

Rajendran A/L Palany v Dril-Quip Asia Pacific Pte Ltd
[2000] SGHC 245

Case Number : Suit 109/2000A
Decision Date : 23 November 2000
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : S Gogulakannan [S K Kumar & Associates] for the plaintiff; Simon Yuen [Tan & Lim] for the defendants
Parties : Rajendran A/L Palany — Dril-Quip Asia Pacific Pte Ltd

JUDGMENT:

Grounds of Judgment

The plaintiff, a 33 year old Malaysian national, at the material time was employed by the defendants to work as a Fitter Grade B. On 15 May, a Friday, 1998 at about 8 a.m. he went to work and was transported from the defendants' main office to No. 3 Tuas Avenue, Singapore ("accident site"). The defendants were carrying on the business, among others, of manufacturing and repairing oilfield and gas field machinery equipment. Such equipment included heavy and long pipes and connector forgings ("connectors"), which are metal rings used to connect the ends of metal pipes. They were occupiers of the site.

2 In the course of work that day, the plaintiff together with his fellow workers were engaged in transporting and stacking connectors. He claimed damages and special damages suffered by him in consequence of having sustained a central disc prolapse between L4/L5 vertebrae in the course of work that Friday. He asserted that he had sustained the injury by reason of the defendants' breaches of statutory duties or by reason of the negligence of the defendants, particulars of which were set out in the pleadings. In the course of the trial, and after the evidence emerged clearer, the pleadings were amended to the effect that the defendants had, in circumstances where very urgent heavy work had to be done, failed to put in place a safe system of work to prevent and/or cater for the plaintiff attempting to match the higher and much stronger performance of a Mr Doug Harrison, the defendants' Operations Manager, in the stacking of the connectors.

3 The defendants by way of their defence asserted that the plaintiff had been manually lifting and stacking the connectors since the commencement of his employment on 13 January 1994. They maintained that he had been properly trained to use the proper and safe methods. The methods for lifting the connectors emphasised the use of their legs by bending them and lifting the connectors with both hands of the employee and the avoidance of bending over and lifting them by bending his back. They contended that if the plaintiff did not carry out those simple instructions, then he had only himself to blame.

4 In addition, the plaintiffs asserted that the plaintiff's injury was "grounded upon a degeneration of the his lumbar discs (L1, L2, L4 and L5) which was a natural process". They further assert that such a degeneration of the lumbar discs made his spine prone to prolapse by any sudden exertion to the back such as bending to pick up the "moderately heavy" connectors during work. The defendants denied that the manual work which plaintiff carried out that day caused his injury.

5 At the commencement of the trial, it was agreed that the trial will be on the question of liability. Damages and special damages, which were specifically pleaded, were agreed to be assessed by the Registrar, if necessary.

The factual background

6 On 15 May 1998, Mr Doug Harrison directed the plaintiff to work at the accident site soon after 8 a.m. Another worker, Raman, was also instructed to go. He instructed them to load the connections onto the pallets. As shown in the photographs appearing in PBD31-34, the connectors were stacked 5 connectors high, separated by wooden planks. The bottom layer of each pallet is

made up of a two-tiered wooden platform which were nailed together and which had a gap into which the forks of a fork-lift could be inserted and mechanically lifting the whole pallet full of 5 connectors and transporting them to wherever is desired.

7 Having given the workers training and demonstration on many occasions, he left them to stack the connectors and move them to the designated places. The defendants urgently needed vacant space for the reception and stacking of a huge quantity of long pipes which were due to arrive in batches. Those pipes were being trucked from the Port Authority of Singapore under police escorts and all possible delays had to be avoided, as the trucking out times and their arrivals were all pre-arranged. No changes could be made, without a lot of trouble and inconvenience.

8 At about 10 a.m. Mr Doug Harrison took 2 workers, Wong Yip Seng and Ah Teck to help plaintiff and Raman with their work. That was because he had seen the slow pace of work and he was unhappy about it. So he brought along 2 more workers.

9 At about 2.30 p.m. Mr Harrison returned to the accident site. He observed that he had only 2 hours before quitting time and only about half the number of connectors were stacked. In his view, the workers did not use the forklift efficiently and they also did not work smartly. He explained that a forklift had two movements. On the other hand, a human being could lift and manoeuvre better. He knew he had no choice and he had to free the space which were occupied by the connections to receive a huge quantity of 60 ft pipes which were arriving from the PSA. They were due the following morning, which was a Saturday, at about 11 a.m. The arrival of the pipes in several trucks involved their unloading and stacking by means of a forklift with heavier capacity. That job spilled over to Sunday. The plaintiff was involved in that work as well, as I will describe later.

10 So Mr Harrison, as he sometimes did, personally stacked pallets. Now, as I had seen him in court, Mr Harrison is about 6 ft 4 inches tall. He is a strapping man. He is very strong. He was at the material time much, much stronger than his Asian workers. They are all of much smaller built. Mr Harrison lifted the heavy connectors, each of 45 kilograms, and stacked them right to the 5th connector on each pallet. It was very heavy work. Whether one uses the knee, bend and lift a connector and stack it, the use of the muscles of the back and spine is involved in every stacking. According to Mr Harrison, out of a total of about 340 pallets, about 180 pallets were left unstacked when he arrived at the scene in the afternoon. He stacked about 30-40 connectors. He stacked them to the 5th level.

11 Mr Harrison, quite candidly admitted, that everybody was exhausted. But everybody took turns to take a respite, a breather. He admitted that the workers, including the plaintiff, were put under some pressure, seeing that he was himself putting his shoulder to the plough, so to speak. The workers, quite understandably, exerted themselves far more than they would have done otherwise. I find that they tried to match, or at least not trail too far behind, Mr Harrison in relation to the rate of stacking the connectors. He admitted that whatever safe system of work he had he did not have in place a system to prevent or cater for workers including the plaintiff attempting to match or perform as closely as possible as he could in the urgent circumstances in which work had to be completed. Knowing that the pipes were arriving, more workers could have been employed to clear, stack and palletise the connectors. They should have started earlier and the heavy work could have been done without unduly straining the back of the workers. When a worker was rushed, he was prone to short circuit the process of bending his knees and lifting the connectors. If more workers had been deployed, then Mr Harrison could have insisted that two workers lift each connector and stack them, especially stacking them at the 4th and 5th level, which inevitably strained the backs of the workers.

12 Although the workers were exhausted after such heavy duties, Mr Harrison offered them, admittedly on a voluntary basis, overtime to carry out the unloading and stacking of the 60 ft long pipes from 7.54 a.m. on Saturday 16 May 1998 to Sunday 0244 hours. Although the plaintiff was suffering a severe back ache, he volunteered as his services were required to drive the bigger fork lift. Admittedly, the workers had time, in between the arrivals of each truck load of pipes after they had stacked the pipes. The driving of the forklift continued to exert stresses and strains on the back of the plaintiff as the doctors had testified.

13 The defendants took issue over the causation of the plaintiff's prolapsed disc. Counsel for them explored this question exhaustively, if in a somewhat belaboured manner. Dr Fong Wai Yin conducted the plaintiff's pre-employment medical examination on 3 January 1994. The plaintiff's muscular skeletal system was essentially normal. He confirmed that the plaintiff had consultations with him from 8 April to November 1999. Prior to 10 July 1998 the plaintiff did not consult him for his back

problems. When he consulted Dr Fong on 10 July 1998 for the first time about his back problems, his chief complaint was low back ache with left sciatica for a period of approximately 1 month which the plaintiff attributed to the carrying of heavy loads at work. He formed the provisional clinical diagnosis of a prolapsed intervertebral disc ("PID") with involvement of the L5 root. Dr Fong then referred the plaintiff to Dr Mitra, Orthopaedic Surgeon at the Singapore General Hospital for further management. Whether PID was picked up depended on the symptoms presented.

14 Dr Mitra at first treated the plaintiff conservatively. He was given analgesic but he developed perforated ulcer and he was admitted and operated in Johore Bahru Hospital. He was suffering from left-sided radiculopathy associated with numbness along the L5 dermatome. He was treated with physiotherapy and it included intermittent lumbar traction, ultrasound therapy, and back care exercises. By 14 September 1998 the plaintiff was still suffering symptomatic prolapsed intervertebral disc. On 2 March 1999 there was a further recurrence of acute L5 radiculopathy. It was only then that he was investigated with MRI of his lumbar spine which confirmed central disc prolapsed between L4/L5 vertebrae. This was causing "significant thecal sac compression"; that explain the severe back pain. The plaintiff was admitted on 24 March 1999 for surgical management. He was treated with fenestration and discectomy of L4/L5 disc prolapsed. He made satisfactory post-operative recovery. The plaintiff was again referred to Dr Mitra for back pain on 8 May 2000. He was assured that the pain was due to ligamentous sprain rather than a prolapsed intervertebral disc.

15 In cross examination, he agreed that disc degeneration is an inevitable ageing process. He pointed out that it needed strenuous bending to cause a disc prolapse between L4 and L5. He also points that a young, healthy disc prolapse much more than a degenerated disc. A degenerated disc has less material and the ligament that contains the material has become fibrotic and stronger. The disc material, being of small amount, would require a tremendous amount of pressure or strain to make the material extrude through the ligament, i.e. annulus. When asked about the plaintiff's evidence that he heard a "click" on 15 May 1998, followed by severe back pain, Dr Mitra opined that if pressure built up, annulus ruptured and one developed acute pain. There might or might not be sound. If the pressure was too much, the material would come out through the opening and once it extruded one suffered a prolapsed disc. When more of the material came out, it would press on the nerves. That would cause leg pain which is called radiculopathy. In the case of the plaintiff it was a moderate size disc prolapse, but the plaintiff on 13 July 1998 had muscle weakness and Dr Mitra then stated that he had more than moderate size disc prolapse.

16 Dr Kanda Pillay's evidence was very clear. I have no hesitation to accept, for the cogent reasons that he had advanced, that the plaintiff suffered a prolapse of the disc on 15 May 1998 as a result of having to stack the heavy connectors under urgent circumstances. I also accept his opinion, for the reasons he has set out in his report of 15 May 2000, that the plaintiff will need another excision of the disc and a decompression of the L4 and L5 nerve roots on the left side with a posterior fusion of the L4/L5 level using instrumentation and bone grafting.

17 On the issue of liability I was satisfied that there was a clear and known danger of the plaintiff suffering injury to his back when he was required to carry the heavy loans in urgent circumstances under which he was under pressure to maintain a respectable rate of stacking when compared to the much stronger Mr Harrison. It was plainly foreseeable by any reasonable employer that a workman, such as the plaintiff, would be liable to suffer a back injury such as a PID. Accordingly, a reasonable employer could foresee that a PID could be sustained. It was clear that the system of work in the urgent circumstances was unsafe for the reasons I stated earlier. More planning, more time and more workers should have been deployed and when lifting the connectors from the 4th level upwards, two workers should have been provided. It was unreasonable to think that if Mr Harrison could do it, so could the much smaller and less strong workers like the plaintiff.

18 However, the plaintiff should not have tried so hard and so long. His overtime work, driving the forklift, exacerbated his prolapse, and he should have stopped. Nobody forced him to work, though he must have felt some pressure in view of the urgency and the shortage of manpower.

19 In those circumstances, I decided that the defendants were liable to the extent of 40% in terms of liability. However, I awarded the plaintiff 60% of the costs because the defendants had taken more time and required more efforts on the part of the plaintiff to prove several issues of fact which were resolved against the defendants.

Lai Kew Chai

Judge

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