IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C. L. 1975/P016

BETWEEN AMY PITTERS

AND T. HAUGHTON
(t/a SPOTLESS DRY CLEANERS
AND LAUNDRY)

D. Muirhead, Q.C. and L.O'B. Williams, N. Burgess for plaintiff.

D. Scharschmidt for defendant.

1978: January, 16, 17, 18;
February 10

J U D G M E N T

Carey, J. :

The plaintiff was a laundry-woman with some twelve years of experience. On January 14, 1974, she was the victim of a tragic accident at her work-place, the defendant's establishment, whereby she has lost four fingers of her right hand, now virtually useless. Thus her present action, which is founded on breach of statutory duty and negligence. The breach of statutory duty and negligence alleged were pleaded in the following terms:

PARTICULARS OF BREACH OF STATUTORY DUTY

(1) Contrary to Part II: 3(1) the Factories Regulations, 1961, the defendant failed to have the rollers of the said machine securely fenced or in any other way to make it safe to operate.

(2) Contrary to Part II: 3 (1) (c) of the said Regulations, the defendant failed to operate and/or maintain efficient devices or appliance in the said work place whereby the power could be promptly cut off from the said machine.

(3) Contrary to Part II: 16 of the said Regulations the defendant allowed the plaintiff to operate the said machine when she was incompetent to do so and was not directly under the supervision of a person competent to operate the said machine

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and was not fully instructed as to the dangers attendant upon the operation of the said machine and the precautions to be taken.

(3a) Contrary to Part II: 57 of the said Regulations, the defendant failed to appoint a person to exercise supervision of the said works, machinery and plant for the purpose of ensuring safety and to see that all safe guards and other safety appliances are maintained in proper order and position and to investigate accidents.

PARTICULARS OF NEGLIGENCE

The defendant was negligent in that:

(1) he failed to provide a shield or in any other way protect the said machine from the wind although he knew it was dangerous to operate when the wind interferes with the work that was being pressed;

(2) he failed to provide a proper supervisor or any supervision for the said machine as to cope with the said emergency.

The defendant denied any breach of statutory duty or negligence on his part, and claimed that the plaintiff was negligent in failing to take sufficient care for her own safety.

A word concerning the pleadings. Although the plaintiff alleged some four breaches of the Factories Regulations, proof was lacking in all but the first. Indeed, Mr. Muirhead did not, in the course of his submissions, trouble himself to support those allegations. As regards the negligence alleged, even if the allegations were proven, which, in the event, they were not, those breaches of duty could not have caused the plaintiff to suffer the injuries which she did. Mr. Muirhead did not at any time endeavour to suggest otherwise. The defendant's counsel did not even advert to this aspect of the pleadings. The case was fought wholly on the failure to fence as required by the Regulations. It becomes wholly unnecessary

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therefore, to devote any time to a consideration of those matters.

The circumstances which gave rise to this action may be shortly stated for there was little dispute in this regard. Before I deal with this aspect of the case, however, it may be helpful to describe the equipment upon which the plaintiff was engaged at the material time and its operation. I may add that I acceded to an application by defence counsel to visit and observe the machinery in use. The equipment which is electrically operated is called a "mangle" which is comprised of four rollers and is used to press flat items, viz, sheets, table-cloths, napkins and pillow cases. The machine is wide enough to accept an item such as a large sheet in its entirety, in which event two operators feed the material onto the machine. The material is actually placed onto a series of parallel conveyor belts called "feed-ribbons" which take the material under an idle-roller, and beneath the four hot rollers which in turn press the particular item, depositing the finished product at the other end of the machine, where it is received by two other workers. Immediately behind the idle-roller is a trip-guard five inches high which runs the entire width of the machine. Its purpose is to bring the machinery to a stop when pushed. Behind this guard and some ten inches away, is the first of the four rollers. A wooden box has been attached to the front section of the equipment, where the operator normally stands and the distance between that spot and the first of the pressing rollers is two feet five inches. The height of the trip-guard above ground level is four feet three inches. Finally, I should add that this piece of machinery is housed in a shed open on all sides but one, where some pieces of metal sheets keep out rain and wind.

On January 14, Miss Pitters was feeding a table-cloth into this machine, assisted by a colleague, Miss Thelma Rowe who gave evidence on behalf of the defendant. Miss Rowe explained the fact of her own presence and that she was assisting the plaintiff in feeding the machine. The evidence of Miss Pitters was silent in this connection. A. portion of the table-cloth on the plaintiff's side having folded over, she endeavoured to correct this by extending her right hand over and beyond the

trip-guard, so that it was nipped between the hot roller and feed-ribbons, holding her hand firmly fixed in that position where it was severely burnt. She said that she reacted by pressing the trip-guard but it took some four minutes for the machinery to come to a stop. Miss Rowe did not agree with this time lag. She testified and I accepted on balance that the machine came to a halt immediately. It was by reason of the plaintiff's inability to extricate her hand, which resulted in her hand eventually being so badly burnt. In the situation in which the plaintiff found herself, I did not consider she was ideally placed to estimate time accurately. As well as pressing the guard she also shouted for help. This attracted the attention not only of those persons serving immediately around that piece of equipment but others who were employed on the premises. Their presence and efforts proved less than helpful. Fortunately, a Mr. Alton Dunn, the driver-handyman, employed by the defendant, came on the scene, and succeeded in releasing her hand. There was some conflict whether this gentleman was present at the time of the accident or came up some twenty minutes later. Miss Pitters had estimated his time of arrival as twenty minutes after her hand had become caught, while Miss Rowe had said he had been on the premises from the outset. In this, the plaintiff differed from Mr. Dunn himself, Miss Rowe who was present when the accident occurred, and Miss Lucille Blake, a sort of supervisor, all of whom gave evidence for the defendant. They all agreed, not surprisingly, with Mr. Dunn, that he was on the premises when the accident occurred and responded when Miss Pitters called for help.

I have already indicated that the pain and the traumatic circumstances in which Miss Pitters found herself held fast by this machine which was slowly roasting her hand, did not predispose me to accept her estimate of time. I find that it did, however, take some time for him to reach the machine, remove the spring which holds the guard over the wheel housing and then reverse the machine. The ensuing delay would,

doubtless contribute to the severity of Miss Pitters' injuries.

The medical evidence showed that she had severe burns to the dorsal aspect of her right hand with complete loss of skin and exposure of the tendons on the second, third, fourth and fifth fingers. Nearly a fortnight after her admission to hospital the fifth and index fingers were seen to be lifeless. On January 28, 1974, there was amputation of second to fifth fingers. On February 25, she had split skin graft to the stump of the amputation. There was total disability in this hand to August 23, 1974. Thereafter, the doctor's opinion was that she had regained 10 percent use of the hand. She is not now able to do many things for herself, including simple tasks like combing her hair, cooking or cleaning or tying her laces.

The space into which she placed her hand was confined, a mere 10 inches and brought it into close proximity to a hot roller. Moreover, she would necessarily rest her hand upon the material which itself would be moving towards the hot roller, so that her hand was being carried into an area of danger, namely, the moving roller emitting heat. There is no question but that the plaintiff deliberately put her hand into that area beyond the trip-guard intending to smooth down a portion of the material which had blown over. She was acting as a zealous, if thoughtless employee, who was guaranteeing that the product of her employer's activities achieved a certain equipoise between reputation and the laundatory business name. I would not dismiss this act as ignoble, nor characterise her conduct as extravagant folly.

The first question then is, was the machinery dangerous? If it was, the Factories Regulations cast an obligation on the owner or manager of a factory to ensure that every dangerous part of any machine is securely fenced unless it is in such a position or of such construction as to be as safe to every worker as it would be if securely fenced. (Part II Regulations 3(1) of the Factories Regulations 1961). This is an absolute obligation for the dominant purpose of the Regulations is to protect the workman. The obligation is to fence securely so that no part of the person

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of any employee working the machine comes in contact with it /John Summers & Sons Limited v. Frost /1955/ 1 All E.R. 870/.

In determining whether machinery is dangerous, the test is that of reasonable foreseeability of accident. Du Parcq, J., in Walker v. Bletchley Flettons Limited /1937/ 1 All E.R. at p. 175, observed that a machine is dangerous

> " if it is a possible cause of injury to anybody acting in a way in which a human being may be reasonably expected to act. "

This was cited with approval in John Summers & Sons Limited v. Frost (supra). Lord Reid, however, in the course of his opinion, queried the word "possible" suggesting that the words "reasonably foreseeable" were to be preferred. The test, it has been said, is objective and impersonal - is danger reasonably to be anticipated from its use unfenced, not only to the prudent, alert and skilled operative intent upon his task, but also to the careless or inattentive worker whose inadvertent or indolent conduct may expose him to risk of injury or death from the unguarded part?

In the instant case, the manufacturers themselves gave an indication of the danger of this area of the equipment. A trip-guard running the entire width of the machine was provided to prevent persons coming in contact with that portion of the machine. A factory inspector who gave evidence on behalf of the plaintiff suggested that the machine could be rendered safer by one of two methods. Either, a horizontal extension could be attached onto the trip-guard to bridge the space between idle roller and hot roller, or the trip-guard could be heightened. The defendant himself conceded that the recommendations of the factory inspector would render the equipment safer. The weight of all this evidence leads, in my view, to the inescapable conclusion that the relevant area of the machinery was a danger and required secure fencing. It was not, as I find, securely fenced. The defendant was thus in breach of the absolute statutory duty cast upon him. As the plaintiff was injured by reason of this breach, it is wholly unnecessary to consider whether the injury

was received in an entirely unexpected way, for even if it were, the defendant would still be liable. /Millard v. Serck Tubes Limited /1969/ 1 All E.R. 598/

If hereafter, I am found to have fallen into error, in this conclusion, and it is held that the plaintiff was required to show that the particular danger was reasonably foreseeable, then in my judgment, the plaintiff has discharged that duty. A witness for the defence, Miss Thelma Rowe, pointed out that she did on occasions straighten out material which had folded over before it went under the rollers. It was in endeavouring to perform a similar task that the plaintiff was injured. It is true that, in doing so, she placed her hand beyond the trip-guard; she was nevertheless carrying out her task with the best of motives, in an ill-advised manner. At all events, she could get her hand beyond the trip-guard and near the hot roller, without undue difficulty. Miss Rowe gave evidence which demonstrates the fact. It may be said that the plaintiff received the injury in a way, in which a worker could reasonably be expected to act in circumstances which might reasonably be expected to occur. I should imagine that items folding over or at all events requiring straightening out, is a circumstance that could reasonably be expected to occur whenever ironing is taking place.

There was some conflicting evidence in this case, regarding wind condition prevailing generally and at the material time. I do not consider it necessary to resolve that conflict for both parties were at one in saying that the material did fold over. The causative factor was therefore irrelevant.

The sole question which has caused me some anxious concern, is that of contributory negligence. Mr. Scharschmidt, on behalf of the defendant, contended that as the plaintiff, an experienced worker, well knew that part of the machinery was hot, she was guilty of an act of extravagant folly in placing her hand where she did. He was relying on the case of F. E. Callow (Engineers) Limited v. Johnson /1970/ 3 All E.R. 639, where the plaintiff was held one-third liable. In the instant case, so

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the argument ran, the plaintiff was largely to blame.

Mr. Muirhead for his part, urged that for the court to find contributory negligence, it had to be shown that the plaintiff had

> " by some act of perverted and deliberate ingenuity forced or circumvented the safeguards provided. "

Per Stable J. in Carr v. Mercartile Produce Company Limited, 601 at p. 608. To constitute contributory negligence, there had to be a high degree of negligence. He also referred to Walker v. Clarke 1 W.I.R. 143. Even if the court were persuaded in favour of a finding of contributory negligence, the percentage should be small, the effect of which would amount to a punishment against a zealous employee intent on advancing the defendant's business.

The approach of the courts on this issue of contributory negligence, can be discerned in the words of Lawrence J. in Flowers v. Ebbw Vale Steel, Iron and Coal Company Limited [1934] 2 K.B. at p. 140:

> " I think, of course, that in considering whether an ordinary prudent workman would have taken more care than the injured man, the tribunal of fact has to take into account all the circumstances of work in a factory and that it is not for every risky thing which a workman in a factory may do in his familiarity with the machine that a plaintiff ought to be held guilty of contributory negligence. "

One starts with the basic assumption that the plaintiff has done a "risky thing", and then goes on to enquire the nature and quality of the riskiness for if it amounts to extravagant folly, or if the safeguards are circumvented by perverted or deliberate ingenuity, then contributory negligence may be found.

To qualify as contributory negligence, the behaviour of the plaintiff is also a very relevant consideration. In Smith v. Chesterfield Co-operative Society Limited [1953] 1 All E.R. 447, the court held the plaintiff 40 percent to blame because she had done a deliberate act againt which she had been warned. If the "risky thing" is in disobedience of orders, the court will apportion the degree of responsibility. Lord Wright in Flower, v. Ebbw Vale Steel, Iron & Coal Company

hand. It was suggested by counsel for the defendant, and adopted by counsel for the plaintiff, that a multiplier of seven would, in all the circumstances, be reasonable. I do not dissent. The weekly figure used would be $26.00 yielding an annual income of $1,352.00, which equals $9,464.00. For pain and suffering I assess damages at $10,000.00. General damages accordingly amount therefore to $19,464.00.

There will be judgment for the plaintiff for $26,961.85 with costs to be agreed or taxed.

[1935] A.C. 206, said that contributory negligence in connection with breach of statutory duty meant misconduct, viz, disobedience of orders. Goddard, L.J., in Hutchinson v. London and North East Railway [1942] 1 K.B. 781 at 788 expressed himself in these words:

> " I always directed myself to be exceedingly chary of finding contributory negligence where the contributory negligence alleged was the very thing which the statutory duty of the employer was designed to prevent. "

I take all these matters into consideration.

As the facts, in this case, show the plaintiff did deliberately place her hand where it became caught. It was a risky thing. It is a risk which the defendant was required, however, to guard against. A measure of criticism can forcibly be suggested against the plaintiff's conduct. Mr. Scharschmidt did so. I have nevertheless come to the conclusion that any deficiencies on Miss Pitters' part fall short of the negligent conduct required in the case of a workman where breach of statutory duty is concerned. She should be absolved from any responsibility. I so hold. It was the failure to fence securely which was the cause of the accident and not the plaintiff's misguided, albeit, risky act, of placing her right hand in the position she did.

As to damages, first, the special damages, these were not really challenged, and are allowed as follows:

Transportation for medical care	=	$ 80.00
Extra help	=	$3,205.00
Loss of Earnings	=	$4,212.85
		$7,497.85

Under the head of general damages I have to consider:

(1) pain and suffering;

(2) loss of amenities;

(3) loss of prospective future earnings.

With regard to (3), no evidence was adduced as to the possibility of future employment given a 90 percent disability of the right

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