37/80

HIGH COURT OF AUSTRALIA

AUSTRALIAN OIL REFINING PTY LTD v BOURNE

Stephen, Mason, Aickin, Wilson and Murphy JJ

13 November 1979; 19 February 1980 — (1980) 54 ALJR 192; (1980) 28 ALR 529

NEGLIGENCE – BREACH OF STATUTORY DUTY – DUTY OF EMPLOYER TO TAKE REASONABLE PRECAUTIONS TO PROVIDE SAFE PLACE OF WORK AND SAFE MEANS OF ACCESS – STATUTORY OBLIGATIONS OF EMPLOYER AS TO FLOORS AND AS TO MEANS OF ACCESS – WHETHER COURT IS ENTITLED TO TAKE JUDICIAL NOTICE OF FACT THAT THE PRESENCE OF WATER ON A STEEL PLATFORM INCREASES THE RISK THAT WORKMEN WILL SLIP THEREON – "FLOOR" – "SO FAR AS IS REASONABLY PRACTICABLE": *FACTORIES, SHOPS AND INDUSTRIES ACT* 1962 (NSW) SS4(1), 22(4), 34(a), 40(1).

The respondent was employed by the appellant as a refinery operator at its premises at Kurnell. After climbing down a metal ladder on to a metal platform approximately twenty-five feet above the ground, he slipped on the platform which was covered with a large patch of oil and water, causing him to fall backwards and injure himself. For some time prior to the accident, there had been water on the platform, due to a leak of steam from a nearby copper pipe. The matter had been recorded in a maintenance book well before the accident, but had not been rectified. After the accident a number of holes were drilled in the platform to prevent the continued accumulation of water. There was no evidence to suggest that oil was usually associated with the water on the platform. The respondent brought an action against the appellant for damages in the Common Law Division of the Supreme Court of New South Wales. No evidence was called for the appellant. The trial judge made an award of $25,000 finding against the appellant in respect of a breach of its common law duty to take reasonable precautions to provide a safe place of work and safe means of access, and also holding that the appellant had been in breach of ss22(4), 34(a) and 40(1) of the *Factories, Shops and Industries Act* 1962 as amended (the Act), which provisions imposed obligations as to the safety of "floors and means of access in factories". An appeal by the appellant to the Court of Appeal of the Supreme Court was dismissed. The appellant appealed to the High Court. It was sought to contend on its behalf that the presence of oil was the sole cause of the accident, representing a transient, exceptional situation for which the appellant was not liable at common law or under the relevant provisions of the Act, while the trial judge was not entitled, in the absence of expert evidence, to conclude that the presence of water on the platform created a dangerous situation for which the appellant was liable.

HELD: Decision of the Supreme Court of New South Wales (Full Court) affirmed. The trial judge was correct in finding in favour of the respondent. Appeal dismissed with costs.

1. (Per the whole court) No expert evidence was necessary to show that to allow water to lie on a stool platform would increase the risk of a workman slipping on that platform. This was an obvious matter of which the Court could take judicial notice. It was immaterial that the presence of this oil added to the hazards due to the accumulation of the water, and the trial judge was entitled to find that the accident was not wholly attributable to the presence of the oil.

***Holland v Jones* [1917] HCA 26; (1917) 23 CLR 149, at p153; 23 ALR 165, applied.**

2. (Per Murphy J) The trial judge was correct in holding that there had been a breach of the relevant provisions of the Act. There had been no provision of "safe means of access" so far "as is reasonably practicable" within the meaning of s40(1). It was for the employer to prove that it was not reasonably practicable to provide and maintain safe means of access, and that, so far as it was reasonably practicable, he did so, but the appellant had made no attempt to do so. It was also open to the trial judge, in the light of the evidence, *inter alia*, that the water had been left for some time on the platform and that oil was to be found everywhere around the refinery, to find that the platform was a "floor", not maintained in good order and conditions within the meaning of ss22(4) and 34(a) of the Act, and that the accident had been caused by the breach of s22(4) for which the appellant was liable.
