Alam Jahangir *v* Mega Metal Pte Ltd
[2018] SGHC 198

Case Number : Suit No 388 of 2017

Decision Date : 17 September 2018

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Namasivayam Srinivasan (Hoh Law Corporation) for the plaintiff; Ramasamy s/o Karuppan Chettiar and Simone B Chettiar (Central Chambers Law Corporation) for the defendant.

Parties : Alam Jahangir — Mega Metal Pte Ltd

Damages – Contributory negligence

Tort – Negligence – Breach of duty

[LawNet Editorial Note: The employer's appeal in Civil Appeal No 143 of 2019 and the employee's cross-appeal in Civil Appeal No 144 of 2019 were allowed in part by the Court of Appeal on 21 January 2020 with brief reasons rendered. The Court of Appeal affirmed the trial Judge's findings on liability and contributory negligence on the part of the employer and employee respectively. In respect of the loss of future earnings, the Court of Appeal allowed a deduction of 10% from the multiplier of 6 years to factor in the accelerated payment and contingencies in life, and also pre-judgment interest on the general damages and special damages payable by the employer to the employee. All other orders of the trial Judge are to stand. The Court of Appeal also ordered each party to bear its own costs for the appeal.]

17 September 2018

Choo Han Teck J:

1 The plaintiff, Alam Jahangir, is a 43 year-old Bangladeshi national. He came to Singapore in 2003 to work as a construction worker. He began his employment with the defendant, Mega Metal Pte Ltd, on 31 January 2004. The plaintiff was employed as a metal melter, caster and rolling mill operator. The defendant was in the business of metal waste collection and recycling. In particular, the defendant collected food and beverage cans that are made of aluminium or iron with tin coating.

2 In this Suit, the plaintiff claims damages against the defendant for an injury sustained during the course of his employment. The accident took place on 16 May 2016 at around 11.23am at the defendant's premises. The accident occurred while the plaintiff was operating a machine which separated waste metal cans made of aluminium from those made of other metals ("the machine"). Sometime around 11am, the machine operator, one Chen Moey, went for his lunch break. The plaintiff took over the operation of the machine.

3 The machine uses a conveyor belt and a magnetised drum to separate the non-aluminium cans from the aluminium ones. The process begins by feeding waste cans onto the conveyor belt, which is inclined upwards. The conveyor belt turns on two rollers located at the centre of the machine. As the waste cans are brought upwards, a magnetised drum located about halfway along the conveyor belt picks out the non-aluminium cans and diverts them onto a different track. These cans fall into a bin.

The aluminium cans, which are not picked out by the magnetised drum, roll along the conveyor belt and fall into a separate bin at the end of the belt.

4 In the normal operation of the machine, cans sometimes get stuck in the rollers. That was what occurred in this case. The plaintiff noticed two cans stuck in the rollers. He tried to dislodge the cans with the end of a broom. He succeeded in dislodging one, but the other can remained stuck. When he realised that that was proving futile, he reached into the space between the rollers with his right arm in an attempt to dislodge the can. Unfortunately, his arm was caught by and pulled into the roller. The plaintiff's co-workers heard his calls for help and turned off the machine. The power-off switch to the machine was located to the left of the plaintiff and was within an arm's length from where the plaintiff was standing at the time.

5 The plaintiff was sent to Ng Teng Fong General Hospital for emergency treatment and care, and later transferred to National University Hospital ("NUH") for further treatment. The plaintiff was diagnosed as having sustained a crush injury to his right arm. He had a degloving near amputation of the mid-upper segment of the right arm with a concomitant open fracture of the right humerus. The plaintiff underwent an arm reattachment procedure, followed by a series of interim procedures for wound care. He was discharged from NUH on 5 August 2016 with long term anti-coagulation for deep vein thrombosis. The plaintiff underwent a secondary wrist fusion surgery on 19 October 2016 to improve the function of his right arm.

6 The plaintiff claims the accident occurred as a result of a breach of the defendant's duty of care as the plaintiff's employer. It is said that the defendant ought to have taken steps to make the machine safer, such as:

(a) setting up guards (*eg*, a wire mesh fence) which prevent access to nip points such as the one in which the plaintiff's arm got caught;

(b) implementing an emergency stop device;

(c) implementing warning signals, whether audible or visible, to complement the installed guards; and

(d) implementing other secondary safety precautions such as the provision of hand-feeding tools or the installation of trip devices on the detection of intrusion into the machine while it is running.

7 The defendant does not dispute that it owes a duty of care to the plaintiff as its employee, but claims that it did not breach its duty of care for the following reasons:

(a) First, the space between the rollers of the machine, *ie*, the part that the plaintiff's arm got caught in, was not such a dangerous part of the machine that it needed to be fenced up. In fact, the machine was approved for use in Singapore when it was acquired in 2006. The space between the rollers was not an area that the plaintiff would ordinarily come into contact with when he discharges his primary duties.

(b) Second, such fencing was unnecessary given the availability of the power-off switch in close proximity to where the plaintiff was standing. This was a separate safety feature on the machine.

8 The defendant's counsel further submits that if it is found to have breached its duty of care to

the plaintiff, damages owing to the plaintiff should be apportioned owing to the plaintiff's contributory negligence. Counsel argues that the conduct of the plaintiff in attempting to dislodge the cans with his bare arm, before powering down the machine, created a significant risk of injury that could easily have been avoided. Counsel submits that it should pay only 10% of the total damages.

9 The plaintiff's primary position on contributory negligence is that he was not contributorily negligent at all. In the alternative, his counsel submits that a minimal figure of 10% liability (*ie*, to receive 90% of the damages) is appropriate should the court find the plaintiff to be contributorily negligent. The plaintiff submits that he was not properly trained to operate the machine, and that he was merely following a common practice adopted by his colleagues in using his hand to dislodge the can while the machine continued to run.

10 In my judgment, the defendant is liable to the plaintiff for breaching its duty of care in not having sufficient fencing to stop workers reaching into the rollers, but I also accept that the plaintiff was partly responsible for the injury. I find that the plaintiff was contributorily negligent to the extent of 50%.

11 An employer's duty to keep the workplace safe is a duty that is intended for the careful worker, it must contemplate dangers that lay in wait for the careless ones as well, but if a worker injures himself through his own carelessness, he must bear some responsibility for the mishap. The extent of his contribution depends on the facts, and the greater the carelessness the more responsibility he has to bear. Low level carelessness may include simple absent-mindedness or momentary inattention though this also depends on the activity in question. Recklessness will form the higher levels of contributory negligence, and this includes cases where pedestrians injure themselves when they dash across a road without looking, giving the motorist only a small chance of avoiding the accident. The degree of contributory negligence at the reckless level depends on the actor and the act, of course, but sometimes the circumstances may also ameliorate or aggravate the liability of the parties.

12 In this case, the defendant had bought the machine as it was, making no alteration or modification to it. If an accident had happened because of an unauthorised modification to a machinery, the employer who had modified it has to bear a greater responsibility for any accident that is attributed to that modification. The case before me is slightly different. The accusation here is that the defendant ought to have modified the machinery to make it safer. We can see at once how that complicates the apportionment of the defendant's responsibility. The defendant bought the machine from an established manufacturer. Were it to modify the machine, it runs the risk of imposing a greater responsibility should the modification cause problems in the use of the machine, and ultimately, accidents.

13 The evidence before me indicates that, as it was, an open, unprotected rolling machine such as the defendant's was a source of danger for careless employees, and some protective grating was probably needed. The manufacturer was not joined as a third party so we do not have its views as to why there was no factory fitted grating, and no further apportionment can be made so as to split the liability between the employer and the manufacturer. That leaves us with the conduct of the plaintiff. He was an experienced worker and was also a trainer of new workers on the use of the machine in question. He knew that should there be any need to stop the machine, the switch is close at hand, just about an arms-length away. When he found a metal can stuck in the rollers, he did not stop the machine. Instead, he stuck his hand between the running rollers in an effort to dislodge the can. This was an act of negligence bordering on recklessness.

14 Finally, the defendant's counterclaim for reimbursement of medical expenses and medical leave wages that it has paid so far to the plaintiff is premised on the plaintiff failing to prove that the

defendant was liable. I dismiss the counterclaim as my decision to apportion damages between the plaintiff and the defendant will account for that. The defendant is thus liable for only 50% of the medical expenses and medical leave wages. To the extent that the defendant has paid more than that, the excess will be set off against the general damages to be recovered by the plaintiff. To allow the counterclaim in full is to give the defendant double recovery. As a result of the apportionment of damages, the defendant will be able to recover 50% of the medical expenses and medical leave wages it had paid, or have it set-off against its outstanding liability to the plaintiff.

15 I will hear the parties on costs after the assessment of damages. Parties are at liberty to apply for directions regarding the assessment of damages.

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