Shaik Abu Bakar Bin Abdul Sukol *v* Saag Oilfield Engineering (S) Pte Ltd and another [2012] SGHC 251

Case Number : Suit No 717 of 2009

Decision Date : 18 December 2012

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Krishna Morthy SV (instructed) (Frontier Law Corporation) for the plaintiff; Anparasan s/o Kamachi and Grace Tan Hui Ying (KhattarWong LLP) for the second defendant.

Parties : Shaik Abu Bakar Bin Abdul Sukol — Saag Oilfield Engineering (S) Pte Ltd and another

Tort – Breach of statutory duty

Tort – Negligence

18 December 2012

Lee Seiu Kin J :

1 Saag Oilfield Engineering (S) Pte Ltd ("the first defendant") is a company in the business of manufacturing and repairing oilfield and gas field machinery and equipment, including derricks. PPL Shipyard Pte Ltd ("the second defendant") is a company engaged in the construction, repairing and improving of oil rigs, ships and other ocean going vessels. The second defendant has a shipyard ("the Worksite") located at 21 Pandan Road, Singapore. The first defendant has gone into liquidation and the trial before me involved only the second defendant. At the material time, Shaik Abu Bakar Bin Abdul Sukok ("the plaintiff") was employed by the first defendant as a derrick builder. On 4 February 2008, the plaintiff suffered injury in an accident while working at the Worksite and in this suit, claimed against the second defendant for damages in negligence and breach of statutory duty.

2 The first defendant was contracted to install the derrick, a structure forming a part of an oil rig being constructed at the Worksite. On the day in question, the plaintiff reported for work at the Worksite. He claimed that, although he had worked at various jobs involving oil rig construction, that day was the first time he had worked on a derrick. Counsel for the second defendant objected to this bit of evidence which was not pleaded nor stated in the plaintiff's affidavit. However given the finding I eventually made, this point is not material. In the event, the plaintiff reported to his supervisor, Mr Chong Chun Voon ("Voon") and, along with the four other members of his team, they proceeded to the derrick. They were issued with harnesses and ropes, helmets, safety goggles, but not walkie talkies as the batteries were flat. The plaintiff said that he did not have gloves that day. He asked Voon for a spare pair, but the latter did not have any. Voon told him to proceed without gloves as the job was required to be completed urgently.

3 The plaintiff was tasked to climb to the top of the derrick which was the height of a 12-storey building. The team was to hoist counterweights – blocks of steel – to the top of the derrick using an electrical winch. The motor was located at the bottom of the derrick and a steel cable ran from it to a pulley at the top of the derrick. As the winch coiled in the cable, the load would be lifted up. As there were no walkie talkies, the team communicated by hand signals.

4 The accident occurred during the first lifting operation. As the load was being hoisted up, the team members could see that some scaffolding that was installed around parts of the derrick was obstructing the path of the load, and so they stopped the lifting just before the load reached the scaffolding. The plaintiff looked down from his position atop the derrick. He saw Voon indicating to him to shake the cable to try to steer the counterweight into a position that would enable it to avoid the scaffolding. The plaintiff did as he was told. He could also see Voon shaking from his position below. When Voon stopped shaking the cable, the plaintiff looked down but his left hand was still holding the cable. That was when the winch motor was started, the cable moved up with the plaintiff's hand holding it and his fingers were caught between the sheave and the wire of the pulley. The plaintiff suffered injuries requiring the amputation of his left index and middle fingers.

5 The second defendant called its safety supervisor, Bernard Tang Kwok Loong ("Tang") to give evidence. As safety supervisor, Tang's task was to inspect the Worksite to look out for unsafe work conditions and to advise management and supervisors of the requirements of the Workplace Safety and Health Act (Cap 354A, 2007 Rev Ed) ("the Act") and the regulations made thereunder. Tang said that every morning, before 9am, a meeting of the Vessel Safety Coordination Committee ("VSCC") was held, at which all jobs for the day were highlighted for coordination. Before a job was started, a safety personnel went to the worksite to ensure that it was safe to proceed with the work. Tang gave evidence that the second defendant was supposed to continually check the safety environment. If any worker did not comply with safety measures, he would be advised. But if the advice was not heeded, the second defendant would impose a penalty. For example if a worker refused to wear a safety helmet even when he was advised to do so, Tang would bring in the supervisor, evict the worker from worksite and impose a penalty. For hot work, a permit was required; the safety officer would go to the site to evaluate the conditions there and issue permit only if it was safe for such works to be carried out. Tang said that for lifting works, a permit was required.

6 Tang testified that on 4 February 2008, the day of the accident, he was at work. He said that he was aware a team was to work at the derrick and that the supervisor had informed those present at the VSCC meeting that lifting work would be carried out on that day. Tang was in charge of investigating the accident after it happened. However he did not take any photographs of the site of the accident shortly after the event and the only available evidence before me of the circumstances of the accident site are eye witness accounts from Tang and the plaintiff.

7 Tang said that one of his colleagues had inspected the site prior to the lifting, probably a few days earlier. He said that such inspection was needed because lifting involved works at a height and there was a need to ensure that the area was barricaded to ensure that unauthorised persons did not enter the area of lifting. Tang agreed that the scaffolding was a danger to the lifting works. He could not remember if the scaffolding was removed after the accident to facilitate the lifting works.

8 Tang said that the report showed that there was scaffolding just below the crown block of the derrick and that while lifting was in progress, part of the load would be impeded by the scaffolding. Tang said that had he been there on that day and saw the scaffolding obstruct the lifting works, he would have stopped it. He said that he would not have agreed to the load being lifted by pushing against the cable to steer the load away from the scaffolding.

My decision

9 The Worksite was a "workplace" under the Act, a term defined in s 5(1) as "any premises where a person is at work or is to work ... and includes a factory". It is also a factory, defined in s 5(2)(*a*)(iii) as "any premises within which persons are employed in ... the repair, construction or manufacturing of any vessel or vehicle". The Act imposes certain duties on the occupier of a

workplace. This is spelt out in s 11 which provides as follows:

> **11**. It shall be the duty of every occupier of any workplace to take, so far as is reasonably practicable, such measures to ensure that —
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> (*a*) the workplace;
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> (*b*) all means of access to or egress from the workplace; and
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> (*c*) any machinery, equipment, plant, article or substance kept on the workplace,
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> are safe and without risks to health to every person within those premises, whether or not the person is at work or is an employee of the occupier.

10 The facts showed that the second defendant is clearly in breach of his statutory duty under s 11 of the Act. However this provision was not pleaded in the statement of claim. The plaintiff's counsel applied to amend the statement of claim on 8 May 2012 when counsel appeared before me to make oral submissions after the trial. This was opposed by counsel for the second defendant on the ground that the 3-year limitation period for personal injury had passed. I therefore disallowed the application to amend. As the breach of statutory duty must be specifically pleaded, this ground could not aid the plaintiff's case against the second defendant. The plaintiff's pleaded ground against the second defendant was in respect of s 12(1) of the Act. However s 12(1) pertains to an employer-employee relationship and as the second defendant was not the plaintiff's employer, this pleaded ground was not relevant *vis-à-vis* the second defendant.

11 Nonetheless, the facts of this case clearly supported a finding of negligence against the second defendant in my view. The second defendant was the occupier of the Worksite, in which many subcontractors operate to build a complex multi-million dollar oil rig within a tight timeframe. There were many possible dangerous situations in such circumstances; indeed the second defendant had dedicated a team of safety officers to ensure that the place was safe for all to work. In the circumstances, the second defendant owed a duty of care to all persons who worked at the Worksite. The evidence of Tang showed that the second defendant had anticipated the inherent dangers from certain types of works such as hot work and lifting works. The second defendant had in fact required such works to be inspected beforehand and certified safe to be proceeded with. The dangers were not only foreseeable but actually foreseen. There was no doubt that, on the day in question, there was scaffolding installed at the lifting site which was not just a potential, but an actual obstruction to the lifting works. Tang said that the site was inspected a few days earlier by his safety officer and certified safe for lifting works. If the scaffolding had been present when the inspection was carried out, the certification ought not to have been made. If the scaffolding had been installed after the inspection, the scaffolding clearly ought not to have been permitted to be installed in that manner, or it should have been installed only after the lifting works had been completed. The second defendant had therefore breached its duty of care to the plaintiff by permitting the lifting works to proceed. As the plaintiff was injured due to the lifting work, I held that the second defendant was liable to the plaintiff for damages resulting from the injury.

12 However I was also of the view that the plaintiff had failed to exercise due care in carrying out his work, in particular, in failing to wear gloves which he knew he was required to wear. Had he done so, the extent of his injury may not have turned out to be as serious. In view of this, I held that the plaintiff was contributorily negligent to the extent of 50%. I therefore gave judgment for the plaintiff against the second defendant for 50% of the damages to be assessed by the Registrar, with costs reserved to him.

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