

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. Cv. 1572 of 1992

BETWEEN

TYRONNE RAMDASS

PLAINTIFF

AND

(1) REPUBLIC OILWELL LIMITED

(2) MARTIN CEDENO

(3) MICHAEL PARAG

DEFENDANTS

BEFORE THE HONOURABLE MR. JUSTICE P. JAMADAR

APPEARANCES

Mr. K. Harrikissoon & Mr. A. Ramroop for the Plaintiff.

Mr. F. Hosein & N. Ramyad for the Defendants.

REASONS

INTRODUCTION

On the 13th February, 2004 this Court gave its decision together with reasons orally. The Plaintiff's case was dismissed and the Plaintiff was ordered to pay the Defendants costs of the action certified fit for counsel, together with the costs of a forensic report agreed to by the parties during the trial.

Before this Court the Plaintiff framed his case, both against the First Defendant as principal and the Second and Third Defendants as servants and/or agents of the First Defendant, in negligence. At the close of the case Counsel for the Plaintiff indicated that he was not pursuing any cause of action against the First Defendant based on a failure to provide a safe system of work or otherwise and was relying entirely on the negligence of its servants and/or agents, the Second and Third Defendants, in order to establish negligence against the First Defendant.

REASONS FOR DECISION

This Court gave detailed oral reasons at the time of its decision. It was agreed that these oral reasons would have been recorded by the attorneys and used in the event of an appeal.

In these circumstances, what is proposed is to state in summary form the said oral reasons.

1. The success of the Plaintiff's case turned on whether either the Second and/or the Third Defendants were guilty of any negligence that resulted in the alleged injury to the Plaintiff.
2. The Plaintiff's case as pleaded (in the Statement of Claim filed on the 15th September, 1992) was as follows:
On the 13th October, 1988 whilst the Plaintiff was in course of his employment with the First Defendant pushing a power tong which was suspended on cables on a servicing rig which power tong was also being pulled by the Second and Third named Defendants in the course of their duties as described above, they negligently released and/or managed the said power tong causing it to swing back in the direction of the Plaintiff thereby pushing the Plaintiff backwards and in the process his left leg got pinned and/or stuck to pipes elevators which resulted in him also receiving injuries to his back.
3. Of significance is that the Plaintiff alleged that both the Second and Third Defendants were pulling the power tong and that they both negligently released it, causing it to swing onto the Plaintiff who alone was pushing it.

The only case pleaded against these Defendants in negligence had to do with their breach of the duty of care they owed the Plaintiff caused by:

- (i) their release of the power tong which they were both pulling, and/or
- (ii) their failure to notify the Plaintiff that they were going to release the power tong. [See, the particulars of negligence pleaded against the Second and Third Defendants].

4. Dealing first with the case against the Third Defendant – Michael Parag.

In the Plaintiff's viva voce evidence the Plaintiff testified that both he and Parag were pushing the power tong and only the Second Defendant was pulling it. And, that the cause of the accident was the Second Defendant's release of the power tong, which neither the Plaintiff nor Parag could restrain – with the consequence that the Plaintiff allegedly fell injuring himself.

Not only was this oral testimony (corroborated by the Plaintiff's only witness – G. Gould-Davies) a material departure from the pleaded case, but standing on its own, as it did, it does not attribute to the Third Defendant any negligence.

5. Given that the oral evidence was not consistent with the case the Third Defendant was called upon to answer, and the fact that, in any event, in light of this evidence there is no case of negligence established against the Third Defendant, the case against the Third Defendant was dismissed with costs.

6. Dealing next with the case against the Second Defendant - Martin Cedeno.

The onus of proof was on the Plaintiff to establish the negligence pleaded and alleged. The standard of proof is on a balance of probabilities.

In my opinion the Plaintiff's case was so riddled with material inconsistencies and contradictions that it is both unreliable and untrustworthy (i.e. the Plaintiff's testimony and by implication that of his witness, G. Gould-Davies).

7. A few examples of these inconsistencies and contradictions will suffice:
 - (a) The case pleaded against the Second Defendant was that he released the power tong without notifying the Plaintiff of his intention to do so. Yet, in the Plaintiff's evidence in chief he stated, in response to a specific question, that before Cedeno released the rope (holding the power tong) he shouted out that he was going up on the rig and was going to let go of the rope.
 - (b) In cross-examination the Plaintiff insisted that he had no idea at all where Cedeno had gone before releasing the rope or why Cedeno released the rope. This is not only contradicted by what is cited above at (a), but also by a previous (inconsistent) statement made by the Plaintiff in an affidavit in these proceedings, when he swore: 'Cedeno could not pull far enough and he let go the rope to climb to the top of the rig to pull.'
 - (c) Both the Plaintiff and his witness described in great detail how the Plaintiff fell and in particular that the Plaintiff's legs 'hooked on a turnbuckle, projecting about three feet from a beam on the rig,' causing the Plaintiff to 'limbo back over' and fall. Yet, in a previous (inconsistent) statement made by the Plaintiff, in the above stated affidavit, the Plaintiff swore: "The tong came back ... and the tong pushed me backwards and my left leg got pinned to a

pipe elevator causing me to fall on my back.” [Compare also the plea in the Statement of Claim cited at paragraph 2 above].

It is agreed that a ‘pipe elevator’ is something completely different from a ‘turnbuckle’ and that this difference was well known to the Plaintiff. Confronted with this inconsistency the Plaintiff recanted on his oral testimony.

- (d) In his evidence in chief, the Plaintiff was clear that he saw P. Linton write in the time log note book at about 7.00 p.m. the words “T. Ramdass Acc.” Yet, in a previous (inconsistent) statement made by the Plaintiff, in the above stated affidavit, the Plaintiff swore that he had been informed by Linton (his supervisor) and believed that as there was no accident report form on the rig, that he (Linton) “would make a note in the time note book of the accident,”
- (e) In cross-examination the Plaintiff was confronted with a letter written on his behalf by an attorney (dated the 10th October, 1991) to the First Defendant, claiming compensation for an injury to his back that allegedly occurred on the 13th October, 1988, while working for the First Defendant.

Remarkably, that letter stated:

“During that course of his employment at your Company, our client has informed us that on the 13th October, 1988, while in the process of laying out a pipe on a rack he strained his low back. This has caused our client to suffer severe pain.

Our client has further informed us that on numerous occasions several requests were made to your Company to compensate our client from 1988 until the present time.

We are therefore calling upon you to compensate our client for the said injuries.

Faced with this letter, which the Plaintiff accepted as true and written on his instructions, the Plaintiff explained that the letter referred to an injury he had sustained to his back the day before (the 12th October, 1988). He contended that the letter writer had made a mistake with the date.

What is highly suspicious however, is that this letter was written in October, 1991 (three (3) years after the alleged incident and one (1) year before action) and no mention was made of the power tong incident. Why would this Plaintiff for three (3) years be seeking compensation for an injury caused when laying out pipes on the 12th, yet file this action with respect to a power tong incident on the 13th? It makes no sense, and no reasonable explanation was given.

(f) The Plaintiff tendered in evidence a NIS Accident Form, filled out by his daughter for him and signed by a Mr. Ross on behalf of the First Defendant.

Question 19 in that form asked for ‘clear details of the cause of the accident.’ The Plaintiff, on the 16th November, 1988, within about one (1) month of the alleged incident, instructed his daughter (presumably) to answer that question as follows:

While working on the well floor, moving the power tong to rack back same Mr. Ramdass was pushing in a upward position and Mr. Cedeno was pulling. He slipped and the strain was released on Mr. Ramdass and his injury was sustained there.

This response to a clear and direct question on causation, attributed the cause of the accident to a slip by Cedeno which resulted in the release of the power tong.

This explanation is materially different from both the pleaded case and the oral testimony. Moreover, the authenticity of this document was confirmed by the Plaintiff's attorneys, when Mr. Ross (called by the defence) was cross-examined. Mr. Ross accepted that he would have checked the correctness of the details of the response to question 19 against the relevant accident report form and with the relevant supervisor, before signing the form.

What this meant, was that this contemporaneous document (the only one describing how the accident occurred), which was prepared (filled out) by the Plaintiff, gave an explanation for the cause of the alleged accident that was different from the Plaintiff's pleaded case and his oral testimony.

Significantly, faced with this obvious dilemma, Counsel for the Plaintiff never sought clarification from the Plaintiff about this material inconsistency. The result is that the Court was left with at least two completely different versions (from the Plaintiff) as to how the alleged accident occurred.

8. The consequence of the above stated inconsistencies is that, in this Court's opinion, the Plaintiff has not discharged the burden of proof on him to establish a case of negligence against the Defendants. That is to say, the Plaintiff has not reached the standard of proof required in a civil negligence suit to cross the threshold and shift the evidential burden onto the Defendants to answer any case.

In this Court's opinion, the Plaintiff's evidence was so wholly inconsistent and unreliable on the most material issues and facts, that this Court is unable to rely on any of it. This conclusion is supported by the negative impression that this Court formed having heard and seen the Plaintiff testify. The Plaintiff's demeanour did not inspire confidence, but rather provoked suspicion as to credibility.

9. In the event that the Plaintiff had crossed the evidentiary threshold, then in any event, this Court holds that the most probable cause of the accident was as described in the said NIS Accident Form of the 16th November, 1988 (see Reid v Charles, P.C. Appeal No. 36 of 1987 at page 6).
10. The effect is that this accident, if it did occur, was as a result of an unexplained slip by Cedeno. No assertion of negligence by reason of a slip has been pleaded or raised in this matter. Thus, no negligence can flow as a result.
11. Therefore, the Plaintiff's case against the Second Defendant also fails.
12. With the failure of the Plaintiff's case against the Second and Third Defendants, his case against the First Defendant also collapsed.
13. The Plaintiff's case was thus dismissed and the Plaintiff ordered to pay the Defendants costs certified fit for counsel and the cost of the stated forensic report.

Dated this 27th day of February, 2004.

P. Jamadar
Judge
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