Neutral Citation: [2016] IEHC 590

THE HIGH COURT

[2013 No. 9910 P.]

BETWEEN

ARTHUR FITZELL

PLAINTIFF

AND

SOUTH TIPPERARY COUNTY COUNCIL

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered on the 25th day of October, 2016

Introduction

1. The plaintiff is 47 years of age and is employed as a store manager. He is also a part-time fire fighter and has been employed in that role since 1992. He has risen to the rank of Station Officer in Cashel Fire Station.

2. On 4th January, 2012, there was an oil spillage at Cooper's Lot, Clonmel Road, Cashel, Co. Tipperary. Oil had leaked from a tanker, resulting in a large covering of oil on the road surface over an extended area. A fire tender was dispatched from Cashel Fire Station to carry out the clean up operation. The plaintiff was the most senior fire fighter present and as such he was the designated Incident Commander.

3. One of the plaintiff's duties as Incident Commander, was to radio back reports to his station as to how the operation was progressing. This required him to ascend and descend from the fire tender on a number of occasions during the clean up operation.

4. The fire tender in question is shown in the photographs taken by Mr. Michael Fogarty, the plaintiff's consulting engineer. The passenger side of the cab is shown in photographs No. 2 and 3. It can be seen that there are two yellow handles at the front and back of the cab opening, which can be used by people ascending or descending from the cab. The cab floor is at a height of 4ft above ground level. There are two steps between the cab floor and ground level. The lower step is at a height of 1ft, 5 inches, while the second step is at a height of 2ft, 8 inches. There is a rubber mat on the floor of the cab and there is metal nosing at the edge of this mat. This can be seen clearly in photographs 4, 5 and 6. The metal nosing has a width of 2 inches and is ribbed. The metal nosing is located at the edge of the cab floor and is, therefore, also at a height of 4ft above ground level.

5. The accident occurred on one of the occasions when the plaintiff had ascended into the cab of the tender to give a progress report to the station. Having given the report, he used his left hand to grab onto the grab rail, which was in front of him and to his left. He pulled himself up from a seated position. The plaintiff's left foot, slid forward along the nosing in the direction of the arrows as shown in photographs 5 and 6. His foot then slipped off the nosing and the plaintiff was caused to fall to the ground, causing injury to his right ankle.

6. The plaintiff states that he was caused to fall due to the presence of oil on the soles of his boots, allied to the fact that the ribs on the nosing ran lengthways from the front to the back of the tender, such that his boot was caused to slip along the ribs and then came off the nosing altogether.

7. The plaintiff's case is that the defendant was negligent and in breach of statutory duty in the following ways:-

(i) Failing to provide a means of cleaning the boots while on site.

(ii) Failing to provide nosing which would provide better grip in all directions. In this regard, he submitted that the defendant should have used nosing which had diamond shaped ribs such that there would be good slip resistance in all directions.

(iii) The plaintiff also argued that the defendant should have had the nosing treated by a company in the United States, who provide a special paint, or covering, which has been applied to the surface of travelators to make them more slip-resistant.

(iv) Failure to make employees aware of the risks involved in cleaning an oil spillage and in particular the risk that their boots would become contaminated by the oil, thereby giving poor slip resistance.

(v) The plaintiff also alleged that the defendant was in breach of statutory duty, in particular that the defendant breached ss. 8, 9, 10 and 19 of the Safety, Health and Welfare at Work Act 2005.

8. The defendant denies liability on the basis that the plaintiff was a senior fire fighter, who had experience of dealing with oil spillages. They state that the plaintiff would have known that it was inevitable that oil would adhere to the soles of his boots and that they would become prone to slip as a result. They stated that it was obvious to all fire fighters that their boots would become slippery after working at the scene of an oil spillage and that as a consequence, fire fighters would have to take extra care when climbing into or out of a fire tender.

9. The defendant pointed out that the plaintiff was aware of the rule that when ascending into or descending from the cab of a fire tender, a person should always use both hands on the handrails provided. They should ascend or descend from the vehicle by facing into the cab. They should maintain at least three points of contact with the vehicle at all times. The defendant further pointed out that the plaintiff himself had given training to new recruits at the station as to the correct method of mounting a fire tender.

10. The defendant submitted that the nosing on the vehicle was of a type that was standard throughout the industry. The vehicle was a Scania model, which was a reputable manufacturer of these types of vehicle. The vehicle itself and, in particular, the steps leading to the cab and the nosing at the mouth of the cab, were in good condition.

11. In essence, the defendant submitted that on the day in question, the plaintiff knew that there was oil on his boots and that as a result they would be more slippery. He knew that he would have to take extra care to ensure that his foot did not slip. The defendant

submitted that the accident simply happened because the plaintiff did not take sufficient care when descending from the vehicle.

12. In relation to the assertion that the defendant should have provided some means of removing the oil from the soles of fire fighters' boots at the scene of the spillage, the defendants produced email correspondence with the manufacturer of the boots as to whether there was any product that could be used to remove oil from leather boots, to which the manufacturer had replied that there was no such product on the market. The defendant pointed out that this was after the plaintiff's accident.

13. In evidence, the plaintiff stated that he had suggested to his senior officer that perhaps the Oil Free product, which was applied to the road surface could be applied to the soles of their boots at the scene. He stated that he was told that management had made inquiry of the manufacturer of the boots, but that they had advised against applying Oil Free to the soles of the boots, as that would damage the boots themselves. The defendants denied that the plaintiff had made any such request or suggestion before his accident.

14. In relation to the boots, the plaintiff had been supplied with new leather boots in 2009. He stated that he had requested replacement leather boots prior to the time of the accident, but had been told that he could only have new rubber ones if he wished. While the plaintiff seemed to suggest that his boots were deficient at the time of the accident, his engineer was not supportive of such assertion. The boots themselves were not put in evidence, nor were any photographs of them produced. There was only a general photograph showing another pair of boots at the station at the time of the engineering inspection. In these circumstances, the plaintiff has not established that his boots were defective at the time of the accident.

15. The plaintiff also relied on alleged breaches of statutory duty on the part of the defendant. In particular, he alleged that the defendant had breached ss. 8, 9, 10 and 19 of the Safety, Health and Welfare at Work Act 2005.

16. The effect of these sections can be summarised as follows:-

> Section 8 sets out the general duties of an employer. The plaintiff relied in particular on sub-para (g) which provides that an employer's duty extends to providing the information, instruction, training and supervision necessary to ensure, so far as is reasonably practicable, the safety, health, and welfare at work of his or her employees.
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> Section 9 provides that an employer shall, when providing information to his or her employees under s. 8 on matters relating to their safety, health and welfare at work, ensure that the information includes the following information:-
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> (i) the hazards to safety, health and welfare at work and the risks identified by the risk assessment,
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> (ii) the protective and preventive measures to be taken concerning safety, health and welfare at work under the relevant statutory provisions in respect of the place of work and each specific task to be performed at the place of work.
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> Section 10 provides that the employer must provide instruction, training and supervision of employees and must ensure that the instruction, training and supervision is provided in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employee concerned.
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> Finally, s. 19 relates to hazard identification and risk assessment. It provides that every employer shall identify the hazards in the place of work under his or her control, assess the risks presented by those hazards and be in possession of a written assessment (known as a "*risk assessment*") of the risks to the safety, health and welfare at work of his or her employees, including the safety, health and welfare of any single employee or group or groups of employees who may be exposed to any unusual or other risks under the relevant statutory provisions.

17. The plaintiff alleged that in breach of statutory duty, the defendant had not provided adequate training in relation to dealing with oil spillages and, in particular, in relation to the danger of their boots becoming contaminated by oil and, thereby rendering the boots slippery. In addition, he alleged that the defendant had not produced any specific risk assessment in relation to the dangers faced by fire fighters in respect of slipping, due to oil on their boots.

18. The plaintiff also relied on a guideline document issued by the Health and Safety Authority in 2010, entitled "Workplace Transport Safety – Falls from Vehicles". In summary, this document stated that each year falls from vehicles accounted for a significant number of workplace transport incidents. It stated that multiple factors may contribute to a fall from a vehicle. One of the most common contributory factors were slips and trips and often by reducing the risk of slips and trips on vehicles, this would also help reduce the risk of falls. Factors which may contribute to falls from vehicles, included surfaces with no or low slip resistance. Another contributory factor was inadequate instruction, information and training: for instance, employees not aware of how to access and egress a vehicle safely. The document further stated that the employer should identify and assess where falls from vehicles could occur in the course of work operations. If a risk of falling was identified, they should eliminate or control the risk taking account of the General Principles of Prevention set out in Schedule 3 to the 2005 Act. The employer should ensure that vehicle steps were anti-slip and large enough for the foot. Where possible they should specify materials that are slip resistant during wet and dry conditions. The employer should also provide employees with adequate instruction, information and training. It also suggested that the employer should consider using anti-slip coatings or finishings on critical areas, or non-slip colour contrast on the edges of load areas, steps and tailboard goods lifts. Finally, the document suggested that the employer should specify that there should be good access when purchasing vehicles. They should provide and maintain safe vehicles, with safe access to all parts of the vehicle such as the vehicle cab and other areas.

19. Based on the statutory provisions and the guideline document, the plaintiff submitted that the defendant should have been aware that at oil spillages, there was a particular risk of people slipping while ascending onto or descending from vehicles. The plaintiff should have been given specific instruction in relation to the dangers posed by this risk. The plaintiff further alleged that while the defendant had carried out a risk assessment of various aspects of a fire fighter's duty, they had not provided any specific risk assessment in relation to the danger posed by boots becoming contaminated by oil.

Conclusions on Liability

20. The plaintiff in this case was a very experienced fire fighter. He was the Station Officer in Cashel Fire Station and was the designated Incident Commander at the oil spillage clean up operation which took placed on 4th January, 2012.

21. The plaintiff knew the correct procedure for ascending into and descending from the cab of the fire tender. In the past, he had trained new recruits in the use of these safe procedures. In particular, he was aware of the need to maintain three points of contact with the vehicle at all times.

22. Fire fighters are required to attend to all manner of different situations. On many such occasions, their boots will become slippery,

perhaps due to the presence of mud, ice or water at the scene or where, as in this case, there is a spillage of oil. The plaintiff knew that his boots had oil on their soles and that as a result they were more prone to be slippery. He knew that he had to take extra care in these circumstances when walking around and in particular, when alighting from the fire tender.

23. Accidents happen and sometimes they happen without any fault on the part of the employer. In this case, the accident happened when the plaintiff was getting out of the cab. I am satisfied that this accident was not due to any negligence or breach of duty on the part of the defendant. If anything, the plaintiff may not have taken sufficient care as to where he was placing his foot, having regard to the fact that he had oil on the soles of his boots.

24. I turn now to deal with the specific allegations of negligence and breach of statutory duty. In relation to the absence of a risk assessment in relation to the risk posed by oil getting onto fire fighters' boots when dealing with an oil spillage, I am not satisfied that any specific risk assessment in this regard was relevant to the accident. It was patently obvious to anyone, that if you walk through oil in the course of dealing with a spillage, some oil will adhere to the boots and make them more prone to slip. The plaintiff, as a very experienced fire fighter and instructor was well aware of this risk. In the circumstances, it was not necessary for his employer to specifically draw this risk to his attention.

25. In relation to the alleged failure to provide a means for removing oil from the boots at the scene of the spillage, I accept the evidence of the defendant that they made inquiry of the manufacturer of the boot, who told them that there was no such product on the market. I also accept the evidence of the plaintiff, that when he asked about applying the Oil Free product to the boots, he was told not to do this, as it would damage the boots. In such circumstances, I cannot see that there was any breach of duty on the part of the employer in failing to provide a means of removing the oil from the boots at the scene of the spillage.

26. In relation to the allegation that there should have been a different rib pattern on the nosing at the edge of the cab floor, I am satisfied that given that the correct procedure for ascending into or descending from the cab of the tender, was for fire fighters to ascend and descend to and from the cab by facing into the cab, this meant that their feet would be approaching the nosing perpendicular to the ribs and as such, the rib design on this vehicle was perfectly adequate.

27. As regards the assertion that the defendant should have sent the nosing to the United States for the application of a special paint or covering, such as is used on travelators, I do not think that this is relevant. On a travelator, a person is walking in the direction of the ribs, so there is a risk of slipping, whereas on these vehicles, the fire fighter, if using correct techniques, will have his feet at right angles to the ribs on the nosing, so the application of the paint or covering is not needed.

28. Furthermore, I accept the defendant's evidence that this fire tender was designed and manufactured by a reputable company and conforms to the standards generally applicable in the industry. The defendant was not negligent in selecting this make of vehicle. Furthermore, the vehicle was in good condition at the time of the accident.

29. In relation to the alleged breach of statutory duty, I have reached the following conclusions: in relation to the alleged breach of s. 8 of the 2005 Act, to the effect that the plaintiff had not been provided with information, instruction, training and supervision necessary to ensure his safety, health and welfare at work, I am satisfied that the plaintiff had received adequate training in relation to the correct method of ascending into or descending from the cab of a fire tender. Indeed, as already pointed out, the plaintiff himself was an instructor who gave instruction to new recruits on the use of these procedures. In relation to the alleged breach of s. 9 of the 2005 Act, I am satisfied that the plaintiff was well aware from his training and more particularly from his extensive experience as a fire fighter, of all the risks involved in cleaning up an oil spillage. In relation to s. 10, which deals with instruction, training and supervision of employees, the plaintiff has not established that he did not receive adequate training to enable him to deal with an oil spillage in safety. Finally, in relation to the alleged breach of s. 19 and the absence of a specific risk assessment dealing with oil spillages and contamination of boots by oil; in the circumstances of this case, such a risk assessment was not necessary, as the oil was plainly obvious to anyone involved in the clean up operation and in particular, was well known to the plaintiff as an experienced fire fighter and instructor. He was well aware of the risks posed by oil contamination of the boots and therefore, the absence of any specific risk assessment in this regard, was not relevant.

30. Finally, turning to the document issued by the Health and Safety Authority in 2010, this is a guideline document, it does not establish any additional legal duty on an employer. It merely sets out best practice in relation to the area of prevention of falls from transport vehicles. Even if it did impose a legal duty on the defendant as the plaintiff's employer, I am not satisfied that the defendant acted in contravention of its terms. The plaintiff purchased a vehicle that was manufactured by a reputable manufacturer, the vehicle was in good condition at the time of the accident and the defendant had provided training to the plaintiff in the correct method of ascending and descending from the cab.

31. In summary, it was inevitable that when dealing with an oil spillage, some oil would adhere to the soles of fire fighters' boots. The plaintiff knew that he had oil on his boots and that this would make them slippery. He knew that as a consequence of that, he would have to take extra care when moving about and, in particular, when getting into and out of the fire tender. Unfortunately, he slipped while getting out of the cab of the tender. This was an unfortunate accident. However, I am satisfied that it was not caused by any wrongdoing on the part of the defendant. Accordingly, I dismiss the plaintiff's action against the defendant.