NEUTRAL CITATION NUMBER [2012] IEHC 289

HIGH COURT

[2011 No. 1538 P]

BETWEEN

ROUD RASHEE GUNGADOSS

PLAINTIFF

AND

SODEXO IRELAND LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice Gilligan delivered on the 26th day of June, 2012

1. The plaintiff in these proceedings was born on the 14th October 1987, and was employed by the defendant as a canteen worker since in or about the month of October 2008 and her usual duties related to the serving of food and making sandwiches. She had been in the employment of the defendant for a period of approximately twenty months when on the 29th June 2010, in the course of her employment she met with an accident when sharpening a knife on a knife sharpener as a result of which she suffered an injury over extensor aspect of the distal end of the left index metacarpal.

2. In so far as there is a complete conflict on practically all aspects relating to the accident itself and the surrounding circumstances the onus rests on the plaintiff to satisfy the court on the balance of probabilities that the case she makes out is what actually occurred. In so far as the plaintiff in court makes the case that she was sharpening the knife in question on an old Furi sharpener with a silver coloured rigid loop guard, this was not the case as made out by the plaintiff when she was asked shortly after the incident to offer an explanation as regards the circumstances. On the 5th August, 2010, the plaintiff indicated to Mr. O'Mahony that she was sharpening a knife at 11.50 a.m. on Tuesday the 29th June. She says she was not talking to anyone and she was looking at the knife sharpener. She does not remember how she cut her left hand because it happened so quickly. She says that the chef helped her afterwards and her supervisor called somebody in First Aid and she went to the hospital in a taxi with her supervisor. The plaintiff appears to have made contact with her solicitor at a very early stage and this resulted in a letter of complaint to the defendant company as dated the 31st August 2010.

3. In that letter it was indicated on the plaintiff's behalf that she was instructed to use a sharpener and whilst doing so she cut her hand. It is alleged that the plaintiff did not receive any adequate training in relation to the use of the sharpener and that accordingly the plaintiff was holding the defendants responsible for her injury.

4. The personal injury summons issued on 7th February, 2011, and at para. 4 of the Endorsement of Claim it is alleged that on the date in question the plaintiff was engaged in the task of sharpening a knife and in the course of so doing using a metal sharpener, the plaintiff received a cut to her left hand causing the plaintiff to suffer serious personal injuries loss and damage.

5. In setting out particulars of the defendants negligence and breach of duty including breach of statutory duty there is no reference to the plaintiff being required to use a sharpener without a guard and effectively the case that is made out is that the plaintiff was caused or permitted to carry out a task of sharpening a knife when the defendants knew or ought to have known that she was not trained to carry out the task in question.

6. The first mention in the proceedings on the plaintiff's behalf that the defendants failed to provide and maintain a guard on the sharpener which the plaintiff was using at the time of the accident is made on the 29th June, 2011.

7. I find it difficult to reconcile the nature of the claim as made by the plaintiff with her evidence because quite clearly if the plaintiff was required to use a knife sharpener without a guard the case is open and shut utterly simple and training or otherwise would play no role.

8. The difficulty from the plaintiff's perspective is that the totality of the evidence as offered on the defendant's behalf is that on the occasion in question there was only one knife sharpener in the kitchen which was a Furi model which was brought to court and extensively referred to in evidence and it has attached to it a solid black guard. The plaintiff's case as made in the notice of additional particular of the 29th June, 2011, is to the effect that the defendants failed provide and maintain any guard on the sharpener and caused or permitted the plaintiff to use the sharpener when they knew or ought to have known that the guard was absent.

9. Both Mr. Kirwan Browne, the engineer retained on the plaintiff's behalf and Mr. Tennyson as retained on the defendants behalf agree that the Furi sharpener with the black fixed guard is good and in this regard from the defendants perspective no case in my view is made out against them that they were not entitled to rely on Furi as experts in their own field or that they the defendants were not entitled to rely on their equipment.

10. The plaintiff's evidence as regards the actual sharpener in relation to a guard appears to run between there being wires in position and a fixed silver coloured looped guard being in position as shown in a photograph as attached to Mr. Kirwan Browne's report. In the course of his evidence however, Mr. Kirwan Browne, clearly indicated that the plaintiff told him that there was no guard and he picked her up as indicating that she was saying that there was no guard on the particular sharpener and this is translated into the notice of additional particulars of the 29th June, 2011. Mr. Kirwan Browne was also clear that the plaintiff was very definite that she was not using a Furi sharpener with a black solid guard.

11. When pressed Mr. Kirwan Browne appeared to indicate that he had a recollection of the plaintiff saying that there was some wire in place and that she had said something about wire, but Mr. Kirwan Browne did not have any notes of his attendance with the plaintiff and the reality of the situation is that the plaintiff was quite definitely maintaining that there was no guard on the machine at the time of Mr. Browne's inspection.

12. In my view the case shifted during the course of the plaintiff's evidence to accepting that she was using the older Furi Sharpener which had a fixed solid silver coloured looped guard and that the knife the plaintiff was sharpening could have got through this guard and effectively the case being made was that there was a guard in place but the guard was inadequate.

13. The contrary case on the defendant's behalf is that at the time of the accident there was only one Furi knife sharpener, and it had a black fixed solid guard attached to it and Michael Given, the head chef says that on the day of the plaintiff's accident he was standing a few metres away from her, heard a yelp turned around and saw that the plaintiff had cut herself and the sharpener she was using was the Furi with the attached fixed black guard. Mr. Given says that at the time of the accident this was the only sharpener in the kitchen but he accepts that there had been a previous Furi sharpener but that had become obsolete and had been thrown out around June 2008, and his evidence is corroborated by that of Mr. O'Flaherty, the third chef.

14. The plaintiff relies on the evidence of Declan Hughes who at the time of the accident was the second chef and who was absent from work on the day of the accident and that is why the plaintiff was deputising for him. He says that at the time of the accident the second Furi sharpener was in the kitchen and had not been thrown out. This sharpener had the silver coloured looped guard in place and thus the case could never have been made out that there was no guard and the appropriate case was that while there was a guard the machine was obsolete and the guard was ineffective allowing the knife the plaintiff was sharpening come in contact with the back of her hand. It appears that Mr. Hughes was only contacted a very short time prior to the actual hearing of the action to give this evidence and in so far as I have to decide an issue of fact as between Mr. Given and Mr. O'Flaherty's evidence and that of Declan Hughes I come to the conclusion that Declan Hughes is mistaken in his evidence and that while he is correct that at one stage there was the second Furi sharpener in the kitchen it had in or about June 2008, and prior to the plaintiff's employment commencing been discarded.

15. I take the overall view that the plaintiff probably is confused arising from the actual accident itself which undoubtedly must have been particularly painful at the time as to the nature of the knife sharpener she was actually working on and this aspect of course would have been clarified most simply if the accident had been properly investigated by or on the defendant's behalf, particularly if it was intended that if proceedings were instituted this was an action that was going to be fully defended. In any event the conclusion I come to on the evidence is that the plaintiff was working on the Furi sharpener with a black fixed guard in position and which was satisfactory for the purpose of being used in the defendant's kitchen on the occasion in question.

16. The difficulty for the plaintiff is that the case she made out in pleadings and verified was to the effect that she was working on a knife sharpener which had no guard in place and I have found that this case has not been made out and thus, I do not consider it necessary to resolve the various issues that arise in relation to training or otherwise.

17. Accordingly the plaintiff's case fails and is dismissed.