Chua Ah Beng v C & P Holdings Pte Ltd
[2001] SGHC 88

Case Number : Suit 909/2000

Decision Date : 08 May 2001

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : S Magintharan (Netto Tan & S Magin) for the plaintiff; Michael Eu Hai Meng and Anthony Wee (Cooma Lau & Loh) for the defendants

Parties : Chua Ah Beng — C & P Holdings Pte Ltd

Employment Law – Employees' duties – Employee slipping and falling off crane while replacing cover on platform after inspecting engine – Severe injuries – Whether employers in breach of statutory duties – Whether platform of crane dangerous part of machinery requiring fencing – Whether duty to maintain crane to prevent breakdown relevant – Whether employers obliged to provide training and warning – Whether employers fail to provide safe place of work – Whether outcome different if fall occurs while opening cover – ss 22(1), 24(3), 28, 33 Factories Act (Cap 104, 1998 Ed)

Employment Law – Employees' liabilities – Employee slipping and falling off crane while replacing cover on platform after inspecting engine – Severe injuries – Whether employers negligent – Whether employers obliged to provide instruction and supervision – Whether outcome different if fall occurs while opening cover

JUDGMENT:

Grounds of Decision

1. The Plaintiff was employed by the Defendants to operate a large Kalmar crane of 37 tons lifting capacity. He filed this action because he suffered severe injuries when he fell off the crane.

2. When the accident occurred, the Plaintiff had just started work for the day. He was carrying out routine inspection of the cranes engine when he fell from the crane onto the ground and suffered spinal injuries.

3. At the time of the accident only he was at the crane, and no one witnessed the accident. He was the only one who can explain what happened. Unfortunately, he gave two different accounts of that, one recorded by an insurance loss adjuster, and another in his affidavit of evidence-in-chief.

4. The Plaintiff sued the Defendants for negligence and breach of statutory duties. For the former the main complaints were that the Defendants have failed to provide a safe workplace by not fitting a fence on the crane which would have prevented the Plaintiff from falling, and failing to provide proper training and supervision to the Plaintiff. For the latter, the Plaintiff alleged that the Defendants had breached s 22(1) of the Factories Act for failing to provide fencing for the crane, s 24(3) for failing to maintain the crane, s 28(1) & (2) for failing to provide proper training to the Plaintiff, and s 33 for failing to provide a safe place of work.

5. The Defendants denied the claims and alleged that the Plaintiffs injuries were caused or contributed to by his own negligence in failing to take reasonable care of himself.

6. It was not disputed that the Plaintiff did not receive any instructions on the operation of the crane. The Defendants initially employed him as a forklift operator. Subsequently he became a container truck operator. He was doing that for about seven years, when the Defendants purchased the 37-ton crane in 1995 which another employee Teo Chin Heng was assigned to operate. As he showed interest in the crane Teo explained the operations to him and allowed him to operate it occasionally. When Teo resigned in 1997 or 1998, the Plaintiff took over his duties until his accident on 17 March 2000.

7. The Plaintiff operated the crane by himself with no one sharing it with him. He was also in charge of its daily maintenance which involved checking the cranes oil levels and looked out for leakages every morning before starting the crane. He had to get onto the platform in front of the operators cabin and open three rectangular covers on the floor of the level rectangular platform. The covers and the platform floor were of the same alloy material with prominent raised non-skid markings. The covers are lifted by handles attached to one side. When each cover was removed, parts of the engine were revealed beneath and oil levels can be checked and leakages can be detected. The covers were not large or heavy the cover in question measured 109 cm by 64 cm and weighed 10 kilograms, and can be handled by one person.

8. The Plaintiffs practice was to start with the cover nearest to the cabin, and work away from the cabin. On the day of the accident, he had opened and closed the first two covers and was engaged with the third cover when he fell from the platform and landed on the ground beside the crane.

9. As I have stated earlier, the only accounts of the accident came from the Plaintiff. In his affidavit of evidence-in-chief of 18 December 2000, he described the events leading to the accident at paras 33-39 thus

> 33. On 17 Mar 2000 at 8.00 am I started work at the Defendants factory at 46 Penjuru Lane Singapore 609206. As usual the first thing I would do was to check on the water, oil and pipes to ensure that they are in order before I started operating the said machine.
>
> 34. I climbed onto the steps of the said machine and checked on the water level of the machine balancing myself on the little space available. The water was sufficient for the day.
>
> 35. I then moved round to the front of the said machine. I grabbed hold of the cabin, and swing myself onto the platform without the aid of any equipment. I then balanced myself on the front platform which was oily.
>
> 36. I stepped on the hard covers and squatted to inspect the first compartment and to check the oil level. The compartment was the closest to the cabin. The metal cover was quite heavy. I used both hands to pull out the cover. I put the cover aside and inspected the oil level. I found that the oil was sufficient. I then placed the heavy iron cover back above the oil tank and moved backwards. After moving backwards and still squatting on the third metal cover I inspected the second compartment. I again used both my hands to pull out the iron cover to inspect the pipes. I found that it was in order and replaced the second cover with both hands.
>
> 37. After inspecting the second cover I moved backwards to inspect the third compartment still squatting. I was near the edge of the platform as the third compartment was about 2 feet away from the edge. I pulled out the iron cover of the third compartment to check on whether there was any leakage on the large hydraulic pipes. The iron cover was quite heavy and stuck. I gave it a heavy pull and the iron cover dislodged itself. However, due to the weight of the iron cover, the oily surface and my force in removing the same I lost my balance and fell backwards.
>
> 38. I was still holding the heavy cover which was pulling me backwards. I dropped the heavy cover but was still falling. There was nothing to prevent me falling backwards and as the result I landed on my back and bounced over the platform and fell off the platform. I shouted as I lost balance but there was no

> one around. There was also nothing I could have held on to prevent the fall. I tried to reach out for something to hold on to but there was none.
>
> 39. I fell from more than 7 feet and landed on the ground in front of the said machine. I felt a crack as my head landed on the ground. I could not move at all as I landed on the ground. I was lying there motionlessly for about 10 mins as there was no one around. I started shouting for help. Then later one of the other prime mover driver one, Mr Ng walked passed and came to my assistance. I told him that I could not move and he then called for help and an ambulance was called. I was then rushed to the National University Hospital and was in rather shocked as I could not feel or move my hands or legs after the fall.

10. A different account of the events was recorded when he was interviewed on 5 April 2000 by insurance adjuster Simon Tan Mui Khim. This statement was signed by the Plaintiffs wife Chia Foong Kheng because he could not sign it himself. The statement was disputed by the Plaintiff, and I will deal with that later on.

11. In this statement, it was recorded that

> On 17 March 2000 at about 0750 hours, I arrived at the container yard of No. 46 Penjuru lane. There was no one around there as it was still early. As usual, I climbed up the Kalmars engine compartment to commence the checking of engine oil. I opened the engine compartment and checked the engine oil which is full. I then closed the compartment and opened the other compartment near to the edge of the Kalmar to check the other part of the machine to check for oil leakage. As I was closing the compartment, I suddenly slipped and fell down from the Kalmar and landed on the concrete ground. I cannot remember which part my body landed on the ground. I was wearing a pair of safety boots at that time. I was not wearing safety helmet. When I landed on the ground, I felt that I could not move and shouted for help.

12. Simon Tan is an employee of Crawford & Co International Pte Ltd, loss adjusters. Crawford was engaged by Liberty Citystate Insurance Pte Ltd, the Defendants insurers, to investigate the accident. He visited the Plaintiff at the National University Hospital on 5 April to interview him.

13. Simon Tans evidence was that when he visited the Plaintiff, he introduced himself, and spoke to the Plaintiff in Hokkien. He told the Plaintiff he was there to gather facts on how he fell from the crane, and that he will record a statement from him, and the Plaintiff agreed to give him a statement. At that stage, the Plaintiffs wife arrived. He introduced himself to her, and told her of the purpose of his visit, and of his intention to interview the Plaintiff.

14. He started the interview by recording the Plaintiffs particulars which the latter furnished himself. After that he recorded the events of the morning of the accident. The interview was conducted on a question-and-answer format, and the statement was recorded in narrative form. The process took more than thirty minutes during which time the Plaintiff spoke clearly to him.

15. When the statement was completed, he read it back to the Plaintiff in Hokkien in the wifes presence and asked the Plaintiff to sign it. The Plaintiff said he could not sign because his hands were numb, and suggested that his wife signed it on his behalf. She confirmed that she had no objection to that. He then read the statement to her in English as she spoke fluent English. After that she requested for the statement and she read it over herself, and had a mistake in her name corrected before she signed it.

16. Simon Tan saw the Plaintiff again on 14 July, after he was discharged from hospital. He said that the visit was to ascertain if the Plaintiff could sign the statement he had given earlier. When he met the Plaintiff, the Plaintiff told him he still had numbness in the hands and could not sign, and authorised his wife to sign the further statement that

> I wished to state that till now, I am unable to sign this statement due to the numbness of my both hands as a result of my injuries. As such, I had authorised my wife Madam Chia Foong Kheng, NRIC No: 1620474-T to sign the above statement on my behalf. I affirmed the statement to be true and correct and signed by my wife.

17. Before the further statement was recorded, he read the statement of 5 April to him again in Hokkien and showed it to the Plaintiffs wife. Neither of them wanted to make any amendment to the statement.

18. Counsel for the Plaintiff put to Simon Tan that the purpose of the meeting of 14 July was to get the Plaintiffs wife to sign a letter of authorisation to the NUH for the release of the Plaintiffs medical report. He disagreed and explained that he had already obtained a letter dated 3 June with the Plaintiffs thumb-print on 7 June. He had previously obtained a letter of authorisation signed by the Plaintiffs wife on 5 April, but that form was rejected by the NUH which required one with the Plaintiffs signature. On 30 May he sent another form to the Plaintiff for him to sign or attach his thumb print on it. He received the form with the Plaintiffs thumb print dated 3 June and submitted it to the NUH on 9 June.

19. The Plaintiff denied that the statement of 5 April was made by him. He said he remembered that someone from the insurance company visited him in hospital and spoke to him. He understood the questions put to him, and remembered his responses to them. When Simon Tan asked him how he fell, and he told him "while I was lifting up the cover I lost balance and fell down" and he also told Simon Tan that the platform was oily but he did not say "As I was closing the compartment, I suddenly slipped and fell down" as was recorded. As he was feeling giddy and was vomiting, Simon Tan conducted the rest of the interview with his wife. After Simon Tan recorded the statement, it was not read back to him.

20. He also recounted the events of 14 July. Simon Tan enquired about his condition, and he told him that he felt numb and had difficulty eating. Simon Tan also told his wife that an application had to be signed for his medical report. He did not ask him to sign any letter of authorisation for the release of medical reports and did not show him the statement recorded on that day or read to him any statement about the numbness of his hands.

21. The Plaintiffs wife Chia Foong Kheng deposed in her affidavit of evidence-in-chief that on 5 April she went to visit her husband in the NUH, Simon Tan was asking the Plaintiff questions and writing. Simon Tan introduced himself and told her he needed a statement from the Plaintiff. He then asked her about his family and work particulars. Simon Tan then asked him to sign the statement on behalf of the Plaintiff. She was hesitant and suggested that he left the statement with her, but he persisted. He handed the handwritten statement to her but she had difficulty reading his handwriting. Simon Tan read parts of the statement to her relating to the Plaintiffs family particulars, working history and the circumstances leading to the Plaintiffs fall. On Simon Tans persuasion, she eventually signed the statement. She reiterated that the Plaintiff had not authorised her to sign it on his behalf, and she signed on Simon Tans assurance that the statement was intended for filing purposes.

22. Chia Foong Kheng confirmed that she met Simon Tan again, probably in July. She said he had called and informed her that he needed her authorisation to obtain a medical report from NUH. When they met, she told Simon Tan that the Plaintiff was still having numbness all over his body and was unable to use his hands to feed himself. Simon Tan added that to the statement of 5 April. He then handed the whole statement to her, but she only read the last page including the concluding part of the previous statement of 5 April that

> I wished to state that the accident was purely accidental. I am a qualified Kalmar operator more than 10 years. I authorised my wife to sign this statement on my behalf.

23. Although she said the Plaintiff had not authorised her to sign the statement of 5 April on his behalf, she did not raise that with Simon Tan when she re-read this part of the statement before signing the further statement.

24. There are material differences in the Plaintiffs and Defendants positions on the statement of 5 April. The Plaintiffs case is

that Simon Tan had ignored the Plaintiffs account of the accident and recorded something he did not say. The defence case, on the other hand was that the statement was a faithful record of the events recounted by the Plaintiff on 5 April.

25. Having observed Simon Tan giving evidence, I formed the impression that he was just carrying out his duties when he recorded the statement. I do not accept counsels suggestion that he suppressed what the Plaintiff told him about the accident to help the Defendants insurers avoid or reduce their liability. I am fortified in my impression by the fact that he handed the statement to the Plaintiffs wife twice, on 5 April and 14 July, giving her the opportunity to read it and note and correct the inaccuracies something he was unlikely to do if he had been less than honest with the recording. There was further fortification in Simon Tans explanation that on 14 July he visited the Plaintiff because he wanted him to sign the statement of 5 April. The Plaintiff and his wife alleged that he visit not for that purpose, but that Simon Tan had gone to get a letter of authority for the medical report. The documentary evidence contradicted them. The documents referred to in paragraph 18 hereof showed that Simon Tan had submitted the application in the proper form on 9 June, and he did not require a letter from the Plaintiff or his wife on 14 July. The statement of 14 July itself showed Simon Tans concern was that the Plaintiff did not sign the statement of 5 April himself.

26. The documentary evidence also raised questions on the assertion of the Plaintiff and his wife that he had not authorised her to sign the statement of 5 April on his behalf. First, it was stated in clear terms at the end of that statement that the Plaintiff authorised his wife to sign the statement on his behalf. Second, the Plaintiffs wife Chia Foong Kheng agreed that she re-read that portion of the statement when it was shown to her again on 14 July, but she made no comment or protest on 5 April or 14 July.

27. I had the opportunity to observe her when she testified. She has a good command of English and appeared to be a sensible and careful person. She did not strike me as a person who would sign a statement on behalf of her husband without his authority and without ensuring that the statement was properly recorded.

28. I find that the statement of 5 April was given by the Plaintiff and duly recorded by Simon Tan, and was signed by the Plaintiffs wife with his authority. Where it differs from the Plaintiffs affidavit of evidence-in-chief, I accept the statement to be an accurate account of the circumstances of the fall.

29. Having made my finding on the circumstances leading to the fall, I shall have to decide whether a case in common law negligence or breach of the provisions of the Factories Act has been made out.

30. I shall begin with the common law liability, from the starting point that an employers obligation to his employee is threefold, "the provision of a competent staff of men, adequate material, and a proper system and effective supervision." per Lord Wright, *Wilsons and Clyde Coal Company Ltd v English* [1938] AC 57@ 78.

31. The fall did not result from the operation of the crane. When the Plaintiff fell, he had not started its engine. The Plaintiff fell when he was replacing the cover after checking the oil levels. There was no complaint from Teo Chin Heng or the Plaintiff that that was an operation on which they needed instructions. The operator has to check the engine before he operates the crane. To do that he has to remove the covers and replace them after the inspection. An experienced crane operator should be able to do that without instruction or supervision.

32. It is not the law that an employer must give instructions on every aspect of his employees work. Recognition must be given to the latter to be able to carry out some work himself relying on his own experience and judgment.

33. As Lord Oaksey held in *Winter v Cardiff Rural District Council* [1950] 1 All ER 819 @ 822-3 when he considered an employers duty to give his employees adequate directions on the system of work or mode of operation

> (T)his does not mean that the employer must decide on every detail of the system of work or mode of operation . where the operation is simple and the decision how it shall be done has to be taken frequently, it is natural and

> reasonable that it should be left to the foreman or workmen on the spot.

34. Likewise, Singleton LJ stated in *Martin v A.B.Dalzell & Co Ltd* [1956] 1 Lloyds Rep 94 @ 100

> It is not for every act that an employee does that an employer must give him instructions how it should be done. Some things must be left to the foreman or charge-hand. The duty of the employer is to act reasonably, and it has been said, time and time again, that a master who employs a servant in work of a dangerous character is bound to take reasonable care so to carry on the operations as not to subject those employed by him to unnecessary risk. But the man in this case was an experienced man, and I cannot think that it was wrong to entrust him with a duty of deciding how this comparatively simple task should be done.

35. The opening and closing of the covers is a simple operation. No one had fallen off or injured himself before doing that since the crane was purchased in 1995. Teo Chin Heng had never lost his balance doing that. He claimed that he had nevertheless informed his supervisor John Teo Boon Buck that the platform was dirty and dangerous, but nothing was done. However John Teo not only denied that Teo Chin Heng had made the complaints to him, but added that if the place oily, it was the responsibility of the operator to clean it. Having observed the two witnesses I believed John Teo over Teo Chin Heng. I do not believe that the latter had complained about the dirtiness or had expected someone to clean the platform for him.

36. The Plaintiff had never fallen before whilst replacing the covers. He said he had slipped while lifting them, but he did not regard that as significant or potentially hazardous.

37. Looking at the Defendants conduct, they had purchased a new crane with non-skid flooring on the platform, provided the operator with safety boots, and left it to him to open and close the covers. For the five years following the purchase of the crane there were no accidents, no complaints from Teo Chin Heng on my finding and none from the Plaintiff by his own evidence.

38. However, the fact remains that the Plaintiff did slip, fall and sustain serious injuries. Everyone would sympathise with him over the accident. Nevertheless in deciding the merits of his claim, we do well to take heed of Lord Thankertons reminder in *Glasgow Corporation v. Muir and Others* [1943] AC 448 @ 454-5 that

> The court must be careful to place itself in the position of the person charged with the duty and to consider what he or she should have reasonably anticipated as a natural and probable consequence of neglect and not to give undue weight to the fact that a distressing accident has happened.

as well as Singleton LJs observation in *Martin v Dalzell* that

> The fact that the accident happened does not prove that the system used was an improper system. For some ten years or so it had been used without any accident. This was a most experienced man who was in charge of the operation. It was for him to decide how it should be done.

39. Each accident must be evaluated on its facts, and taking all the circumstances into consideration, I find that the Plaintiff had not made out his case against the Defendants in negligence.

40. I now consider the allegations of breach of statutory duty in the order they were pleaded. The first complaint was the breach of s 33(1) of the Factories Act which provides that

> 33.- (1) All places of work, floors, steps, stairs, passages, gang-ways and means

of access shall

> (a) be of sound construction and properly maintained; and
>
> (b) so far as it is reasonably practicable, be kept free from any obstruction and from any substance likely to cause persons to slip.

41. The floor of the platform had a non-slip surface, and the Plaintiff was issued with safety footwear. It was not the Plaintiffs case that the platform was always oily and slippery because of its design or the working of the crane. His case was that occasionally the platform became oily. His evidence was that he realised that the platform was oily when he got onto it on the morning of the accident. Being the only person in charge of the daily maintenance of the crane, he should wipe off the oil. The Defendants are not answerable to him under s 33(2) if he did nothing to remove the oil knowing that no one else was going to do it for him.

42. The second breach complained of was for non-compliance with s 22(1) that

> Every dangerous part of any machinery, other than prime movers and transmission machinery, shall be securely fenced unless it is in such a position or of such construction as to be safe to every person employed or working on the premises as it would be if securely fenced.

43. The platform of the crane is not a dangerous part of machinery required by s 22(1) to be fenced. Chua J had stated in *Teoh Gor Hua v Camel Plywood Corporation Ltd* [1968] 2 MLJ 147 @ 151 that

> I am of the opinion that the obligation to fence imposed by subsection (1) is an obligation to provide a guard against contact with any dangerous part of a machine

citing *Nicholls v Austin (Leyton) Ltd* [1946] 2 All ER 92 and *Close v Steel Co. of Wales Ltd* [1961] 2 All ER 953 as support. Counsel for the Plaintiff did not refer to any authority which establishes or suggests that a static platform can be considered as a dangerous part of machinery within the contemplation of s 22(1).

44. Section 24(3) which the Plaintiff also relied on is not really applicable. It relates to the proper maintenance of machinery to prevent breakdown, and it is not the Plaintiffs case that his injuries resulted from the breakdown of the crane.

45. The last provision relied by the Plaintiff is s 28. The provision reads

> 28.-(1) No person shall be employed at any machine or in any process, being a machine or process liable to cause bodily injury, unless he has been fully instructed as to the dangers likely to arise in connection therewith and the precautions to be observed, and
>
> > (a) has received a sufficient training in work at the machine or in the process; or
> >
> > (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine or process.
>
> (2) For the purpose of instructing any person employed at any such machine or process on the safety measures to be observed in respect of the safe operation

> of any such machine or process, an employer shall cause to be displayed on such machine or at a place nearest to the process a notice written in languages understood by the persons employed at such machine or in any such process describing those safety measures.

46. The Plaintiff slipped and fell while replacing the cover. As I have stated earlier, that is an operation the Defendants can rely on him to perform using his own judgment and experience. Employers are only obliged to provide training and warning when they are needed. An employer is not required to instruct his carpenter how to use a hammer, or to warn him not to strike before ensuring that his fingers are out of the way. Section 28 does not apply to the Plaintiffs case.

47. For the foregoing reasons, I find that the Plaintiff has also not made out a case of breach of statutory duties against the Defendants. Consequently he had failed on both parts of his case.

48. As he had pleaded a different account of his fall from that he had described to Simon Tan on 5 April, I considered that as well. The main difference between the two versions is that in his pleaded case and affidavit of evidence-in-chief the Plaintiff alleged that he fell in the process of opening the third cover. He had opened and closed the first two covers without incident, but when he came to the third cover, it did not open immediately because it was stuck. He deposed that he gave it a heavy pull and "due to the weight of the iron cover, the oily surface and my force in removing the same, I lost my balance and fell backwards."

49. Assuming against my finding, that the accident happened that way, the outcome remains the same. The procedure for opening the cover e.g. whether to squat or bend the body, where to place the feet, how to grip the handle, how much force to use, is rightly left to the individual operator. It is a straightforward process requiring no equipment or special knowledge, and it is unreasonable for him to complain that the Defendants did not instruct him on these matters.

50. Consequently, although I am sympathetic over the Plaintiffs misfortune, I found that he had failed to establish that the Defendants are responsible for it, and I dismissed his claim.

51. However, I found that the case came within s 33(3) of the Workmens Compensation Act, and enquired whether he wanted to have compensation assessed under the Act, but he declined that option. In view of that, I ordered that costs be paid to the Defendants to be taxed if the parties cannot agree on it between themselves.

Kan Ting Chiu

Judge