BARBADOS.

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

No. 1691 of 1997.

BETWEEN:

THEROLD DOUGLIN

(Plaintiff)

AND

TRANSPORT BOARD

(Defendant)

Before the Honourable Mr. Justice E. Garvey Husbands, Judge of the High Court.

2002: May2,3,5, 30 and 31

2003: February 3,4,7,13 and 17

December11.

Mr. John Connell QC with Mr. Calvin Alleyne for the Plaintiff
Mr. C. Percy Chenery QC and Mr. Patterson CheltenhamQC with Mr. Alrick Scott for the Defendant.

DECISION

[1] On the 30thSeptember, 1996, the plaintiff was working as a mechanic on the engine of a buson the premises of the Transport Board, his employer. He was removing with the aid of a spanner about 8 inches longbolts from the manifold of the bus. Inperforming the task he sustained injuries to his back. The plaintiff claimed damages fornegligence.

[2] In Smith v Baker [1891] A.C. 325, 362 Lord Herschell said:

"It isquite clear that the contract between employer and employed involves on thepart of the former the duty of taking reasonable care to provide properappliances and to maintain them in a proper condition, and so to carry on hisoperations as not to subject those employed by him to unnecessary risk. Whatever the dangers of the employment which the employed undertakes,among them is certainly not to be numbered the risk of the employer'snegligence and the creation or enhancement of danger thereby engendered".

[3] In Wilsons and Clyde Coal Co. v.English [1938] AC 57 Lord Wright redefinedthe employer's duty as threefold: "the provision of a competent staff of men,adequate material, and a proper system and effective supervision". The duty is not absolute, for it isfulfilled by the exercise of due care and skill, but it is not fulfilled by entrustingits fulfillment to employees even though selected with due care and skill.

[4] The employer must takereasonable care to provide his workmen with the necessary plant and equipment,and is therefore liable if an accident is caused through the absence of someitem of equipment which was obviously necessary or which a reasonable employerwould recognise to be needed. Thus theduty of the employer is not to expose his workmen to unusual danger, and if it was a matter of ordinary working in theordinary course of business and trade which does not require the use of powertools, extension bar and socket etc. there was no obligation on the employersto provide them. So far as I can see,there was no unusual danger to which the workman was exposed. He was not exposed to any greater dangerthan any other man who was employed in the business of the defendant.; it wasnot in itself a dangerous operation: the particular pieces of tools were not items which it was the duty ofthe employers to provide in carrying out this particular assignment.

[5] It was held in Paris vStepney Brough Council 1951 All ER 42 that the condition of the appellant'seyes (a welder with one eye lost his sight in other eye because he was notprovided with goggles), the knowledgeof the respondents, the likelihood of an accident happening, and the gravity ofthe consequences if an accident should occur, were relevant facts to be takeninto account in determining the question whether or not the respondent tookreasonable precautions for the appellant's safety.

[6] It is common ground thatin the tort of negligence the burden of proving absence of care is theplaintiff's. He discharges thisobligation by showing that, on the balance of probabilities, he has sufferedloss or injury as a result of the defendant's act of carelessness. On the other hand the defendant may showthat he was not negligent in one of two ways:

(1) By showing the actual cause of the damage or injury did not involveabsence of care on his part

(2) Demonstrating that he, in fact, took allreasonable care. This leaves the courtto infer that the injury or damage has some other cause.

[7] In the matter underconsideration the defendant would be liable if it failed in its duty to provideadequate material, a proper system or method of work and effectivesupervision. Can it be said that theemployer failed in its duty? Theplaintiff had removed bolts without mishap. He had back problems before the incident but his employer was not awareof this. The plaintiff is saying thatif he had adequate

tools and had been able to apply the proper lubricants to the bolts theevening before the job was intended tobe done, he would have got the job done without injury.

[8] The plaintiff using the spanner which according to him wasworking

quite well had removed anumber of bolts. He had gone to thetool room and asked for this particular spanner to do the assignment.

This was a straight forwardtask and involved no difficulty or danger. In Morton v William Dixon 1909 S.C. 807 @ 809 Lord Dunedin, LordPresident said:-

"Where the negligence of theemployer consists of what I may call a fault of omission I think it is absolutenecessary that the proof of that fault of omission should be one of two kinds –either to show that the thing which hedid not do was a thing which was commonly done by other persons in like circumstances or - to show that it was a thing which was soobviously wanted that it would be folly in anyone to neglect to provide it."

[9] As was said in Paris v.Stepney Borough Council, "the rule is stated with all the Lord President's trenehantlucidity. It contains an emphatic warning against a facile finding that aprecaution is necessary when there is no proof that it is one taken by others inlike circumstances, but it does not detract from the test of the conduct andjudgment of the reasonable and prudent man. If there is proof that a precaution is usually observed by otherpersons, a reasonable and prudent man will follow the usual practice in thelike circumstances, Failing such proof the test is whether the precaution isone which the reasonable and prudent man would think so obvious that it wasfolly to omit it".

[10] In the present case thequestion is whether the risk of an accident of the nature was appreciable andif it was, it would be the clear duty of the employer to take the properprecautions and provide the appropriate tools other than a spanner. I find that the degree of risk did notdemand that precaution in a reasonable employer. I also find that there was no evidence on which it could fairlybe held that the same reasonable employer was bound at his peril to providepower tools or socket and racket or socket extension and bar, to do theparticular assignment.

[11] The plaintiff's claim therefore fails and is dismissed.

E.Garvey Husbands

Judge of the High Court.