IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. D 119/1991

BETWEEN	EASTON DOUGLAS	PLAINTIFF
A N D	WORTHY PARK (FACTORY) LIMITED	DEFENDANTS

Mr. Ainsworth Campbell for Plaintiff

Mr. Garth McBean instructed by Messrs. Dunn, Cox and Orrett for Defendants.

HEARD: July, 20, 26 and 28, 1994 and June 3, 1997

GRANVILLE JAMES, J.

The Plaintiff was employed to the Defendants at their factory in Saint Catherine, he was a Grade 1 Plumber. On April 15, 1990 while he was working at Defendants' Worthy Park premises, he suffered injuries to his left foot. As a result of the injuries the Plaintiff was hospitalised for a total of eighteen days, he also paid several visits to the doctor and was treated as an out-patient.

Most of the facts relating to the circumstances under which the Plaintiff was injured are not disputed.

The case for the Plaintiff is that he was assigned by Clinton Kerr, the factory Engineer, to work with John Osborne, a factory Mechanic. There were two Cranes at the factory, one was referred to as the grabber and the other as the hook. Both the Plaintiff and Osborne completed maintenance work on the grabber. In Osborne's own words, "After working on the grabber, we left for the other crane, we both left together. I told him to go on the other side that when I alert the driver he would check one side of the buggy wheel and I would check the other side." It was while the Plaintiff was proceeding to the other side that his foot was crushed between the crane and a 'railing' when the crane known as the hook moved off.

There is some disagreement on the evidence as to whether or not both cranes were in operation on the day in question. According to the Plaintiff, neither crane was in operation but Osborne's evidence is that one crane (the hook) was in operation on that day. I accept Osborne as the more reliable witness on this point. Daffet Ashley, a crane operator, supports Osborne's testimony, Ashley said that he operated the crane on April 15, 1990.

Both Osborne and Ashley were called as witnesses on behalf of the Defendants.

Osborne said in evidence that the practise was that before he started working on a crane, he would alert the driver of his presence. He further said that where he was, that was the point from which he could speak to the driver and he knew of the driver's presence. In answer to Mr. Campbell in cross examination Osborne said, "There is no reason why I did not alert the driver, I felt we could work on the crane before it moved. I was taking a chance. I was the mechanic in charge."

Based on the facts disclosed on the evidence, I find:

(i) the Plaintiff was acting in the course of and within the scope of his employment when he was injured;

(ii) he was proceeding to perform a task at the request of another employee (Osborne) when he was injured;

(iii) the Defendants are liable in respect of the injuries suffered by the Plaintiff.

(iv) the system of work left much to be desired in that the channel of communication between the workmen (Plaintiff and Osborne) and the workmen (Plaintiff and Osborne) and the driver of the crane was defective.

I find that there was no contributory negligence on the part of the Plaintiff.

DAMAGES

In respect of damages, a medical certificate by Dr. Douglas Mossop was tendered and received in evidence as Exhibit One. The certificate shows that when he was last seen by the doctor the Plaintiff had suffered a fracture to the left knee and trauma to the left lower leg, he complained of stiffness and pain in the left knee.

Dr. Adolfo Mena gave evidence, he examined the Plaintiff on January 21, 1994. The doctor found as follow:-

(i) tenderness and pain of anterior medial and lateral aspects of the left knee;

(ii) creptitus sound whenever he flexed or extended the knee joint;

(iii) range of movement slightly restricted on full

flexion.

(iv) 3.3 cm. scar over posterior medial aspect of the upper third of the left leg;

(v) osteoarthritis of the left knee joint;

(vi) a 10% impairment of the left lower limb.

Plaintiff complained of pain and stiffness of the left knee and cramp in the left leg. He walked with a limp sometimes and had difficulty in climbing steps or hills.

On the question of the quantum of damages, a number of cases were cited by the Attorneys, both Attorneys referred to the case of **Stephen Donaldson v. The Attorney General** and **Franklyn Sutherland** decided on September 26, 1990 (reported in Casenote, issue 2 at page 36). In that case the injuries and resultant disability are somewhat similar to those in the instant case. In the instant case I find that there is insufficient evidence relating to loss of future earnings and future medical expenses.

I give judgment for the Plaintiff in the sum of $636,772.33.

Damages comprise:

Special	$184,330.00
General (For pain and suffering and loss of amenities)	$452,442.33
	$636,772.33

Interest on Special Damages at 6% per annum from April 15, 1990 and at 6% per annum on General Damages from August 13, 1991.

Cost to the Plaintiff to be agreed or taxed.

I sincerely regret the delay in presenting this Judgment.