

Judgment

reveals that he was 100% contributorily negligent in the circumstances of this case.

3. The facts are that on the 7th March 1994, the appellant was the flight engineer or third pilot on a flight of the respondent from Frankfurt to Trinidad via St. Lucia and Grenada. Over the Atlantic, en route to St. Lucia, the appellant, as was his duty, observed that one of the hydraulic systems, the C system, started depleting. He concluded there was a leak in the C system and as was the practice and policy of the respondent, he reported it to the engineer on the ground in St. Lucia. He reported that the 'C' hydraulic system showed it was one half full. The flight landed successfully and the appellant deplaned after about seven minutes. He walked from the cockpit to the hydraulic bay which was located between the landing gears. The hydraulic bay was about 10 feet above the ground. He observed the 2 panel doors to the hydraulic bay open and a ladder inside one. The appellant testified that the ground Tw[eng)5.5(was supposed to come on board)5.5(upon)J0 4.7322 TD

apparently filed his action earlier in Ontario, Canada where it was dismissed by consent on the condition that no point of limitation would be taken, if it is filed in this jurisdiction.

5. Mohammed J. dismissed the action. The learned judge carefully recited in detail all of the relevant evidence so there is no need for me to repeat it here. He then found as a fact that the hydraulic system was pressurised at the time of the incident. The respondent has appealed this finding. I will r DO. 8(t)6(h(n)0.thilatlier in)5.(t)6(heed jumident.Nex at the learned juio)5.theeld

placed on this aspect of the case. I say this primarily because it must not be forgotten that the appellant is not an ordinary passenger on the aircraft. He is the flight engineer. He is an experienced pilot with the respondent. He had

with a pressure of 3000 psi or 3 times the pressure hose effect but I have already pointed out that even when pressured to 3000 psi the leak was probably nothing more than a steady drip.

8. While I would have had difficulty coming to the conclusion that the hydraulic system was pressurized I defer to the trial judge's finding of fact.

9. A lot of the difficulty in coming to conclusions of fact on the evidence

breach of any duty of care to him, by the failure to warn him that the system was being pressurised.

14. I may add a thought of my own. Many of us have travelled on the

17. It was agreed at the inception of the appeal that this Court would assess the damages, all the evidence having been led before the trial judge. This however has become impossible in respect of the pecuniary loss of the appellant. The evidence is most unclear with respect to this, including but not limited to, the period of time for which the appellant was paid, how the sick leave bank operated and until when it did and also how that part of the emoluments earned in US dollars was calculated to name but a few. Therefore while it is desirable that I make an award of damages, in the event I am wrong in my conclusion on the appeal, unfortunately I am unable to do so.

Wendell N. Kangaloo
Justice of Appeal