.478.

[37] He relies on several authorities which established the following principles -The CommonLaw Duty of an employer of Labour is to act reasonable in all the circumstances.The employer has a duty of taking reasonable care to provide proper appliances, and to maintain them in a proper condition, to carry on his operations as not to subject those employed by him to unnecessary risk,a safe system of work include the way in which it is intended for the work to be carried out, the giving of adequateinstructions and the taking of precautions forthe safety of the workers. The extent to which the employer is responsible for putting in place a safe system of work is directly proportional to the complexity of the task to be performed. He relies on the cases of ***Winter v Cardiff Rural District Council*** [1951] 1All ER 819; ***Davie v New Merton***

Board Mills Ltd and Another *[1959] A.C.604,620****; Ray McCalla v Atlas Protection Limited & Ringo Company Limited*** *Claim No****.*** *HCV04117/2006* ***Harris v Brights Asphalt Contractors Ltd****. [1953] 1 WLR 341, 344****.*** .

Submissions on behalf of the Defendant

[38] Counsel Mrs. Senior-Smith made the following submissions;"There is consensus that the Claimant was employed by the Defendant at the time of the incident and that the incident occurred on the Defendant's premises, establishing the existence of a duty of care by the Defendant towards the Claimant. The key issues revolve around determining whether there was a breach of duty of care by the Defendant or contributory negligence on the part of the Claimant. It is established that an employer must ensure a safe workplace and system of work. However, based on the evidence provided by the Claimant, there is no proof that the Defendant failed to provide a safe workplace, breaching its duty of care".

[39] She submits that; Mr. Maise evidence under cross examination contradicts the evidence given in his evidence-in-chief; His employment contract dated December 21, 2012, sets out his full duties. However, when he was asked if as part of his contract of employment his responsibilities included any other duties that may be assigned from time to time, he disagreed that the contract said so; However, when he was shown the said contract, he reluctantly admitted that it was so stated in the contract, but does not agree that it meant he could be assigned any other duty; Even on the clear exposition of the contract the Claimant is willing to give a different version of what is stated; The Court should take this into consideration upon assessing the Claimant's credibility.

[40] She further submits that; the evidence of the Claimant does not support any liability on the part of the Defendant; The Claimant has conceded that he did not need, gloves, a safety belt, a towline or ladder. to enter or exit the truck; He confirmed that he was loading the truck with two others, indicating he wasn't alone and did not lack the full assistance as he claimed; His general

claim of no specific training is unhelpful, as it has been shown that no training was needed for entering and exiting the truck; He has also stated that the distances from the truck to the step and from the step to the ground were comfortable.

[41] Regarding the lack of slip resistant shoes, she submits that the Claimant's admission that he was wearing hard shoes, and that he did not complain that this caused his fall, undermines his case .

[42] Counsel also submits that; the Claimant refers to the failure of the Defendant to use a towel or other material to absorb water, on the truck's step; However, he did not describe how water accumulated on the step and has not shown that it was the Defendant's fault; Rain alone does not create a dangerous working environment.

[43] She also points to conflicting accounts given by the Claimant regarding his fall. She highlighted that in his report to his supervisor, the Claimant stated that he "slipped on the wet surface of the truck and fell to the ground hitting the back of his head." In his witness statement he claims, "I started to exit the truck by stepping onto the same steps I used to enter the truck when my shoes slipped on the wet steps causing me to fall backwards to the ground landing on my buttocks and hitting the back of my head and my left hand." While during cross-examination, he states that he cannot specifically say if he missed his step

[44] She also points out that in his evidence the Claimant insisted that it rained causing the steps of the truck to be wet. Yet, she indicates, it was not mentioned in his report to his supervisor that it rained. These conflicting accounts, she submits create a material inconsistency, undermining his credibility. She has also noted that these differences were not addressed in re-examination.

[45] Counsel has also asked the court to take note of the evidence of the Claimant that stepping from the truck to the step, and from the step to the ground was a leg length. He also affirmed that stepping from the step to the ground was comfortable. These responses, she posits, indicate that the truck and its steps were not hazardous, portraying a safe work environment for the Claimant.

[46] Finally, counsel submits that it was the Claimant's own negligence that caused his fall. He failed to ensure proper foot placement on the rail or step before stepping off the truck, thereby neglecting to take adequate safety precautions when exiting. She relies on the cases of ***Blythe v Birmingham Waterworks Company*** 11 Exch 78;***Lochgelly Iron & Coal Co. Ltd. v. McMullan*** [1934] A.C.; ***Anns v. London Borough of Merton*** [1977] 2 All E. R. 492 at 498; and ***Pamela Minor v. Sandals Resort International Limited (Trading as Beaches Negril Resort and Spa)*** et al [2015] JMSC Civ 256.

Discussion

[47] The burden of proving that it was the Defendant's negligence that caused the accident giving rise to his injuries, rest throughout this case on the Claimant. It is not in dispute that at the time of the alleged incident there existed a relationship characterised by proximity, that is, an employee-employer relationship between the Claimant and the Defendant. In these circumstances, there is no doubt that the Defendant owed a duty of care to the Claimant.

[48] However, this case is somewhat peculiar, in that the Defendant has adduce no evidence from an any eye witness account of the accident. However, in addition to adducing evidence as to their system of work, they have challenged the evidence of the Claimant on cross examination, and rely heavily on his report of the accident which he gave to his supervisor.

[49] Nonetheless, where the Claimant has established a prima facie case by relying upon the fact of the accident, If the defendant adduces no evidence and there is, nothing to rebut the inference of negligence, the Claimant will

have proved his case. That is, when faced with a prima facie case of negligence the Defendant will be found negligent unless he produces evidence that is capable of rebutting the prima facie case… (See the cases of Ng ***Chun Pui and Ng Wang King v Lee Chuen Tat and another*** PC Appeal No. 1/1988.)

[50] The clear principle in the aforementioned case and others is that the failure of the Defendant to produce evidence from an eye witness to counteract the Claimant's version as to the cause of the accident does not by itself make the Defendant liable. This court must first determine whether the Claimant has established a prima facie case that the Defendant has breached their duty of care owed to him as his employer to provide a safe system of work. Additionally, the court must also go further to determine whether the Claimant has established a prima facie case that it was the Defendant's failure to provide the safe system of work that caused him to fall and sustained injuries.

> "*The actual proof of carelessness may often be problematic and the question in every case must be 'what is a reasonable inference from the known facts*?(See the case of *Adele Shtern v Villa Mora Cottages Ltd and Monica Cummings* [2012] JMCA Civ 20, at paragraph 50.)

[51] In the case of ***Miller v Minister of Pensions*** [1947] 2 All ER 372 at page 374, Denning J*, said "If the evidence is such that the tribunal can say 'we think it more probable than not', the burden is discharged but if the probabilities are equal it is not." Essentially the legal and evidential burden to prove the case rests on the Claimant.*

[52] It is therefore, incumbent on the Claimant, to provide cogent evidence to establish a prima facie case that the incident occurred as he stated, and that in the circumstances, it was caused by the act or omission of the Defendant which fell below the standard of care reasonably expected of an employer to his employees. That is, the Claimant must be able to establish a causal link between the injuries sustained and the alleged breach. (See the Dictum of Panton J in the case ***The Attorney General v Phillip Granston*** [2011] JMCA Civ 1.)

[53] In his witness statement the Claimant indicates that the fall which caused his injuries occurred as a result of him being instructed to load a truck at a time when the steps were wet due to the fact that it rained heavily that night.It is also his evidence that the Defendant's servant/agent knew that the truck's steps were very wet and not safe for him to be loading the truck.Furthermore, he contends that he only complied with his supervisor's instruction to load the truck in the circumstances where he was under the threat of losing his job.

[54] Counsel Ms. Senior Smith submits that the Claimant must prove that water accumulated on the steps and that it was the fault of the defendant that caused this accumulation. However, breach of a duty of care can be committed by acts of commission or omission.This principle was clearly expressed in the case of***Blyth v The Birmingham Waterworks Company [1856] 11 EX. 781, at page 1049,****where* the court stated that-

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

[55] Therefore despite the fact that the Defendant did not cause it to rain, where it is proven that the rain created a dangerous working environment, and that the Defendant, despite being aware of the dangerous environment, insisted that the employee work in the dangerous environment, then the Defendant would be in breach of his duty of care towards the employee, to provide a safe environment within which to work.

[56] However, the issue for me to determine is whether the Claimant has established a prima facie that his fall was due to the Defendant's failure to provide a safe system of work. Alternatively, whether the Defendant as the occupier of his place of work did not take reasonable care for the safety of the Claimant as an invitee to the premises.

[57] This depends on whether, I find, on his evidence, a prima facie case that;

(i) the step of the truck was wet due to heavy rains that fell that night
(ii) That his supervisor knew that the step of the truck was wet and insisted that he loaded the truck using the wet step; and
(iii) That when descending from the truck after fixing the goods that were blocking the back door of the truck he slipped on the wet step and fell to the ground thereby sustaining injuries.

[58] In his evidence in chief the Claimant testifies that it had rained heavily the night in question, and both the ground and the truck's steps were wet. However, in his written report to his supervisor given shortly after the incident, which was admitted into evidence on cross examination, he failed to mention that it was raining that night. This is a significant omission, affecting the credibility of his account of the incident, bearing in mind, that the Defendant is relying on this report as a part of their defence. This inconsistency has not been cleared up on his case.

[59] Additionally, in his evidence in chief, Mr. Maise indicated that he *"started to exit the truck by stepping onto the same steps"* he used to enter the truck, 'when his shoes slipped on the wet steps causing him to fall backwards to the ground landing on his buttocks and hitting the back of his head and his left hand.*'* On this account of Mr. Maise, he is indicating that he fell from the wet steps of the truck.

[60] However, the account he gave to his supervisor in the report is significantly different from that in his evidence in chief. In his report to his supervisor he indicated that he "*slipped on the wet surface of the truck and fell to the ground"*

[61] In his cross examination of the defence witness Mr. Khan, counsel for the Claimant seems to be asking the court to make a deduction that the surface of the truck could have gotten wet from juices that Mr. Khan admits would burst from time to time. However, this does not resolve the issue of the

inconsistent versions of the Claimant as to whether he fell from inside the truck or the steps, that he says were wet due to rain fall.

[62] The Claimant, in an effort to demonstrate that the Defendant did not create a safe environment for him to work, indicates that he was not provided with any safety gears or equipment for loading the truck. These he itemizes as step ladder, safety harness, gloves, towline and proper slip resistant shoes.

[63] As such, in his evidence in chief, the indication of the Claimant, is that the construct of the truck was of such, that it could not be safely loaded without "the use of step ladder or safety harness, which could be hooked independently, to ensure that if he slipped from the truck, it would prevent him from falling to the ground."

[64] Additionally, he also intimated that safety railing for him to hold onto, was also a necessary safety requirement for loading that truck. Therefore, the distinct impression that was being conveyed by the Claimant in his evidence in chief and in his pleading, is that the height of the body of the truck to include the steps were such that he could not easily descend the steps from the truck to the ground.

[65] However, on cross examination he admits that the type of truck he was loading on the night in question did not require the use of safety harness, tow line, or ladder. Ms. Senior Smith's position is that, due to the fact that he was provided with hard shoes for which he made no complaint, it was not necessary to provide him with slip resistant shoes.

[66] In the case of ***Winter v Cardiff Rural District Council*** [1950] 1 All ER 819 Lord Oaksey expressed the view that;

> **"*where the system or mode of operation is complicated or highly dangerous or prolonged or involves a number of men performing different functions, it is naturally a matter for the employer to take the responsibility of deciding***

> ***what system shall be adopted. On the other hand, where the operation is simple and the decision how it shall be done has to be taken frequently, it is natural and reasonable that it should be left to the foreman or workmen on the spot'***

[67] The question therefore is whether the task assigned to the Claimant was so complicated or so highly dangerous that it was necessary to provide him with a particular kind of shoes. That is slip resistance shoesIn his cross examination he was shown a picture of a truck by the Defendant's attorney-at-Law which was tendered into evidence. He was asked if the truck he fell from look like that truck. He responded in the affirmative.

[68] From the court's observation the truck shown was enclosed. Therefore, common sense dictates, that unless the roof of the back of the truck was leaking, the rain would not cause inside the truck to be wet. No evidence was led that the roof of the truck was leaking.

[69] I also take note of the Claimant's response in relation to the distances in height between the body of the truck and the step, and between the step and ground. These he said were "leg length." This would suggest that he should have been able to exit the truck comfortably without any need for additional equipment to assist him in descending from the truck.

[70] Additionally, he admits on cross examination that the actual loading of the truck was being done by a fork lift operated by another employee and that it was this employee who asked him to go inside the truck to fix the water /juice so that the door could be closed.

[71] Obviously, at the time of the incident, Mr. Mais was asked to perform a simple task. That is to ascend and descend steps of the truck to fix the item that was preventing the door from being closed. This on his own admission, he would have been able to do comfortably.

[72] Consequently, it is my view, that in these circumstances, no special gears to include slip resistant shoes would have been necessary. This also brings into sharp focus, the pronouncements of Lord Oaksey in the ***Case of Winter v Cardiff Rural District Council***(supra) that;

> ***"it is reasonable that (an employer) should employ competent servants, should supply them with adequate plant and should give them adequate directions as to the system of work or made of operations, but this does not mean that the employer must decide on every detail of the system of work or mode of operation'***

[73] Essentially Mr. Mais needed no special instructions as to how to ascend and descend steps of a truck, that on his own admission, and in light of the construct, that is the height, he could have ascended and descended comfortably.

[74] Quite significantly however, Mr. Maise on cross examination has provided a third version as to how his fall could have occurred. He says *"one foot was on the surface of the truck and one foot was on the step", "…in the process of coming down I fell."* He states *"…I can't specifically say if it is because I miss my step when I was coming down from the step, that is when I fell…".*

[75] Nonetheless, in its assessment of whether the claimant has provided a prima facie case of a breach of duty of care on the part of his employer, the Court must be satisfied that he has presented a plausible account, that establishes failure on the part of the employer to provide a safe working environment, or failure to take care for his safety, resulting in his injuries. On Mr. Mais own account it is demonstrable that there is not clear, narrative as to what caused him to fall. In essence his account lacks consistency as to the true cause of his fall.

[76] Consequently I am unable to make a factual finding that the steps of the truck were wet or even that inside of the truck was wet. Additionally, I am unable to conclude that the Claimant fell because he slipped from the wet step of the

truck or from the inside of the truck that was wet,or whether it was because he missed his step by his own misjudgement in exiting the truck.

[77] Employing the Claimant's own words "I cannot specifically say if it was because he missed his steps that he fell". However, the uncertainty in his response in this regard, presents to this to court, a real possibility, that the cause of his fall could have been that he missed his steps by his own misjudgement. As such, the court having been left with all these conflicting version's on the Claimant's own account, as unfortunate as his fall may have been, I find that the Claimant has failed to establish a prima facie case, whether at common law, or under the Occupiers Liability Act, that his injuries were due to the Defendant's failure to provide him with a safe system of work, or to take reasonable care for his safety.

[78] Consequently, I make the following orders.

Orders

i. Judgment for the Defendant
ii. Cost to the Defendant to be agreed or taxed.