NEUTRAL CITATION NUMBER [2012] IEHC 301

THE HIGH COURT

Record Number: 2009 NO. 6473P

BETWEEN:

Wojciech Stachowski

Plaintiff

And

Diamond Bar Limited

Defendant

Judgment of Mr Justice Michael Peart delivered on the 20th day of July 2012:

1. The plaintiff is a young Polish man who came to this country in August 2007 in search of work and a better life. With the help of another Polish man who was already employed with the defendant company, he soon found work as a general operative with the defendant company which is in the business of well-drilling. He started work at the beginning of September 2007. But about four weeks later on the 4th October 2007 the plaintiff injured his left knee when he fell to the ground from the top of a steel drop leaf on the side of the defendant's truck- a drop of about 1.4 metres.

2. The reason he was on top of this drop leaf at all is that at the end of the working day at the well site, it was part of his duties to load a number of 10 metre plastic pipes onto the back of the truck, and secure them with a strap, before returning the truck to the defendant's depot. These pipes are too long to lie flat on the floor of the truck. They have to lean upwards so that one end is against a crossbar and protrude above the driver's cabin. There is a dispute as to how many such pipes were to be loaded on the day of this accident. The plaintiff told his consulting engineer, Mr Alan Conlon, that there were about 90 pipes on the back of the truck. In evidence he stated that there were about 50 pipes. His employer on the other hand thinks that no more than 15 pipes would have been there. According to Mr Fay, the employer, about 10 lengths of pipe are needed per well being drilled. He does not think that 90 lengths of pipe, or even 50, would ever have been needed to be loaded up at the depot at the beginning of the day.

3. In order to secure these lengths of pipe with the strapping onto the crossbar behind the driver's cabin for the journey back to the depot in the evening, the plaintiff's colleague would stand on the ground on one side of the truck, and the plaintiff would stand on the opposite side. They would pass the strapping from one to the other under and over the pipes on the truck in order to bundle the pipes together. This bundling or gathering together of the pipes is achieved with a ratchet mechanism operated by the plaintiff's colleague and which draws the pipes together into a bundle so that they no longer lie side by side across the entire with of the crossbar. Then the straps are secured to hooks on each side of the truck below the level of the drop leaf to prevent movement of the bundle while the truck is driven back to the depot.

4. The plaintiff states that it was often necessary for him to climb up onto the narrow top edge of the drop leaf in order to gain height in order to adjust the pipes or the strapping during the strapping process. His evidence was that it was not possible to do this by standing on the flat bed of the truck itself as the number of pipes on the back of the truck left no room for a person to stand - hence he had to stand on the top of the drop leaf. In addition, he says, there were a lot of other tools and equipment loaded onto the back of the truck besides the pipes themselves, thereby restricting the space, such as spades, crowbars, a welding machine, shorter pipes of one kind or another and so on.

5. For this reason, he states that it was normal practice that he would stand on the top of the drop leaf in order to adjust the pipes/strapping. He would stand on the top of the drop leaf and lean in towards the pipes and make whatever adjustment was needed in relation to either the pipes or the strapping. He acknowledges that this is a potentially dangerous thing to do. He says that if a ladder had been provided by his employer he could have used that safely in order to carry out this task, but that in the absence of a ladder he had no alternative but to deal with the task in the manner he did. The defendant says that a ladder would not have been of much assistance because when leaning against the side of the truck it would not in fact enable the plaintiff safely to get close enough to the pipes and the straps in order to make adjustments

6. The issue as to liability in this case is whether the defendant breached its duty of care to the plaintiff by exposing him to an unsafe system of work, resulting in a foreseeable injury; or whether this plaintiff was in fact the author of his own misfortune by doing something which was not required of him by his employer and which he knew to be inherently dangerous and which could easily cause him an injury; or perhaps a combination of the two.

7. The plaintiff says that he was given no training as to how he should perform this task, and, that having been left to his own devices in this regard, he did the best he could. The defendant says that when the plaintiff was first taken on as an employee at the beginning of September, Mr Fay who owns the defendant company, and who is very experienced in this type of work, went out on the job with the plaintiff to show him the ropes, so to speak. He knew that the plaintiff had no previous experience of this type of work. The plaintiff had apparently done some military service in Poland before coming to this country, and as part of that service had obtained a qualification to drive trucks. But that apart, he had no particular relevant work experience. He was taken on as a general operative. Mr Fay was introduced to the plaintiff by another Polish man already in his employment. He found the plaintiff to be an excellent employee during the few weeks leading up to this injury. He spoke very highly of him.

8. The plaintiff has not stated that he was instructed by Mr Fay or any other employee of the defendant company to climb up onto the narrow ridge on top of the drop flap in order to adjust the pipes or the strapping. I can see no reason why the drop flap could not have been dropped, so that the plaintiff could easily have gained access to the flat bed of the truck and carried out whatever adjustments to the pipes that was necessary, and then put the flap back up into position in order to tie the straps to the sides of the truck. It is impossible to accept that the number of pipes and amount of other equipment on this truck would have made it impossible for the plaintiff to perform the task in this way. I cannot accept that there was the number of pipes which the plaintiff says there were on the truck. I cannot see any reason why there would be so many given the evidence which I have heard that a well might require perhaps 200 feet of piping. That would be ten lengths. I cannot see how there would be 90 pipes loaded up for a day's work

or even 50 in such circumstances.

9. The plaintiff was a very competent and valued employee even though he was working for the defendant company for a short number of weeks by the time of this accident. He was a general operative. It is inherent in the nature of the duties performed by a general operative that they are not specific. They can be many and varied as the day requires. Somebody such as the plaintiff must be expected to use his own commonsense in any situation which presents itself during the course of a day's work. He must take reasonable care for his own safety too, and not take unnecessary risks. If he is presented with a situation which he considers to be risky, with the potential for injury to himself, he needs in his own interests to explore a safer way of doing the task. If necessary he could consult his employer for suggestions or advice.

10. In the present case the plaintiff was wearing Wellington boots. He decided to climb up onto the top ridge of the drop flap and to lean inwards while balancing on that ridge in order to adjust the pipes or the strapping. That was, he acknowledges, a dangerous manoeuvre. He appears to have lost his balance and fell awkwardly onto the ground below, causing himself a nasty twisting injury to his knee - a knee which had already suffered an injury previously apparently.

11. The plaintiff himself chose to adopt this particular and risky way of reaching the pipes and strapping. He was not instructed by the defendant to do this. He knew it was a risky thing to do. Having taken that risk, he has in my view only himself to blame. I am left wondering what exactly the defendant is supposed to have done to cause this to happen. The most that the plaintiff says is that he should have been provided with a ladder. I am not satisfied that even if he was given a ladder it would have assisted the plaintiff. I still consider that the optimal way of accessing the pipes was to simply lower the drop leaf and get up onto the back of the truck. The floor of the truck is only a meter or so above ground level. It is easily accessed by somebody like the plaintiff, even if some tools or equipment had to be moved slightly in order to facilitate him. He could in my view also have accessed the bed of the truck without dropping the leaf. He could even have left it in place and climbed over it and onto the floor of the truck, rather than simply staying perched precariously on the narrow ridge at the top of the drop leaf.

12. I do not consider that it is reasonable that his employer should be expected to have anticipated that the plaintiff would do as he did. It was not reasonably foreseeable that he would act in this way. I do not consider that the defendant breached its duty of care to the plaintiff. That duty of care is not an insurance or guarantee that no injury will be caused to the plaintiff. It is a duty to take reasonable care, and not expose the plaintiff to a foreseeable risk or hazard. Simply because an employee receives an injury at work does not automatically mean that his employer is responsible for its occurrence.

13. In these circumstances, I must dismiss the plaintiff's claim.