IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 20

Suit 5284/1986

Between

Araveanthan
Another

… *Plaintiff*

And

Nippon Pigment (S) Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Damages — Measure of damages; Damages — Measure of damages — Personal injuries cases; Tort — Negligence — Duty of care

Version No 1: 11 Sep 2026 (01:05 hrs)

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Araveanthan and Another v Nippon Pigment (S) Pte Ltd

[1992] SGHC 20

Suit 5284/1986
Yong Pung How CJ
01 February 1992

1 Cur Adv Vult

2 This claim arises from an industrial accident on 11 October 1985, in which the first plaintiff, an infant, was severely injured. He sues by his father and next friend for damages in respect of the injuries, pain and suffering and consequential loss suffered by him as a result of his accident, on the grounds that the accident was caused by the defendant`s negligence and/or breach of statutory duty.

3 The defendant was manufacturing plastic synthetic resins and plastic materials at 7A Pioneer Road, Jurong Industrial Estate at premises which were a factory within the meaning of the Factories Act (Cap 104) (`the Act`). On those premises was a power-operated Meiki plastic injection moulding machine which was used to produce reference plastic colour plates. The Meiki machine has a movable gate guard that looks like a metal tunnel covering the moving and stationary moulds. Seen from the side of the machine, it is a square arch in cross-section. Seen from the front, it moves from side to side on runners. On the front runner at the right-hand end is a microswitch. There is a similar microswitch on

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the rear runner, but this is half-way along, not at the end. The gate guard on the machine has a handle on it. It is always opened and closed by hand and the plates are always removed by hand. When the gate guard is fully closed, then seen from the front, it is all the way to the right and its front foot then comes into contact with the front microswitch. In this position, the rear foot of the gate guard just breaks contact with the microswitch on the rear runner. Conversely, as the gate guard is opened, moving to the left, its front foot breaks contact with the front microswitch and the rear foot comes into and maintains contact with the rear microswitch. The result is that the gate guard acts, and is clearly intended to act, as an automatic safety device. Closing it activates the moving mould to close and mate with the stationary mould in about two seconds. When the gate guard is open, and this is most important, the moving mould is supposed to remain stationary so long as the rear microswitch is working properly, even if the front microswitch is somehow activated.

4 At the relevant time, the first plaintiff was employed by the defendant as a machine operator. His duties as such were, inter alia, to remove plates from the Meiki machine after they had been produced. The first plaintiff originally worked for the defendant as a quality control operative and did not have to handle any machines. After a month, he was told to work on the Meiki machine. He learnt to operate it on-the-job while assisting E, the man in overall charge of the injection moulding machines. In three or four weeks, he was operating the machine and removing the plates by himself. At about 1.45pm on 11 October 1985, while the gate guard was open and the first plaintiff was removing a plate from the machine, the moving mould, instead of remaining stationary as it might have been expected to, suddenly moved and closed on his right hand. He instinctively used his left hand to operate the control panel on his left-hand side, the moving mould retracted and he pulled out his injured right hand. As a result

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of the accident, his right index, middle and ring fingers had to be completely amputated.

5 The first plaintiff testified that the following incident had happened after lunch on the day of the accident, when he was assisting E, who was operating the machine. As E was taking the second plate from the machine, the moulds hit each other, damaging the plate. E was unhurt and the first plaintiff asked him why this happened. E answered rather cryptically that the first plaintiff knew nothing about the machine and that he, E, would operate it. E then operated the switch on the control panel so that the moulds would separate and then removed the plate. He continued operating the machine and removing the plates from it for another ten minutes or so before going to the office, instructing the first plaintiff to continue operating the machine and to take out the plates. Left to himself, the first plaintiff obeyed E`s instructions and all went as usual for the first two plates he took. The accident occurred as he was removing the third plate. He testified that he did not touch the front microswitch.

6 The first important issue is whether the rear microswitch was faulty, and the machine was not functioning as it should. The day after the accident, an inspector was called in to check the machine. He did not order cessation of its use. Nevertheless, to allay the fears of other workers, an engineer was later called in from the manufacturers of the machine and he also checked it. He did not locate any specific fault in the machine but recommended installing an extra microswitch in front. This was done a few months later. There is no evidence of the reasons why this recommendation was made. Only the Meiki engineer who made the recommendation could give direct evidence of his reasons for making that recommendation, and he was not called as a witness. There was no explanation of why he was not called, nor was there even an attempt to put in evidence any written statement or report by him. Given that the machine was

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designed to ensure that normally nothing should cause the moulds to close when the gate guard was open, the mere fact that the mould moved while the gate guard was open was, in my opinion, sufficient to indicate that the machine was somehow not functioning as it should.

7 The second issue pertaining to liability for either common law negligence or breach of statutory duty is whether the fault in the machine caused the accident. At the time of the accident, the first plaintiff was standing quite close to the machine so that, it was said, his stomach was near to the front microswitch. The defendant contended that there was a strong possibility that the first plaintiff himself depressed the front microswitch while acting in haste to make up for time lost through alleged malingering, and was thus contributorily negligent. However, the first plaintiff denied throughout that he had touched that microswitch. In my view, even if the first plaintiff had somehow depressed the front microswitch, the moving mould should, nevertheless, have remained stationary because the gate guard was open. That was the whole point of the gate guard system. It cannot be said that the first plaintiff should have his claim reduced because he did what the system was designed to render safe. So long as the gate guard was open, he was entitled to rely on there being no ill consequences, even if the front microswitch was depressed. Furthermore, there was no allegation that, if he depressed the front microswitch, he did so other than inadvertently, and there is ample authority for inadvertent acts being insufficient to constitute contributory negligence: see ***Caswell v Powell Duffryn Associated Collieries Ltd*** .1 In my opinion, it is clear that the fault in the machine caused the accident, and that the first plaintiff could not be held to have been contributorily negligent.

8 The plaintiff contended that the defendant was in breach of its duty under s 24 of the Act to constantly maintain the safeguards and fencing for its

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machinery, and keep them in position while the parts required to be safeguarded were in motion or in use, and to properly maintain the machinery in order to prevent any breakdown which was likely to cause death or bodily injury to any person. Section 24 reads:

> (1) All fencing or other safeguards provided in pursuance of the foregoing provisions of this Part shall be of substantial construction, and constantly maintained and kept in position while the parts required to be fenced or safeguarded are in motion or in use, except when any such parts are necessarily exposed in motion for examination and for any lubrication or adjustment shown by such examination to be immediately necessary, and all the conditions specified in section 23(2) are complied with.
>
> (2) The machinery and plant shall be properly maintained in order to prevent any breakdown which is likely to cause death or bodily injury to any person.

9 The wording of s 24 indicates that these duties are absolute in the sense that once it is proved that the safeguards and machinery were not maintained or kept in position as required, the first plaintiff did not need to prove any lack of care on the part of the factory owner. The fact that the moulds closed while the gate guard was open was, in view of the intention behind the design of its gate guard, sufficient to fix liability on the defendant for failing to maintain the safeguard and failing to maintain the machinery in order to prevent any breakdown which was likely to cause death or bodily injury to any person. With the gate guard open, the accident could not have happened in the absence of a fault in the machine.

10 This was sufficient to determine the issue of liability, but the plaintiff also alleged that the defendant was liable on several other grounds, all of which I rejected. As time was spent on these points during the trial, I will deal shortly with them all.

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11 The Act requires employers to fence securely dangerous machinery parts or take other equally effective safety measures whenever their employees are exposed to dangerous machinery. Section 22 reads:

> (1) 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.
>
> (2) Subsection (1) shall not apply where the dangerous part of any machinery is made safe for persons employed or working on the premises by other equally effective means.

12 The Meiki machine was not fenced but the obligation in s 22 is not an absolute one. The gate guard was designed to be an equally effective means of making the machine safe for persons employed or working on the premises. Furthermore, no fence could have prevented the accident that occurred to the first plaintiff. Fences only prevent accidents happening to those who stand behind them. In this case, the first plaintiff had to stand next to the machine and put his hand into it to withdraw the plates. Therefore, even if the defendant had been in breach of its duty under s 22, there was not established the necessary causal link between that breach and the injury suffered by the plaintiff.

13 Section 28 of the Act reads:

> (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.

14 Had the first plaintiff, at the time of the accident, working alone with the machine, been `fully instructed as to the dangers likely to arise in connection therewith and the precautions to be observed`? The defendant contended that the first plaintiff `received a sufficient training in work at the machine` and was `under adequate supervision by a person who [had] a thorough knowledge and experience of the machine or process`. On balance, I do not think it was proved that the plaintiff failed to receive full and adequate instruction in the operation of the machine. On the contrary, it was not clear exactly what caused it to malfunction - no instruction could have assisted the plaintiff.

15 At trial, the first plaintiff also contended that the defendant was in breach of its duties under s 20 of the Act. This was not pleaded in the statement of claim and it was not necessary to consider the point.

16 The common law requires employers to take reasonable care for the safety of their employees. At the trial, the first plaintiff contended that the defendant had failed in its duty to take reasonable care for his safety, inter alia, by neglecting to provide tongs or other equipment with which to remove the plates from the Meiki machine. It was not disputed that no tongs or other equipment had been provided, but there was no evidence that tongs or other equipment were available on the market which would have enabled the plates to be extracted from the machine without risk to the operator. The witnesses were not asked if it was possible to find such equipment or if the method by which the plates were extracted was amenable to the use of equipment. If there

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was no way except by hand that the plates could have been removed from the machine, the defendant could hardly have been unreasonable in not providing the other equipment. Though the danger to the machine operator was obvious, a properly functioning gate guard would be an adequate safety measure exonerating the defendant from liability at common law.

17 Alternatively, the claim in negligence was based on the defendant`s alleged failure to take reasonable care to maintain the machine in such state that it was reasonably safe to work with. It was contended for the first plaintiff that the accident with E after lunch on the day of the accident, coupled with what happened to the first plaintiff later, showed that the machine was not maintained in such a state. However, the first plaintiff`s evidence of the incident with E after lunch was not supported. Only E and the first plaintiff were together at the time and E was not available at the trial. In favour of the defendant, it is noted that this was an isolated incidence of such an accident. It had not happened before, nor does it appear to have happened again since. S, the first plaintiff`s supervisor at the time, said that on the day of the accident E did not speak to him of the incident of the damaged plate, neither did he show the damaged plate to him. E was not called as a witness. He was apparently not in the jurisdiction, but there was no attempt to have admitted in evidence any statement by him. Therefore this ground of action also fails.

18 On the basis of liability established for breach of duty under s 24 of the Act, I now consider the quantum of damages to be awarded. The first plaintiff was 20 years old at the time of the accident. He was hospitalized from the day of the accident until 8 November 1985. Subsequently, he was warded for reparative treatment between 14 and 16 November 1985 and 19 and 26 December 1985. He was seen again in May 1986 and reviewed six months later. As a result of this accident, his right hand index, middle and ring fingers had to

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be amputated and his last finger became deformed and stiff. His right hand is now in the shape of a lobster claw and very unsightly. He is unable to grasp, pinch or grip anything and certainly cannot use the hand to lift heavy loads or use a hammer or screwdriver. With his thumb and little finger he can pick up light objects. He can write, but slowly and clumsily and not well enough for a clerical job. He now finds it awkward to go out when he has to take public transport on which he has to stand and hold on to a support, and he finds it embarrassing to eat in public without his right hand. He was assessed to have 70% permanent incapacity for the purposes of estimating workmen`s compensation. He continues to be employed by the defendant, though not in the same capacity. His duties are now to weigh powder, which he can do mainly with his left hand. His formal education ended in secondary two and he then obtained a trade certificate from the Vocational and Industrial Training Board (`VITB`) in metal machining, a qualification that is now virtually useless to him.

19 **General damages**

20 Injury, pain and suffering, and loss of amenity

21 The first plaintiff referred me to the broadly similar facts in **Ong Moh Chong v Hitachi Chemical (S) Pte Ltd** [1987] 1 MLJ 450 in which the court awarded $30,000. Bearing in mind that the first plaintiff has also been left with a deformed little finger, I award under this head a sum of $35,000.

22 Loss of future earnings

23 It is not possible to accept the first plaintiff`s assertion that, if not for the injury, he would now be earning a basic salary of $2,000. In fact, even with overtime, it is highly unlikely that his earnings each month would be anywhere

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near that, even if he were not injured. At the time of trial, his basic salary was $836 and it appears that when he resumed work after being discharged from hospital, he did so at the same salary he was earning when he was injured. As for the fact that he has not been promoted, this was explained to the first plaintiff as being caused by a change of management. This reason was not doubted by the first plaintiff and has certainly nothing to do with his injury. In my opinion, no compensation can be due under this head.

24 Loss of earning capacity

25 The first plaintiff is now still employed by the defendant as a weighing assistant, a job that he can perform despite his handicap. He is only 25 years old. It may not be very likely that in the near future he will need to seek another job, but he has a long working life left. Even though the defendant has quite honourably continued to find a place for him for more than six years after the accident, and no criticism may be directed against the defendant in this regard, it must nevertheless be recognized that there is a real risk that the vicissitudes of time will at some point during that long remaining working life compel him to leave the defendant`s employ and find another place. When that happens, since his handicap is permanent, he will have difficulty finding a job that would pay him as well as if he could have complete use of his right hand. His vocational qualification is now useless to him. Consequently, any future employment he may find, in the event that he loses his present one, is not likely to pay him as well as if he could use that skill as well as his hand. Moreover, some allowance will have to be made for the effect of his injury upon his chances of advancement even in the defendant`s employ. For these reasons, I award him a lump sum of $55,000 under this head, without interest thereon, for his handicap in the labour market.

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26 **Special damages**

> (a) pre-trial loss of earnings - there can be none if the plaintiff was paid in full while on medical leave;
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> (b) pre-trial loss of overtime pay from 11 October 1985 to 30 April 1986, agreed at $980;
>
> (c) pre-trial loss of overtime pay from May 1986 to July 1986 will be assessed at $70 for May 1986, $140 for June 1986 and $35 for July 1986 (taking 20 hours overtime to be worth $140); no further compensation will be awarded for pre-trial loss of overtime pay since there was evidence that the plaintiff worked a maximum of 20 hours overtime a month at the time he was injured, but from August 1986 onwards, his new duties permitted him to work more than 20 hours overtime, and at the same rate;
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> (d) transport expenses for plaintiff`s father to visit him in hospital, agreed at $936;
>
> (e) transport expenses for plaintiff to travel to and from hospital for outpatient treatment, agreed at $240;
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> (f) medical report, specialist`s report, factory inspection report, totalling an agreed $390.

27 There will be interest at 6% on the damages for the injury, pain and suffering and loss of amenity, and, on the facts of this case, also at 6% on the special damages awarded, in both cases from the date of writ until judgment. As all the special damages were incurred at around the same time, rather than being spread out over an extended period of time up until the date of trial, there is no reason to take the 3% rate which is normally used because it is the median measure over such an extended period. There will also be costs to the first plaintiff.

28 **Outcome:**

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Yong Pung How CJ

Bhargavan Sujatha (Bhargavan & Co) for the plaintiff
Martin Lee (Goh Poh & Partners) for the defendant

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