Neutral Citation Number: [2012] IEHC 48

**THE HIGH COURT**

**2009 852 P**

**BETWEEN**

**JOHN MURPHY**

**PLAINTIFF**

**AND**

**PORTROE STEVEDORES LIMITED, COASTAL CONTAINER LINE LTD AND PARTENREEDEREI MS JOHANNA**

**DEFENDANTS**

**JUDGMENT of Mr Justice Charleton delivered on the 15th day of March 2012**

1. This case is about the stacking of containers on ships and how they are unloaded. Because of negligent stacking or negligent procedures in unloading, the plaintiff, a stevedore employed by the first named defendant, was seriously injured in a fall within the hold of a vessel operated by the second defendant called the Coastal Isle while containers were being loaded into it in Dublin Port on the 9th of July 2007. After the accident the plaintiff, who was in his 60s, had to retire early.

*Description*

2. The plaintiff has almost 40 years of experience working in Dublin docks loading and unloading ships. Over that time span, the nature of the work of a stevedore has changed. In 1961, when the plaintiff first went on the docks, yellow banana boats and dark coloured coal boats would arrive in Dublin Port and these, as with other vessels, required to be unloaded package by package. For the last two to three decades, container traffic has predominated. Goods are packed into large boxes, placed on board ship, consigned to a destination in another sea port, removed, placed on a lorry in that form and then driven by road to their destination. Containers can be of lengths of 45 feet, 40 feet or 20 feet. Containers, as far as I could gather, are the same width. They can be open on three sides, being made up of a floor and an upright wall on each short side; and these are referred to as flat containers or flats. Containers which have six sides are, for that reason, fully enclosed; and these are called box containers or boxes. Anyone observing container ships will note that they seem to be loaded up to a very high level well above the notional deck level.

3. At the corner of each container, whether a flat or a box, are eight receptacles into which either cones or twist locks can be inserted. The cones fit within the receptacles and establish a position above them onto which the lower receptacles in the container to be put on top may be slotted. Twist locks work in a similar way. They are inserted into the receptacle on top of a container and, when another container is lowered on top, the upper part of the twist lock is inserted into the lower receptacle on the four corners of the container above it. A seaman will then turn a lever and this locks the container below and the container above it together. Lifting the container above without freeing the twist lock will cause both of them to be hoisted. Cones, on the other hand, do not have this effect. From a stack of containers, the topmost one can be lifted without the need for intervention by unlocking. Cones provide a high level of stability but this is less than would be the case were twist locks to be invariably used.

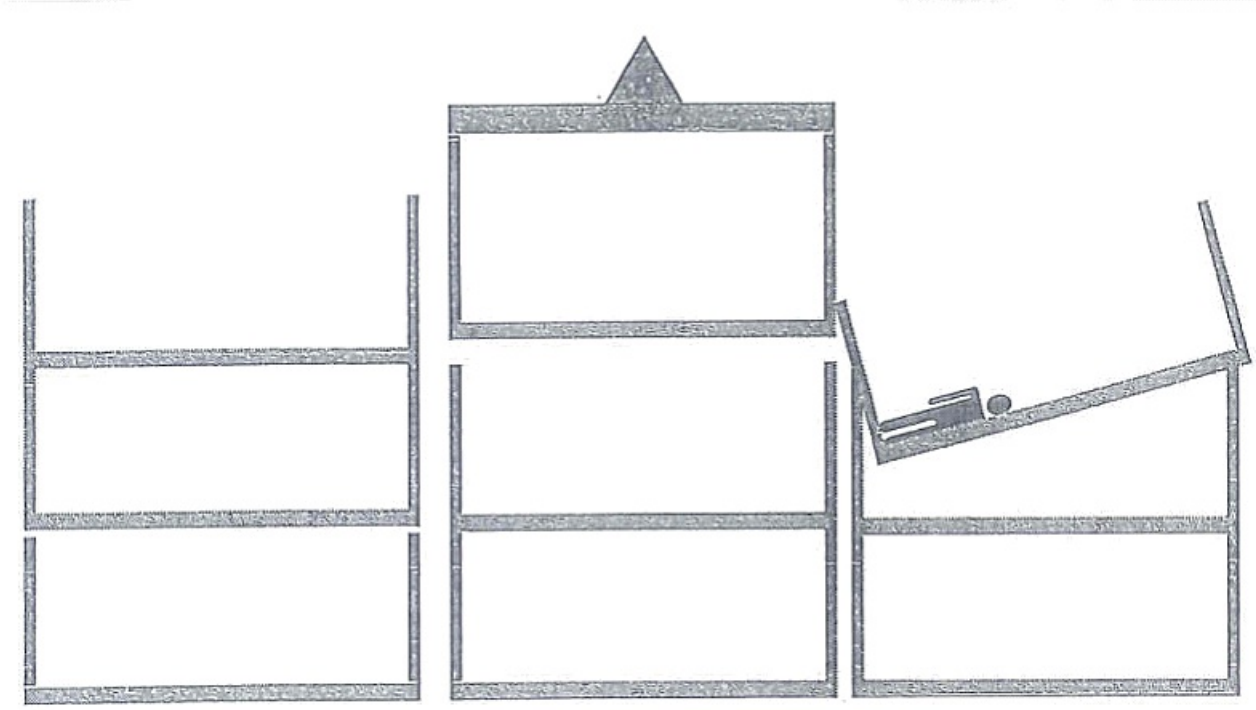
4. Large modern container ships tend to be fitted with cell guides. These are large uprights of steel which are fixed into the hold and above at intervals of the width of containers and at varying lengths from 20 feet to 40 feet to 45 feet. Two 20 feet containers will fit within a cell guide spanning 40 feet. Normal practice is to then put a 40 foot container over these for additional stability; a bit like Lego blocks. Older ships which carry containers tend not to be fitted with cell guides, especially small ships. Typically, containers will be placed in the hold on a flat surface and then built up over many levels. The system operated by the second-named defendant, in the loading of its ship the Coastal Isle was to use cones linking containers stacked within the hold, and notionally below decks, but to use twist locks for those stored above that level. When a stack of containers is completed it will be joined at the top to other containers beside it.

*Issues*

5. It is accepted by both defendants that the plaintiff was not responsible for the accident which occurred to him. A claim of contributory negligence in not wearing anti-fall equipment was withdrawn at the hearing of the action. Instead, the issue as between the defendants is that the first named defendant, a stevedoring firm which employed the plaintiff, alleges that the accident occurred due to the negligence of the second-named defendant. It is accepted that the second-named defendant which operated the Coastal Isle, was responsible for the condition of the vessel and in particular was obliged to ensure that the containers within the hold were properly and carefully stacked. It is accepted that the first named defendant owed the ordinary duty of care of an employer towards the plaintiff as employee. The first named defendant loads and unloads vessels in Dublin Port. For this they use two kinds of crane; a jib crane, which swings on an arm extended from the main upright, and a gantry crane which moves across an inverted "U" system. For the purposes of this case the type of crane used is irrelevant to liability. The first named defendant claims that the second-named defendant should not have operated a ship which was not fitted with cell guides. They also claim that the second-named defendant should not have had a system of stacking containers, and especially flats, which were not secured to each other vertically through twist locks and it is also asserted that the cone system of stacking constituted a hazard. Even was the cone system to be adequate, the first named defendant claims against the second-named defendant that the stacking of the containers through the use of cones within the hold was done badly and must have incorporated either a missing cone or a badly worn cone on the container in question. No one examined the cones after the accident, probably because of panic at what had happened to the plaintiff. The second-named defendant alleges against the first named defendant, that as controllers of the vessel being unloaded by an expert stevedoring company, they were entitled to assume that a truly safe system of work was being operated whereby the plaintiff was not ever to be put in harm's way. The second-named defendant claims that the plaintiff should never have been put in proximity to containers that were being loaded within the hold of the Coastal Isle and that, in particular, he should never have been standing on a container next to one which was being loaded.

*Accident*

6. The accident in this case must now be described. The diagram which follows will be of assistance, though as a general guide only:



7. The Coastal Isle had been loaded with container traffic in Belfast Port a day or so prior to coming to Dublin. Several flats had been placed over levels within the hold. These flats tend to be more difficult to stack on top of each other because the two short end walls have less stability than would naturally be the case in a box container, where all sides support each other. Nonetheless, whether box container or a flat container, the stacking mechanism is the same. The responsibility for ensuring that the stacking is done properly rests with the master of the vessel and vicariously with the owners of the vessel, namely the second-named defendant. The master of the vessel is required to ensure that the cones or twist locks are properly in place and that the containers are stabilised and fit for a sea voyage and for safe unloading upon arrival in another port. That vessel arrived in Dublin Port on 9 July 2007 for further loading of containers. The plaintiff had the responsibility of assisting and supervising further loading of containers into the vessel. He works closely with a crane driver who has a reasonable view through windows and by way of a camera fitted to the top of the jib. Before this accident happened in Dublin, a number of containers had been loaded on top of the flat containers already stacked in Belfast; and this took place without incident. One particular flat container proved to be difficult to load. The crane driver, Kenneth Scott, made three or four attempts to lower a container on top of the flat container already loaded in Belfast, but without success. Mr Scott gave evidence. Early in the course of the case a proposition had been floated that Mr Scott had caused his jib crane to come in with the container too fast, with the load swinging about, and had thereby caused the accident to the plaintiff. As the trial went on, that allegation was, responsibly, dropped. Even had it not been, the crane driver emerged in evidence as a careful and highly conscientious individual with a strong ability to focus on his work. The plaintiff was asked by way of two-way radio to go down to the hold to check out what the problem might be in loading this container. In doing so he was moving on a level across the floor of a number of stacked flat containers, already stacked in Belfast on others, in the aft of the vessel. His job, as stevedore in this context is, as is said in the trade, to sing out directions and suggestions to the crane driver. For this reason he came proximate to the loaded container upon which the crane driver was to stack the new container.

8. I am satisfied that in the course of the ordinary loading and unloading of container ships a level of bumping, nudging and grinding as between containers being slotted in and out takes place. The evidence from Kenneth Scott, the crane driver, from John Murphy, the plaintiff, and from John Dent, an expert witness called on behalf of the second-named defendant, is that they have never seen this ordinary and everyday contact between containers to cause a collapse. All of them had seen containers in disarray. This, however, was only in the context of a vessel arriving in port for further loading or unloading after having experienced heavy seas. This can shift goods within containers and cause them to slip from their contact with each other. Making a statement after the accident, Mr Scott said: "I was putting last flat into hatch second from outside. John was standing on flat aft of that guiding me in. Flat touched flat he was standing on and flats collapsed on one end." I am satisfied from the observation of this witness in court that this is an honest account. John Murphy, the plaintiff, testified that he had worked with Mr Scott for years as a crane driver and that he trusted him. While he remembered was that he had difficulty dropping a flat into the hold. This was quite a normal situation and he went to help. He might check on the cones topmost of the flat container or he might ask the master of the vessel to jettison some bilge so that the alignment of the vessel on the water would assist loading. Suddenly, the flat he was standing on collapsed and a strut fell across and hit him in the pelvic area. He sustained what is called an open book series of fractures.

9. Amet Èil was a sea man employed by the second-named defendant who was standing on the dock as the time of the accident. His evidence was careful and honest. He was responsible for security in Belfast and was one of 10 people employed on the vessel. Nine of these, the entire crew except the captain, were Turkish speakers and the master of the vessel is a German. He, apparently, communicates with his crew in English. Mr Èil gave evidence in Turkish with the assistance of a translator. He said that the crew had checked the stacking of containers before the ship left Belfast Port and that all was in order. His evidence in this regard, however, cannot be at the level of what is specific to the problem in this case. After the accident was over he did not examine whether the cones were properly in place underneath the flat container which collapsed with the plaintiff on it and which should have held secure by the cone system to the container underneath. He indicated that he had no concern for the way in which the first named defendant had carried out this operation. He said that the difference between the cell guide system and the open system used on this vessel was a red herring. I agree with him. He also said that the difference between the cone stacking system and the twist lock stacking system was that on this vessel the containers were linked by the cone system in the hold and with the twist lock system above the notional deck level. He had never seen or heard of a collapse during the course of loading or unloading simply because containers tipped against each other in the ordinary way. He described the process as noisy and involving banging. On the quay, he was not paying attention to the plaintiff within the hold. It was only when he heard a very loud bang that he turned around and saw the container fall with the plaintiff in it. He could not say that he had a clear view as to

what caused the accident.

10. In addition to these witnesses, the court heard expert testimony from John Dent, who had been the safety manager for the second-named defendant, and from Peter Johnston a litigation engineer. John Dent said that there should have been a safety system in place and that no stevedore should have been asked to come within two containers of a container that was having another container put on top of it. This was said, however, in the context of the lack of accidents due to the cause described, a fact which he freely admitted, that twist locks did not need to be used within the hold and that cones were perfectly adequate. He said that the cone system was not less safe than a twist lock system. Whereas, technically, yes the accident would not have happened had the container which fell been secured by twist locks to the one beneath, what was being asked for as a safety precaution of the second-named defendant was something which carried risks to crew members of the vessel being loaded in locking and unlocking the twist locks and which was not a system habitually used in shipping.

*Decision*

11. I do not believe that the cell system is necessary for the safe operation of the loading and unloading of container ships. I cannot accept that every vessel which carries containers must have a cell system of stacking fitted. This certainly helps safety. The test is, however, reasonable care. Vessels can operate in safety, to a high standard of worker protection, without it. I believe that system adds a measure of safety and security to the stability of stacked containers. It could therefore usefully be adopted into the future. The absence of that system from this vessel was not the cause of the accident. Whereas twist locks would have prevented the accident, given the absence of the vast experience of four people working on the loading and unloading of vessels not seeing an accident of this kind due to the normal nudging and bumping of containers against each other, it cannot be said that the absence of the system amounted to negligence.

12. I return to the evidence of Kenneth Scott, the crane driver. At the time when the accident occurred he had attempted to manoeuvre the new container into place above those already stacked. I am satisfied that he did not do anything other than act in an extremely careful way. The new container was hovering a matter of inches above the place on which it was intended was to rest it on the already loaded container. He could not have anticipated an accident happening due to that container nudging against the one on which the plaintiff was standing; nor could his employer the first named defendant as a stevedoring company. Such an accident had not occurred in the past. Unless a particularly strong force had been used there was no reason to anticipate a container being knocked off the one below it. I am satisfied that nothing beyond the ordinary nudging that constantly happens in the loading and unloading of containers took place in the context of this accident. I am further satisfied that had the flat container upon which the plaintiff was walking been properly secured that such a tip from a suspended container would have done nothing other than make a noise and cause a jolt of a minor kind. What happened in this accident, in contrast, was that on a slight nudge from the suspended container the flat container collapsed into the one below, also a flat container, throwing the plaintiff and making a strut fall on top of him. That would not have happened unless a cone was missing or unless a cone was so worn as to have become ineffective. Being satisfied that this loading procedure was normal and that the crane driver was acting in a highly conscientious manner, no other inference is reasonably open than that some member of the crew of the Coastal Isle when it was being loaded in Belfast had regrettably failed to insert a cone on one of the corners, or more than one of the corners underneath the flat container upon which John Murphy the plaintiff was standing. A worn-out cone is a lesser possibility. It is not possible for me to conclude that a worn-out cone caused this accident as no one examined the cones afterwards. The cause of a missing cone, as stated, is highly probable. The negligence in this case was therefore entirely due to some want of care in an unknown member of the crew of the vessel operated by the second named defendant. I am fundamentally satisfied on all of the evidence that otherwise the accident could not have happened. The party responsible for the security of the loading of the ship in Belfast is the ship owner, the second named defendant. That defendant is therefore vicariously liable.

*Decree*

13. The plaintiff was operated on two occasions and plates and screws were inserted to fix the fractures in his pelvis. He spent several weeks in Clontarf Orthopaedic Hospital after operations in Dublin. He retired in consequence of this accident a couple of years early. He has been deprived of walking long distances as a hobby and his mobility is somewhat restricted. Despite all of this, he is far from a moaner and is continuing to lead a normal life. His cheerful disposition, notwithstanding his responsibilities in life, is a tonic. The amount of damages has been set by agreement among the parties at €200,000. The appropriate order, by agreement of the parties is a decree for that amount and the costs of the plaintiff against the second named defendant. The first named defendant is, by consent, to have a decree for its costs against the plaintiff but there will be an order over for those costs against the second named defendant.