

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1999/RO47

BETWEEN LODERICK ROBINSON CLAIMANT

A N D Y.P. SEATON AND ASSOCIATES DEFENDANT

Miss V. Grant instructed by H.G. Bartholomew & Co
for Claimant

Mr. John Graham instructed by John G. Graham & Co. for Defendant

15th March, 16th March and 1st April 2004

MANGATAL, J

1. This claim by Loderick Robinson is a claim against his employers in negligence. Mr. Robinson was injured on the 6th August 1996 whilst he was travelling on the back of a flat bed truck owned by the Defendant. At a certain point whilst the truck was travelling the driver braked suddenly and metal sheets in the back of the truck which were strapped to each other, but not securely fastened to the truck, slid forward striking Mr. Robinson on the back of his legs. Mr. Robinson suffered serious injuries. He was taken to the hospital where he was hospitalized for 59 days.
2. In this case damages have been agreed as follows:-

General Damages for Pain and Suffering and Loss of Amenities, with no other claim being pursued, \$4.5 million.

Special Damages exclusive of Loss of Earnings - \$66,438.20

Past Loss of Earnings - \$616,000.00

3. The questions that remain for decision are therefore concerned with liability and the issue of contributory negligence.
4. In this case Mr. Robinson and Mr. Ian Lowers, a fellow employee of the Defendant who at the time was traveling in the center of the truck, and whose responsibility it was to deal with the safety of items on the back of the truck, and to see to the loading and off loading of goods from the truck, gave evidence for the Claimant. Lester Clarke, another welder traveling on the back of the truck with Mr. Robinson, and Mr. Calvert Mundle, Mr. Robinson's supervisor at the time of the incident, gave evidence on behalf of the Defendant.
5. It is agreed on both sides that Mr. Robinson was to perform some welding work on behalf of the Defendant at the Kingston Wharves the following day. It is agreed that on the day in question, Mr. Robinson was not going to the site to perform the welding but was going with a view to familiarizing himself with the site and surroundings in order to commence working the next day.

6. However, Mr. Robinson claims that on the morning in question, he was in the company of Mr. Mundle about 12 feet away from the truck under an almond tree when Mr. Mundle told him to go on the truck so he could go and see what he was to do the next day. Mr. Mundle did not tell him whether to go on the back of the truck or in the cab. Mr. Robinson said that over the time working for the Defendant he would be required to travel in the cab of the truck if empty, and if full, he would be told to go on the back by the supervisor because the workmen have to reach the site. On the morning in question the cab was full so Mr. Robinson travelled on the back. There were two other persons on the back of the flatbed truck positioned to the sides. Mr. Robinson went in the middle.
7. Mr. Mundle on the other hand denied having any discussion with Mr. Robinson about the means of transportation to go to the site. He says he only discussed with Mr. Robinson that it was best for him to go and familiarize himself with the site.
8. At paragraph 6 of his witness statement Mr. Mundle said, "It was my expectation that he would have traveled in the cab of one of the trucks".

9. Assessing the witnesses, I found Mr. Robinson to be a truthful and forthright witness. Mr. Mundle on the other hand appeared to me to be somewhat evasive and vague as to the facts surrounding the incident. I accept that Mr. Mundle did tell Mr. Robinson to go on the truck that morning.
10. The Defendants have not established that there was any company policy forbidding employees to travel in the back of trucks and instructing them to travel only in the cabs of trucks, and I accept that employees were required to travel on the back of trucks from time to time.
11. Although Mr. Robinson was on the back of the truck that morning for the purpose of going to familiarize himself with the new work, it seems to me that that purpose was a dual purpose, for his own benefit, the better to perform the work, and also for the benefit of his employers, whose work he was to perform. It is therefore my view that his employer would owe him a duty of care as an employee whilst being transported on the back of the truck on the morning in question.
12. The immediate cause of the accident and Mr. Robinson's injuries was that the metal sheets were not properly secured and so they became loose upon the sudden braking of the truck. I find that the Defendant

company was negligent in that regard, and failed to provide a safe system of work in transporting Mr. Robinson in that way and in those circumstances.

13. However, to the extent that Mr. Robinson was not going to actually work that day, and had in theory if not in practice some choice about the means by which to get to Kingston Wharves that day I find that he should in his own interest have taken reasonable care to see that he would not be injured. He does not seem to have had anything but minimal regard to the fact that the metal sheets were in the back of the truck. He took no note of the fact that the other 2 persons in the back of the truck placed themselves to the sides and he went and stood in the middle of the truck, a mere 4 feet from where the metal sheets were directly in line with him. I am of the view that Mr. Robinson must bear some share of the blame, albeit a small portion.
14. In **Davis v Swan Motor Co.** [1949] 2 K.B. 291 referred to paragraph 3-23 of Charlesworth & Percy on Negligence 9th Edition, a collision took place between an omnibus and a dustcart. The collision was caused by the combined negligence of the drivers of the vehicles, and the Claimant's husband was killed. He had been standing on the steps of the dustcart, where he was forbidden to be, and was crushed

in the collision. The collision was not caused or contributed to by his presence on the steps in any way at all. However, despite this fact, it was held that his death was contributed to by his negligence in riding in a forbidden position and the charges payable to his widow were reduced by one-fifth.

15. Although in the instant case, there is no evidence that the Defendant Company had forbidden Mr. Robinson to ride in the back of the truck, indeed, there is evidence to the contrary as to the practice which obtained, it seems to me that in so far as Mr. Robinson was on the morning in question traveling on the truck for dual purposes, and could have elected to get to the site in some other way, I would consider that he should take 20% of the blame for traveling on the truck in a dangerous position and without paying any or any sufficient attention to the question of whether the potentially dangerous pile of metal sheets was properly secured.
16. There shall therefore be judgment for the Claimant against the Defendant, the liability being apportioned 80:20 in favour of the Claimant. Costs to the Claimant in the same proportion to be taxed if not agreed.

17. General Damages awarded to the Claimant in the sum of \$3,600,000.00 being 80% of \$4.5 million (agreed). Special damages awarded to the Claimant in the sum of \$545,950.56 being 80% of \$682,438.20 (agreed). Costs to the Claimant in the same proportion to be taxed if not agreed.
18. The parties agreed to no award for interest on general damages Interest on special damages awarded at the rate of 6% per annum from 6th August 1996 to today's date 1st April 2004.