

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2019/0156

BETWEEN

ECKRON JACOBS

CLAIMANT

AND

GLOSSY BAY CONSTRUCTION LIMITED

DEFENDANT

Appearances:

Mr. Ronald Marks for the Claimant

Mr. Sten Sargeant for the Defendant

Mr. Grahame Bollers on a Watching Brief

2021: 22nd September
28th October

JUDGMENT

Byer, J.:

- [1] When one considers the Southern Grenadines, what comes to mind are the bluest oceans and the whitest sands, but on the island of Canouan on 2 November 2016, the claimant in this matter had no such frivolous thoughts as he was pinned under a vehicle at his work place as it rolled over his body causing injury.
- [2] By claim form filed by the claimant, the claimant sought damages against the defendant company for negligence and/or breach of statutory duty by the defendant towards the claimant.
- [3] The facts as presented by the claimant in his pleadings and evidence were as follows:
- i) On 2 November 2016 the claimant reported to work as an employee holding the position of senior mechanic.
 - ii) He was assigned the use of a Ford truck to carry out his duties that day.

- iii) On his return to the garage, the truck stalled while he was proceeding up an incline. He engaged the foot brake or emergency brake, placed the automatic transmission in the park position (having manually overridden the stalled transmission), came out of the truck, placed two stones behind the back wheels, and then proceeded to lie beneath the truck to investigate the cause of the stalling. The vehicle, while he was under the truck, rolled over him at that point and caused him injury.
- [4] In the defence and the evidence of the defendant, the defendant did not deny that the accident occurred, but relied on the pleading that the occurrence of the accident was due to the sole negligence of the claimant and relied on the doctrine of *res ipsa loquitor*. The contention of the defendant in this regard was that at the time of the accident the claimant was the only one who was present and he was in total control of the vehicle assigned to him, the accident could therefore have only happened because of his own negligence. The defendant further maintained that the claimant failed to take reasonable precautions when he was inspecting the vehicle and assumed the risk when he placed himself in the position of being under the truck without seeking assistance from his work colleagues or his supervisor.
- [5] On the closing of the pleadings and the filing of the witness statements, it was clear to the court that this case rested on the evidence of two witnesses only, the claimant himself and a fellow senior mechanic employed by the defendant. It was from this evidence that the court was required to determine the following issues:
- a) Whether the cause of the claimant's injuries was as a result of the defendant being in breach of their statutory duty by virtue of the Compensation for Injuries Act CAP 122 of the Revised Laws of Saint Vincent and the Grenadines (hereinafter referred to as "the Act") or were they as result of a breach of duty of care at common law?
 - b) Whether the claimant caused or contributed to his injury?
 - c) Whether the damage suffered by the claimant is too remote to recover?
- [6] It is therefore obvious that before issues (b) and (c) can even detain the court that the claimant would have to satisfy the court that the defendant was in fact liable to him either under the Act or at common law.
- [7] What therefore would the claimant have to prove under either head?

The Statutory Duty

- [8] The claimant in this regard, relied on the provisions of the Act and in particular section 4 thereof which states in its entirety:

"4. Action maintainable against an employer

Where personal injury is caused to a workman-

- (a) by reason of any defect in the condition of the ways, works, machinery or plant connected with or used in the business of the employer;
- (b) by reason of the negligence of any person in the service of the employer, who has any superintendence entrusted to him, whilst in the exercise of such superintendence;
- (c) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed; or
- (d) by reason of the act or omission of any person in the service of the employer, done or made in obedience to the rules or regulations of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf,

the workman, or in case the injury results in death, the legal personal representatives of the workman and any person entitled in case of death, shall have the same right of compensation and remedies against the employer, as if the workman had not been a workman of nor in the service of the employer nor engaged in his work.”

- [9] It is clear, that in the instant case, the relevant provision is section 4(a) and as such the claimant would have to show clearly from his evidence that the truck assigned to him was part of the “...works, machinery or plant...” of the defendant “...used in the business...” of the defendant and that there was a “defect” which caused his injury.
- [10] In the submission of the claimant, the claimant stated that it was clear that the truck had been given to the claimant in connection with his employment and that the said truck had a defect, which caused the emergency brake to fail which then, led to the injuries that the claimant suffered.
- [11] The defendant on the other hand in this regard, submitted that the claimant had failed to show any evidence that supported that there was in fact, a defect in the truck that caused it to roll over him when he lay under the same. Indeed, the defendant identified to the court that the evidence of the claimant made it clear that he himself did not in fact know what caused the truck to move after he had engaged the emergency brake, the transmission brake and the stones behind the wheels. In fact, the defendant emphasized to the court, that the most that the claimant could say, was that brake failure was only a suggestion for the reason that the truck rolled that day.
- [12] Additionally the defendant sought to rely on the exceptions to liability provided in the Act at section 5(a) thereof which states as follows:

“5. Exceptions to liability of employer

A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases-

- (a) under section 4 (a), **unless** the defect therein-mentioned arose from, or had not been discovered or remedied owing to, **the negligence of the employer or of some person in the**

service of the employer and entrusted by him with the duty of seeing that the ways, works, machinery or plant were in proper condition;” (My emphasis added)

- [13] In relying on this provision, the defendant further submitted that in the event that the court finds that there was a defect, the claimant certainly has led no evidence to show that the same arose because of the negligence of the defendant or any of its employees. The claimant himself admitted, that fellow employees who were not called as witnesses, had previous to his taking control of the truck that day, worked on the vehicle and the claimant led no evidence that those employees had told him of any remaining defect with the said truck nor that they had left certain works undone. As such, in the submission of the defendant, the claimant had not proven any breach of the duty owed to the claimant under the statute and as such, he could not claim under those provisions for his injuries.

Analysis

- [14] The starting point for this court on this issue must be first and foremost whether the truck that was supplied to the claimant on that day in question falls within the statutory provision that ascribes liability to an employer under section 4(a) of the Act.
- [15] The claimant would therefore have to prove the following regarding the truck:
- i) that the truck constituted “works, machinery or plant connected with or used in the business of the employer” and
 - ii) that there was a defect.
- [16] In this court’s mind, there can be little said to the effect that the truck could not be considered work equipment used in the business of the employer. The evidence of the claimant, which was not disputed by the defendant, was that this truck, this F-550 heavy-duty truck assigned to the claimant was owned by the defendant and was used as a service truck for the defendant in answering service calls from their employees in the field. As the House of Lords per Lord Hoffman said in the case of **Spencer-Franks v Kellogg Brown and Root Ltd and others**¹ “*the domestic definition requires one to ascertain the purpose of the apparatus etc. What is it for? If it is for use at work, then it is work equipment.*” Lord Rodger in that same case also added his voice on this issue and stated that “[T]he machinery and apparatus etc of an undertaking are there to perform a useful, practical function in relation to the purposes of that undertaking. Depending on the nature of its business, the undertaking may, for instance, have lathes for cutting metal, axes for chopping wood, a furnace for refining ore, chalk for writing on blackboards, needles for sewing model dresses, hoists for raising loads, fork-lift trucks for carrying the loads from place to place, and, in the case of courier business, bicycles, vans or aircraft for carrying letters and parcels. All these pieces of equipment would serve a useful function in the employer’s business. So they are “for use at work”

¹[2008] UKHL 46 at para 10

and fall within the definition of “work equipment”. Indeed, many other things may be “for use at work” – for example, clocks to let the employees know the time, radios for them to listen to music while they work, kettles for them to make tea or coffee and water-coolers at which they can drink and gossip. All these will constitute work equipment – as indeed will, say, screwdrivers or radios of their own which employees are allowed to bring in and use at work.”

- [17] Having said all of this, this court is therefore satisfied that the truck that was provided to the claimant on 2 November 2016 did in fact fall within the parameters of section 4(a). However, in order for the claimant to establish liability he must go further and show that there was a defect, which caused the injury.
- [18] In this regard, the claimant’s evidence is less than conclusive to any such finding. In fact, the only evidence of the claimant was that “something failed.” At the time, he was driving the vehicle “she shut down on me. I believed the truck was safe to drive when I started using it- it move good. ...when the truck stalled out, the dashboard went blank, current went off. I engaged the handbrakes and before I stepped out, I applied the handbrakes and put it in park and then came out. The instant that I stepped out the vehicle was stationary not moving at that moment. I used stones for the purpose of safety though it was not moving.”²
- [19] The evidence then was that while he was under the truck it rolled. The defendant’s witness stated that there had been no mechanical issues with the truck and in fact contrary to the indication of the claimant that the truck had just left the garage having been serviced, the witness for the defendant categorically stated that the truck had not been under repair and was in fact relatively new.
- [20] So, the question must therefore arise, how did the truck come to roll over the claimant? In this court’s mind it is not only the existence of a defect in the mechanism of the truck that could have caused the same to move from a stationary position, but this court must also accept that that state of affairs could also have been caused by the action of the claimant himself in doing something or failing to do something. Indeed, when this court considered the evidence that was elicited at trial as to the mechanism of the transmission brake which operates by the gear lever being engaged, an action that the claimant admitted that he had done by placing the lever in the Park position, it was clear to this court that the truck having stalled, with a concomitant loss of electricity would not have allowed for the transmission brake to have been engaged to assist in the stopping power of the truck on the incline. This is indeed a possibility which would not have amounted to a defect but rather to an action of the claimant himself. The claimant having failed to establish that the only reason for the truck’s movement would have been a defect, in effect means that this court cannot find that the claimant has proven his case in this regard on a balance of probabilities that his injuries were caused as a result of a defect in the truck itself.
- [21] Indeed, “the employee must in all cases prove his case by the ordinary standard of proof in civil actions; he must make it appear at least that on a balance of probabilities the **breach of duty**

² Evidence elicited on cross examination of the claimant at trial

caused or materially contributed to his injury.”³ (My emphasis added) In this court’s mind, the claimant has not been able to establish this correlation on a balance of probabilities as the court is still left without the information as to the cause of the truck’s movement.

- [22] In any event, and more importantly this court also accepts that the defendant falls within the exception created under section 5(a) of the Act disentitling the claimant from a right of compensation.
- [23] The claimant under section 5(a) is not entitled to claim compensation unless he can show that it was the negligence of the employer to remedy the defect or the negligence of an employee who the employer entrusted to make sure that the machinery was in good order. This court has not heard one scintilla of evidence to that effect in this case and this court is satisfied that the claimant did not raise this nor did he prove any such set of circumstances.
- [24] This court therefore finds that this claimant has not proven that the cause of his injury was a defect in breach of the statutory duty on the part of the defendant and that further in any event nor did he prove that there was any negligence on the part of the defendant in failing to keep the truck in good working condition or any negligence on any other mechanic to do so. The claimant therefore fails on this issue.

The Common Law Duty

- [25] This duty has been recognized as consisting of two aspects, a safe system of work and a safe place of work.
- [26] A safe system of work has been defined as:
- ... the physical layout of the job; the setting of the stage, so to speak; the sequence in which the work is to be carried out; the provision in proper cases of warnings and notices, and the issue of special instructions. A system may be adequate for the whole course of the job, or it may have to be modified or improved to meet the circumstances which arise.”⁴*
- [27] A safe place of work on the other hand is defined as where “an employer has a duty to take care to ensure that the premises where his employees are required to work are reasonably safe. ... But the employer’s duty is not absolute; it is sufficient that the premises are maintained ‘in as safe a condition as reasonable care by a prudent employer can make them’, and if the employer ‘has an efficient system to keep (the workplace) clean and free from obstruction, that is all that can be reasonably demanded from him.”⁵

³Bonnington Castings Ltd v Wardlaw [1956] AC 613 at 620 per Lord Reid

⁴Gilbert Kodilyne’s Commonwealth Caribbean Tort Law at page 163

⁵Ibid at pages 164 and 165

[28] The submissions of the claimant on this issue were however unclear to the court although the same had been pleaded in the claim. In the statement of claim filed⁶ in this matter, the claimant pleaded the particulars of negligence as follows:

- “a) Failed to take any or any proper measures to maintain their vehicles;
- b) failed to take any or any adequate care for the Claimant’s safety;
- c) Exposed the Claimant to foreseeable risk of injury.”

However, the claimant did not submit to the court on how these may have been met in the case as it evolved. The claimant however did state that in providing employees with a safe system of work, the employer was also duty bound to provide safe equipment and machinery to discharge his employment. Indeed, the submission of the claimant was that the defendant having failed to provide safe equipment, resulted in the claimant putting himself in a vulnerable position (lying beneath the vehicle parked on an incline chocked by stones and a park brake) to carry out the checks on the vehicle for him to diagnose the issue of its stalling. It is this argument that the claimant relies on for the breach of the common law duty to the claimant.

[29] The defendant’s submission was that the claimant had failed to provide any evidence that the defendant had not provided a safe place of work or a safe system of working. There was in fact no evidence, in the submission of the defendant, that the defendant had not done all that they could have done in the place where the claimant worked or with the system that was used in that garage. The defendant also submitted that the claimant had failed to show that the defendant had not provided adequate plant and equipment as they had pleaded. The defendant highlighted that the claimant had pleaded that the defendant had failed to adequately maintain its vehicles but in saying so, the claimant had not provided any evidence to that effect and as far as the defendant was concerned the claimant could not succeed on a claim against the defendant for breach of a common law duty.

Analysis

[30] In the case of **Cheryl Malone v AMS Financial Services Ltd**⁷ my sister Ellis J made it clear that it is now settled that the test for an employer’s liability at common law is as follows:

“...In **Stokes v GKN (Bolts and Nuts) Ltd**⁸, Swanwick J described the position as follows:

“From these authorities I deduce the principles, that the overall test is still the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in the light of what he knows or ought to know; where there is a recognised and general practice which has been followed for a substantial period in similar circumstances without

⁶ Filed 7/10/2019

⁷ BVIHCV2013/0241 at paragraph 30

⁸ [1968] 1 WLR 1776 at 1783

mishap, he is entitled to follow it, unless in the light of common sense or newer knowledge it is clearly bad; but, where there is developing knowledge, he must keep reasonably abreast of it and not be too slow to apply it; and where he has in fact greater than average knowledge of the risks, he may be thereby obliged to take more than the average or standard precautions. He must weigh up the risk in terms of the likelihood of injury occurring and the potential consequences if it does; and he must balance against this the probable effectiveness of the precautions that can be taken to meet it and the expense and inconvenience they involve. If he is found to have fallen below the standard to be properly expected of a reasonable and prudent employer in these respects, he is negligent.”⁹

- [31] In the case at bar, the claimant’s uncontroverted evidence is that he was assigned a vehicle by the defendant for use that day for the purpose of carrying out his work as the senior mechanic. He took the vehicle and did his pre work checks and all he saw was the tyre warning light on the vehicle. There was no check engine light and the vehicle drove well until he returned to the garage after undertaking an errand for his supervisor. It was at that point that the vehicle completely shut down on him, with the dashboard becoming completely dark and blank.
- [32] It was also the evidence of the claimant that the vehicle’s incapacity had occurred so close to the environs of the garage that he considered it to be in the yard of the garage but on an incline. From the claimant’s own evidence, he chose not to call any of his subordinate mechanics and not to tow it down the hill to work on it but did so where it had stalled on the uneven saturated portion of the yard.
- [33] In this court’s mind it would have been highly unreasonable for an employer having hired the claimant as a senior mechanic, with his own professed 35 years of experience, to foresee that a vehicle that stalled on an incline in close proximity to the actual physical plant that the claimant would not have availed himself of those facilities but rather have attempted to do so in conditions that had nothing to do with the facilities provided by the defendant.
- [34] As my sister further opined in the **Cheryl Malone**¹⁰ case that “[a]t common law the employer’s duty is a duty of care and the burden of proving negligence rests with the claimant employee throughout the case. If he alleges a failure to provide a reasonably safe system of work, a claimant will generally be obliged to plead and therefore prove what the proper system was and in what relevant respects it was not observed.”
- [35] In the instant case, this court cannot see how the defendant failed in his duty to the claimant in this instance and I also find that on a balance of probability that the claimant has failed to establish his claim in this regard. The claimant failed to lead any evidence as to the proper system expected and how the defendant failed to provide the same to his employees which resulted in the injuries suffered by the claimant. This claim is also dismissed in its entirety.

⁹ Claimant’s Submissions case at para 30

¹⁰ Ibid at paragraph 58

- [36] Having found in these terms, this court accepts that there is no need to address its mind to the additional issues of contributory negligence or remoteness of damages.
- [37] The court empathizes with the claimant on the injuries that he suffered and indeed it was unfortunate, but this court cannot find that the defendant, as his employer, was in breach of his statutory or common law duty. Rather this court finds that it was plainly obvious to the court, that the sole cause of the accident was the method that the claimant chose to adopt to assess the mechanical issue that arose without taking any care for his own safety. Thus, if the court is wrong on the issue of primary liability the court still would have found that the claimant was at least 90% contributory negligent in all the circumstances.

The order of the court is therefore as follows:

1. The claim is dismissed in its entirety with costs to the defendant on an unvalued claim pursuant to Part 65.5 CPR 2000 in the sum of \$7,500.00.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar