Chandran a/l Subbiah v Dockers Marine Pte Ltd (Owners of the Ship or Vessel "Tasman Mariner", Third Party)
[2009] SGHC 109

Case Number : Suit 250/2008

Decision Date : 06 May 2009

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Perumal Athitham (YPMP Law Corporation) for the plaintiff; Michael Eu (United Legal Alliance LLC) for the defendant

Parties : Chandran a/l Subbiah — Dockers Marine Pte Ltd — Owners of the Ship or Vessel "Tasman Mariner"

Tort – Breach of statutory duty – Factories Act (Cap 104, 1998 Rev Ed) – Definition – Applicability and scope of Factories Act – Whether hatch fell to be considered as "factory" – Sections 6(2)(f), 6(2)(r), 6(4), 33, 47A, 74(1), 74(3), 74(4) and 74(5) Factories Act (Cap 104, 1998 Rev Ed)

Tort – Negligence – Duty of care – Employee injured on vessel owned by third party – Whether stevedore company had duty to inspect vessel before requiring its employees to work on board

Tort – Occupier's liability – Duty of care – Who was an occupier – Whether there was control

6 May 2009

Judith Prakash J:

Introduction

1 By this action, the plaintiff claimed damages for personal injuries and consequential loss which he suffered as a result of an accident whilst in the employment of the defendant. The plaintiff fell from a height of about 10 metres onto the top of a cargo container in the hold of the vessel Tasman Mariner ("the vessel") and suffered head and hand injuries as a result. After the plaintiff commenced his action, the defendant sought to bring a third party claim against the owners of the vessel. Unfortunately, the defendant was not able to serve the third party and the action proceeded between the plaintiff and the defendant only.

Background Facts

2 The plaintiff was a freelance stevedore engaged by the defendant to carry out stevedoring tasks on board the vessel when it was docked at the PSA Pasir Panjang Wharves ("the wharf") on 18 October 2005. The defendant was carrying on stevedoring business contracting services and was contracted by the owners or agents of the vessel to carry out cargo operations on the vessel whilst it was docked at the wharf.

3 According to Rajendran S/O Pavadai ("Mr Rajendran") who was a supervisor employed by the defendant, the usual arrangement in the stevedoring industry was that stevedores would only be engaged on an *ad hoc* basis and would be paid by shift or work carried out. The stevedores would be engaged through their freelance stevedoring foreman and there would be no contact between the freelance stevedore and the defendant. This evidence did not affect the plaintiff's liability, however, because for the purposes of this claim, the defendant had conceded that it would be considered the

employer of the plaintiff. Therefore, it was not necessary for me to consider the issue of whether the plaintiff had been employed by the defendant or was merely engaged as an independent contractor. I think such an argument would have been difficult for the defendant to maintain as it appeared from the facts of this case that at all times the plaintiff in carrying out his work was under the supervision of Mr Rajendran.

4 According to the plaintiff's evidence as set out in his affidavit of evidence-in-chief, on 18 October 2005, he and three other workers were deployed to carry out stevedoring tasks on board the vessel. Their task was to see to the proper arrangement of some cargo containers which were being stored inside Cargo Hold (Hatch) No. 5 ("Hatch 5") of the vessel. After lunch, at about 1.40pm, the plaintiff was descending into Hatch 5, using a ladder fixed to the wall of the hatch when a section of the ladder dislodged causing the plaintiff to fall a distance of about 10 metres into the hold.

5 During cross-examination, however, the plaintiff said that he could not remember whether his task that day was to load or unload the container. Similarly, he claimed that he could not remember whether he fell when descending into the hatch or when coming out of the hatch. He explained that after he fell, he became unconscious. When he regained consciousness, he was told that he fell when he was climbing out of the hatch. The plaintiff claimed that he could not remember how the accident occurred.

6 This inconsistency in the plaintiff's version of events is not critical. Whether the plaintiff fell when he was using the ladder to climb out of Hatch 5 or when he was using it to descend into Hatch 5 is not relevant to the liability of the defendant.

7 The plaintiff claimed that the defendant:

(a) had breached its statutory duty under the Factories Act (Cap. 104, 1998 Rev. Ed.);

(b) had breached its common law duty of care as an employer and by its negligence caused the accident; and

(c) was liable to the plaintiff for breach of its duty of care as an occupier of the vessel at the material time.

8 I dismissed the claim and I now provide my reasons for doing so. I will discuss the common law duty of care first as on the facts that seemed to be the claim with the greatest chance of success.

Common law duty of Care

9 The common law duty of care of employers with respect to their employees is clear. In *Parno v SC Marine Pte Ltd* [1999] 4 SLR 579 ("*Parno*"), the Court of Appeal held that the duty of an employer was threefold — to provide: a competent staff of men, adequate material, and a proper system of work and effective supervision.

10 The plaintiff argued that the defendant had breached its duty to provide a safe place of work and a safe system of work. In order to discharge the duty to provide a safe place of work, the

defendant had a duty to conduct a proper inspection of the premises. However, no inspection had been carried out to ascertain the stability and soundness of the ladder. He also argued that the defendant had breached its duty to provide a safe system of work by failing to provide adequate equipment for him to enter Hatch 5.

11 In my judgment, the present case could not fall under the safe system of work category. A worker must always have entry/access to the worksite. The means of entry to the premises cannot constitute the system of work. The defendant was not the owner or operator of the vessel. It was working on the vessel and had to use the means of access provided by the owners of the vessel in order to carry out its work. In this case, the vessel had been constructed in such manner that the usual way for stevedores and other persons to gain access to the holds of the vessel was by utilising the ladder which had been constructed and attached to the wall of each hold. It was not wrong on the part of the defendant to require its workers, including the plaintiff, to enter the holds by using the attached ladders.

12 The plaintiff argued that the defendant should have provided some other means of ingress. I did not agree. It was not wrong or unsafe for the defendant to insist that the plaintiff use the method provided by the vessel unless there was some industry practice that the defendant had failed to follow. For example, if there had been a practice of having safety belts to lower workers into a hold and the defendant failed to provide such safety belts, he could be in breach of the duty to provide a proper system of work. However, this was not the case here. No evidence of such an industry practice was adduced. The danger was the defect in the ladder and that it had not been properly maintained. If any liability was to be imposed on the defendant by reason of the defect in the ladder, such liability would arise as a breach of the employer's duty to provide a safe place of work rather than as a breach of its duty to provide a safe system of work.

Third party premises

13 Indisputably, an employer has a duty to provide a safe place of work to its employees. The issue in this case was, however, whether this duty extended to ensuring that the premises of a third party were safe in the case where the premises was a vessel and the employer and its workers were only invitees with no control over the same.

14 In *Thomson v Cremin* [1956] 1 W.L.R. 103 ("*Cremin*"), a labourer employed by a firm of Glasgow stevedores to discharge bulk grain in a ship's hold was injured when he was struck by the fall of a "shore" fixed by shipwrights in Australia to hold a shifting-board. The House of Lords held that the firm of stevedores was not negligent. It was not proved to be part of the regular practice of such firms to inspect the shores and unless they observed a defect in a particular shore they were not obliged to take special precautions. Lord Wright observed that:

> To hold a master stevedore in the absence of special circumstances of suspicion subject to a general duty towards his men to inspect the structure of the vessel, whether permanent or temporary, whether shifting-boards, stanchions or the like, would, I think, be contrary to practice and inconsistent with the exigencies of the case. He comes on board the vessel, the shipowner's premises, to carry out the loading or discharging and, unless there are special stipulations in the contract, is prima facie entitled to assume that the shipowner has discharged his duty of care in regard to the safety of the premises. He is on board the ship for a special and limited purpose and has in the ordinary course no right to interfere with the structure, temporary or permanent, of the vessel. No doubt if there are apparent indications which he observes, or ought to observe, that the structure is defective, he owes a duty to take reasonable measures for the protection of his men. But there was nothing of the sort in the present case. I agree generally with what was

said on this question by the Lord Justice-Clerk in *M'Lachlan v. Peveril S.S. Co. Ltd.*, though if there was something manifestly wrong and dangerous, I think that the stevedore should refuse to go on with the work until the defect was remedied. I cannot, however, see what purpose would be served by a slight inspection of the structure by the master stevedore where there was no special ground of suspicion, while to require it would place an unwarranted and unbusinesslike burden on the stevedores.

1 5 *Cremin* was approved by the two Scottish cases of *William Durie v Andrew Main & Sons* [1958] SC 48 ("*Durie*"), a decision of the Second Division of Scotland, and *Shephard v Pearson Engineering Services (Dundee) Ltd* [1980] SLT 197. In *Durie*, a dock labourer brought an action against his employers, a firm of stevedores, for damages in respect of injuries which he had received through the fall of a section of the handrail of a ship on which he was working. The section in question had been removed and propped against the fixed handrail without being lashed to it. It was held that when a stevedore goes on board a ship to discharge a cargo, he does not owe any general duty to his employees to inspect the ship and its equipment to see that they are in a safe condition. On the other hand, should some obvious danger come to the notice of the stevedore, he cannot just ignore it and he should take immediate precautions. Lord Walker observed in the course of his judgment at first instance (at p 51) that "stevedores have no concern to inspect things forming part of the structure or fittings or fastenings of the ship which are in the vicinity of the place where they have to work". This opinion was echoed on appeal by Lord Justice Clerk (Thomson) who stated (p 52) that "when a stevedore goes on board a ship to discharge a cargo, he does not owe any general duty to his employees to inspect the ship and its equipment to see that they are in a safe condition. That is well established by cases like *Peveril* and *Cremin*, and it is clearly good sense, because the inspection of a ship is a highly technical matter".

16 The plaintiff relied on *Marney v Scott* [1899] 1 QB 986 ("*Marney*") to argue that some attention ought to have been devoted to the condition of the ladders in Hatch No 5 and that the defendant was in breach of its duty because Rajendran did not carry out an inspection of the ladder before instructing the plaintiff and his co-workers to enter Hatch 5. In *Marney*, the defendant chartered a vessel which was at the time at sea and in ballast. The charterparty declared that she was in every way fit for the service, and provided that she should be so maintained by the owners. The defendant contracted with the stevedore who engaged the plaintiff (amongst others) to carry out the work of loading. In the course of his work, the plaintiff had to descend a ladder leading into the hold. It came adrift, and the plaintiff fell, sustaining injuries for which he sued the defendant. It was held that the defendant was liable to the plaintiff, since it was his duty under the circumstances to make some inspection of the vessel before allowing the stevedore and his men to go on board her, and since the slightest inspection would have revealed the defective state of the ladder.

17 The decision in *Marney* is inconsistent with *Cremin* and the other cases cited in [15] above. It should be noted that *Marney* was decided more than 50 years before *Cremin* and was a first instance decision whilst *Cremin* and *Durie* were decided by higher courts, in the case of *Cremin* the final court of appeal in England. Its persuasiveness therefore, in relation to the extent of the duty which a stevedoring company owes its employees to inspect the vessels on which the employees are to carry out their stevedoring duties, is not great insofar as the opinion of the judge in that case differed from those expressed in *Cremin* and *Durie*.

18 The rationale of Bigham J's decision in *Marney* is found in the following passage of his judgment:

I do not think that the mere fact that the defective state of the ladder was patent (as I think it was, in the sense that a slight examination would have detected it), and that the defendant did nothing to remedy it, is sufficient o fix him with a breach of the duty which in my opinion he

undertook. He must have had a reasonable opportunity of ascertaining that a defect existed; the circumstances must have been such that, though he did not know of the condition of the ladder, he ought to have known of it; and if he ought to have known of it, and might either have remedied it or warned the plaintiff of the danger and did neither, and hurt resulted to the plaintiff, then and only then, can that want of reasonable care be imputed to him which would make him liable. Ought he, then, to have known of the condition of the ladder? Here comes in my doubt. I am far from saying and thinking that a man in the position of the defendant is bound, before he allows the work of loading a vessel to begin, to have the vessel surveyed from stem to stern for the purpose of ascertaining that every little appliance that may come into use is in perfect order. Business would be impossible if such a duty were cast upon him, and it would be beyond the scope of reasonable care. But I cannot help thinking that when a vessel comes into a port after a voyage, though it is only a coasting voyage and though the vessel is in ballast, some slight attention ought to be devoted to the condition of the tackle and appliances which the stevedore's labourers are to use in their work in loading that vessel. What the attention ought to be must depend on the circumstances of each particular case. In this case I think the defendant ought to have made some examination of the ladders into the holds. The slightest examination would have shewn him that this ladder was in such a condition as really to make it a trap; and, taking this view, I hold that he was guilty of a breach of the duty which I think the law imposed on him.

19 I do not think that the statement of the law made by Bigham J can be reconciled with the judicial pronouncements in *Durie* and *Cremin*. Bigham J indicated that after the vessel had been out to sea, the stevedoring company had a duty to make some slight examination of the ladders into the hold. He said that even after noting that the business of a stevedore would be impossible if a duty was cast on him to do a thorough examination of each ship before allowing his workers on to the vessel. In my respectful opinion, however, the judge, in requiring the stevedore to nevertheless pay "some slight attention" to the ladders, did not overcome the difficulty that this requirement would place on the shoulders of the stevedoring company. This is because the formulation "slight attention" is vague and does not really indicate what degree of care has to be paid to the fitness of the ship's appliances before the stevedore can be held to have discharged his duty. It would be noted that in *Cremin*, Lord Wright held that in the absence of "special circumstances of suspicion" there would be no duty of inspection placed on the stevedore. A coastal voyage which is a regular occurrence can never qualify as giving rise to special circumstances of suspicion and thus, in my view, had *Marney* been decided after *Cremin*, the outcome may very well have been different.

20 The condition of the ladder in *Marney* was so bad that the danger should have been obvious and therefore, despite his disclaimer, it was probably the fact that the defective state of the ladder was patent that influenced Bigham J to impose a liability on the defendant there. The factual situation in *Marney* serves to distinguish it from *Cremin*. The patent defectiveness of the ladder would have been an example of the situation mentioned in *Cremin*, where the judges indicated that in a situation where there are apparent indications that the structure is defective, a duty is imposed on the master stevedore to ensure the structure is safe before allowing work to start. In the present case the situation was different. There was no obvious defect in the condition of the ladder. The plaintiff and his co-workers in Hatch 5 had entered the hatch in the morning using the ladder and had exited the hatch the same way for lunch. On both occasions nothing untoward had occurred. The dislodging of the ladder only took place after the plaintiff returned to work in the afternoon. It was clear to me from the evidence therefore that even if there was a duty on Mr Rajendran to pay some slight attention to the ladder in Hatch 5 by giving it a visual inspection, had he done so, no danger would have been discernible.

21 The plaintiff raised the case of *McDermid v Nash Dredging & Reclaimation Co Ltd* [1987] 1 A.C.

906 ("*McDermid*") to argue that the cases which held that there was no duty on the master stevedore to check third party premises are no longer valid law. In *McDermid*, the plaintiff was employed by the defendants as a deckhand. In the course of his employment he worked on board a tug owned by a Dutch company and under the control of a captain employed by them. The plaintiff's work included untying ropes mooring the tug fore and aft to a dredger. The system used by the captain was that when the plaintiff had untied the ropes and it was safe for the captain to move the tug, the plaintiff would give a double knock with his hand on the wheelhouse. At the time in question the plaintiff had untied the aft rope but was still in the course of untying the forward rope when the captain, without waiting for the plaintiff's signal, put the engine of the tug hard astern. As a result, the rope snaked round the plaintiff's leg causing him serious injury. The House of Lords held that the defendants owed the plaintiff a duty of care to devise a safe system of work for him and to see that that system was operated. The defendants' duty of care was non-delegable and they were personally liable for its performance. Although they had delegated the performance of their duty of care to the captain, they could not thereby avoid their own liability to the plaintiff. *McDermid* therefore was a case on safe system of work and not a case on safe working premises.

22 The plaintiff in the present case used *McDermid* to argue that the defendant cannot delegate its duty of care to the plaintiff to the shipowner and would therefore be liable for the faulty ladder. Indeed, an employer's duty of care is non-delegable. *McDermid* has been approved locally by the Court of Appeal in *The Lotus M (No 2)* [1998] 2 SLR 145. However, quite apart from the fact that liability was found on a different basis, the facts in *McDermid* are distinguishable from those in the present case. There, the plaintiff, defendant and the Dutch company who employed the captain were all working together to perform the contract. The Dutch company was not a passive party to the task being performed by the defendant and plaintiff but a participant in the system of work. The responsibility of the defendant employers for the system instituted by the captain was therefore more direct. This is unlike the present case where all that the shipowners did was to present the ship for the cargo operations and the defendant worked for the owners rather than with the owners. There was no delegation of any sort by the defendant here to the shipowners. This reading of *McDermid* is consistent with that taken by the Court of Appeal in *Cook v Square D Ltd* [1992] ICR 262 which held that *Cremin* was not inconsistent with *McDermid* and is still good law.

23 Having considered the abovementioned cases, I came to the conclusion that the defendant did not have a duty to inspect the premises or the hatch before allowing the workers to perform the task of loading and unloading unless there was some ground of suspicion. On the facts, there was no evidence of any circumstance which would have given rise to any ground of suspicion prior to the commencement of work by the plaintiff and his co-workers. It would be too onerous to impose a general duty on stevedoring companies to inspect the vessels they work on before allowing stevedoring operations to commence even if there is nothing special in the circumstances to lead the company to suspect that the vessel or its fixtures might pose a danger to the stevedores. Accordingly, the claim of the plaintiff on this ground failed.

Statutory Liability under Factories Act

24 The plaintiff alleged that the defendant had failed to comply with the statutory liability imposed on it by the Factories Act (Cap 104, 1998 Rev. Ed) (the "Act"). Counsel argued that the defendant failed to ensure the safety of the place of work and means of access as required under s33 of the Act. She added that by virtue of s 47A(3) of the Act read together with the Twelfth Schedule, the defendants ought to have taken appropriate measures to reduce where possible or eliminate the hazard or inform all persons working at the workplace of the means to reduce where possible or eliminate the hazard which could cause the plaintiff to fall from a height of 3 metres and above. The relevant sections of the Act are reproduced below:

Safe means of access and safe place of employment.

s33.

(1) All places of work, floors, steps, stairs, passages, gangways and means of access shall —

(a) be of sound construction and properly maintained; and

(b) so far as it is reasonably practicable, be kept free from any obstruction and from any substance likely to cause persons to slip.

(3) There shall, so far as is reasonably practicable, be provided and maintained safe means of access to and egress from every place at which any person has at any time to work and every such place shall, so far as is reasonably practicable, be made and kept safe for any person working there.

(7) Where any person has to work at a place from which he would be liable to fall a distance of more than 3 metres or into any substance which is likely to cause drowning or asphyxiation, a secure foothold and handhold shall be provided so far as practicable at the place for ensuring his safety.

(8) Where it is not practicable to provide a secure foothold and handhold as required under subsection (7), other suitable means such as a safety belt and fencing shall be provided for ensuring the safety of every person working at such places.

(10) No person shall require, permit or direct any person to work at a place from which he would be liable to fall a distance of more than 3 metres or into any substance which is likely to cause drowning or asphyxiation unless the requirements of subsection (7) or (8) have been complied with.

Safe work procedures

47A. (1) No work specified in the Twelfth Schedule shall commence in any factory unless —

(a) the hazards to which persons at the workplace could be exposed as a result of such work have been identified;

(b) the injury or harm that could arise from the hazards referred to in paragraph (*a*) have been identified;

(c) safe work procedures are implemented; and

(d) steps are taken to ensure that all persons involved in such work are familiar with the safe work procedures.

(2) The safe work procedures referred to in subsection (1) shall include —

(a) the provision of personal protective equipment; and

(b) the safety precautions to be taken in the course of work and during an emergency.

(3) Appropriate measures shall be taken in a factory —

(a) to reduce and, where possible, eliminate the hazards identified under subsection (1); and

(b) to inform all persons working at the workplace of the means to reduce and, where possible, eliminate the hazards identified under subsection (1).

25 The Act only regulates factories as defined in the Act. Therefore, Hatch 5 had to come under the definition of a factory before the statutory obligations discussed above would have applied to the defendant. The plaintiff argued that Hatch 5 would be classified as a factory because it would fall under s 6(2)(f), s 6(2)(r), s 6(5) or s 74(3) of the Act.

26 The general definition of 'factory' appears in s 6(1) of the Act. A ship's hold does not fall within the definition. Subsection (2) provides that whether or not premises are factories by reason of the general definition, a number of specified instances are included in the term 'factories'. The specified instances it was submitted applied here were s 6(2)(f) and s 6(2)(r) which read:

(f) any premises in which the construction, reconstruction or repair of locomotives, aircraft, vehicles or other plant for use for transport purposes is carried on as ancillary to a transport undertaking or other industrial or commercial undertaking, not being any premises used for the purpose of housing locomotives, aircraft or vehicles where only cleaning, washing, running repairs or minor adjustments are carried out;

(r) any premises in which mechanical power is used in connection with the sorting, packing, handling or storing of articles which is carried out by way of trade or for purposes of gain or incidentally to another business so carried on.

27 In my opinion, Hatch 5 did not come under either s 6(2)(f) or s6(2)(r). Section 6(2)(f) refers to premises in which there is construction, reconstruction or repair. The hatch was not being used for such a purpose. The hatch also did not come under s 6(2)(r) which was introduced in the year 2000. The provision was meant to cover premises such as warehouses and open storage areas where mechanical devices were in use in relation to the storing of articles as a business. The hatch would not fall under this provision as the business of the vessel was the transporting of articles and the vessel was not intended to be, nor was it actually being used as, a warehouse or storage area. In the parliamentary debates for the amendment to the Act to include this provision, the Minister for Manpower made the following comments which indicate that vessels are not the kind of premises which the legislation was intended to cover:

Clause 2 of the Bill amends the Factories Act to expand the interpretation of "factories" to include any premises in which mechanical power is used in sorting, packing, handling, or storing of articles which is carried out by way of trade or incidental to other businesses. Currently, the Act contains a provision to cover workers involved in this kind of work, that is, the sorting, packing or handling of articles in a warehouse only where such work is carried out as a business or by way of trade. In other words, the warehouse must be a commercial warehouse taking in the goods for storage for and on behalf of customers. However, whether the warehouses where such activities are being carried out are in the warehousing business or just a company's own warehouse to store its own products or materials, workers are actually exposed to the same kind of hazards. The Ministry, therefore, proposes to expand the scope of the Act to include warehouses or open yards where such activities are carried out and where mechanical power is used. Warehouses where no mechanical power is used are obviously less hazardous to the workers. Hence, the amendment excludes premises which are essentially stores where articles are kept incidental to business activities and no mechanical power is used at all. The extension of the Act will ensure

that workers who are exposed to occupational hazards in all warehouses and open storage areas where mechanical devices are in use would be adequately protected. (Emphasis added).

28 The plaintiff then sought to rely on s6(4). The section reads as follows:

> Any workplace in which, with the permission of or under agreement with the owner or occupier, 10 or more persons carry on any work which would constitute the workplace a factory if the persons working therein were in the employment of the owner or occupier of the workplace, shall be deemed to be a factory for the purposes of this Act, and, in the case of any such workplace, this Act shall apply as if the owner or occupier of the workplace were the occupier of the factory and the persons working therein were persons employed in the factory.

In my opinion, this provision is meant to cater to situations where the people working at the workplace are not employees. The provision helps to ensure that the obligations under the Act would still be applicable to the owner or occupier. The provision deems a workplace which would be a factory if the people working there were employees in a factory. Therefore, for this provision to apply, the hatch must already be considered a factory by any of the other provisions of the Act.

29 The plaintiff then tried to argue that by the application of s 74(3) of the Act, the vessel including the hatch, was to be treated as if it was a factory where the defendant was carrying out the process of loading and unloading work. The relevant section reads:

> (3) Subject to subsection (4), subsection (2) (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*) and (*i*), shall (subject to the modification in paragraph (*c*)) apply to the processes of loading, unloading or bunkering of any ship in any dock and to all machinery or plant used in those processes, as if the processes were carried on in a factory and the machinery or plant were machinery or plant in a factory and the person who carries on those processes were the occupier of a factory.

30 However, it is important to study the context of s74 in order to understand s 74(3). Section 74(1) of the Act makes most of the provisions of the Factories Act applicable to docks, wharfs or quays by treating the dock, wharf or quay as a factory. The relevant sections are:

> Docks, etc.
>
> 74. —(1) The provisions of this Act specified in subsection (2) shall apply to every dock, wharf or quay in or for the purposes of which mechanical power is used —
>
> (a) as if it were a factory; and
>
> (b) as if the person having the actual use or occupation of it or of any premises within it or forming part of it, were the occupier of a factory.
>
> (2) The provisions referred to in subsection (1) are —
>
> (a) Part I;
>
> (b) Part II;
>
> (c) the provisions of Part V with respect to steam boilers, steam receivers and steam containers (including the provisions relating to the exemption of steam boilers) and air receivers but with the modification that the owner of the boiler, receiver or container shall, instead of the person deemed to be the occupier, be responsible for any contravention of those provisions;

(d) the provisions of Part V with respect to lifting gears, lifting appliances and machines, the power of the Chief Inspector to make orders, the power of the Minister to make orders, the notification of accidents and dangerous occurrences and the investigation into accidents and dangerous occurrences;

(e) sections 62, 67 and 68;

(f) the provisions of Part IX with respect to factory records, subject to such modifications as may be made by rules made by the Commissioner and the provisions of that Part with respect to duties of persons employed, and the prohibition of deductions from wages;

(g) the provisions of Part X with respect to powers and duties of inspectors;

(h) Part XI; and

(i) Part XII.

Then, s 74(3) goes on to provide that the process of loading and unloading in the dock etc would be deemed to be a process carried on in a factory. Here, I was concerned with the hatch and not the dock. Therefore, s74 is not relevant. However, even if I am wrong and s74 is relevant, the ladder would not fall under the Factories Act because of ss 74(4) and 74(5) which state:

(4) The provisions of this Act mentioned in subsection (2) (*c*) and (*d*) shall not apply in relation to any such lifting gear, lifting appliance, lifting machine or machinery or plant which is on board a ship and is the property of the shipowner.

(5) For the purposes of subsections (3) and (4), "plant" includes any gangway or ladder used by any person employed to load or unload or bunker a ship.

31 Since the obligations imposed by the Factories Act were not applicable the claim on this ground also failed.

Occupiers' Liability

32 The plaintiff alleged that the defendant was the occupier of the vessel. The defendant had invited the plaintiff to work in the vessel for the purpose of carrying out the cargo operations and should therefore be liable to the plaintiff for the injuries that he had suffered.

33 In Awang bin Dollah v Shun Shing Construction & Engineering Co Ltd [1997] 3 SLR 677, the Court of Appeal held that the law in respect of an occupier's liability in Singapore is strictly derived from the common law. The Court of Appeal approved Lord Denning's statement of the law in *Wheat v E Lacon and Co Ltd* [1966] AC 552 ("*Wheat*"):

… wherever a person has a sufficient degree of control over premises that he ought to realise that any failure on his part to use care may result in injury to a person coming lawfully there, then he is an 'occupier' and the person coming lawfully there is his 'visitor': and the 'occupier' is under a duty to his 'visitor' to use reasonable care. In order to be an 'occupier' it is not necessary for a person to have entire control over the premises. He need not have exclusive occupation. Suffice it that he has some degree of control. He may share the control with others. Two or more may be 'occupiers'.

34 In *Wheat*, Lord Denning observed that:

> In Salmond on Torts, 14th ed. (1965), p. 372, it is said that an "occupier" is "he who has the immediate supervision and control and the power of permitting or prohibiting the entry of other persons." This definition was adopted by Roxburgh J. in Hartwell v. Grayson, Rollo and Clover Docks Ltd.and by Diplock L.J. in the present case. There is no doubt that a person who fulfils that test is an "occupier." He is the person who says "come in." But I think that test is too narrow by far. There are other people who are "occupiers," even though they do not say "come in." If a person has any degree of control over the state of the premises it is enough."

35 Usually, a person who has control over the premises has the power of permitting or prohibiting the entry of other person. Here, the defendant did not have control over who entered or left the vessel. There may, however, as Lord Denning stated, be cases where a person can have control over premises even if he does not decide who has entry to the premises. To make such a person an occupier it needs to be shown that he has some other form of control of the premises. This requirement was not satisfied in the present case. There was no evidence of any form of control that the defendant had over the vessel. The occupation of the vessel by the defendant was merely transient and for the specific purpose of loading and unloading. At all times, the vessel was under the control of her master and crew and, indeed, even the stevedoring operations would have been subject to the authority of the vessel's officers. I did not see how the defendant could have had any control over the vessel. Whatever control the defendant had was only over the process of loading and unloading of the goods in the hatch. The defendant had no control over the vessel and could not be said to be the occupier of the vessel. Hence the claim under occupier's liability also failed.