

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. G139/1985

BETWEEN	LESLIE GUNNIS	PLAINTIFF
A N D	CLARENDON SUGAR COMPANY	DEFENDANTS

Mr. Pearson and Miss Bravo for the Plaintiff

Miss Carol Davis for Defendants

HEARD: 14th November and 15th November, 1991 and 25th April, 1997.

GRANVILLE JAMES, J.

Plaintiff was employed to Defendants at their factory at Monymusk in the parish of Clarendon, he worked as a millwright/mechanic.

On 15th April 1982 Plaintiff while engaged in repairing a pump at the factory suffered injuries to his right hand resulting in amputation of the fifth digit of the right hand through the proximal phalanx, fracture of the proximal phalanx of the ring finger, fracture of the proximal phalanx of the middle finger, disrupted collateral ligaments in the joints of the right thumb, resulting deformity of the index, middle and ring fingers.

The case for the Plaintiff is that at about 6:30 a.m. one Mr. Lilly told him something and he went to the Shift Office where he got two belts for a pump in the factory. Plaintiff and Lilly were proceeding towards the pump when they met Aston Robb, a production Foreman at the time. The Plaintiff said in evidence that he asked Robb if everything was alright and Robb said yes.

Plaintiff proceeded to the defective pump and he observed that the pump needed a belt. The pump operated both electrically and manually. There was a switch which operated about eight pumps including the pump on which the Plaintiff was about to start work. This switch could turn on or off the pump, it was located about four arms lengths from where Plaintiff was working by the pump. According to the Plaintiff, when he was about to work on the pump it had no electricity supply.

In order that the pump should operate manually it works with 'liquor.' The liquor goes down into a drum containing a float, the 'liquor' lifts the float and that turns on the pump. Plaintiff's evidence is that he did not check to see if there was any liquor in the drum that could lift the float and so turn on the pump.

So far as the actual accident is concerned, these are the Plaintiff's words:

"While doing the job we put on one of the belts, the other belt went into the wrong groove of the pulley, Mr. Lilly and I were trying to turn the belt to get it in the right groove, we could not turn it and we called Alvin Stephenson and Granville Gordon, we turn the belt but still could not get it into the right groove. I got a screw-driver and put it in the groove of the pulley, while turning the belt, the pump tripped in."

It was at this point (when the pump tripped in) that Plaintiff's right hand was caught in the groove of the pulley.

The Plaintiff said that he realised that the current was not turned off and 'it was still on automatic.' He said further that by turning the pulley it could not of itself turn on the current.

After the mishap, Plaintiff noticed that his little finger was missing, he got a cut on his ring finger, he said four fingers were caught in the machine. He is now unable to make a fist with his right hand - he is right handed. Plaintiff was treated at the Company's Clinic and at Lionel Town Hospital, he was later admitted for two days at the University Hospital.

In support of the Plaintiff's case, William Lilly was called as a witness. He worked with the Plaintiff and was present at the time of the accident. According to this witness, Aston Robb who was then a Production Foreman spoke with him. In the witness's own words:

"He (Robb) told me that one of the molasses pumps wanted some belts. I asked him if he kill the current off the pump and he said yes. I referred to the main switch that control the current that goes to the pump. I went to Gunnis and told him that Robb gave me a job."

Aston Robb, Production Supervisor, gave evidence on behalf of the Defendants. He said that in April 1982 he was a Production Foreman. He said that on the morning of 5th April, 1982 he heard a 'funny sound' from the pump in question. This pump is described as the 'A molasses pump.' Robb examined the pump and he discovered that a belt on the pump was slack. Robb said that he asked William Lilly to order belts for the pump. The witness said further:

"When workmen are going to work on the pump, they are supposed to ask the Shift Foreman or Shift Superintendent to isolate the pump. The persons doing the work should themselves ensure that the pump has been isolated. I was the Shift Foreman on the day in question and no one asked me to isolate the pump."

Robb denies that he told Lilly he had 'killed off' the electricity, according to Robb he said nothing to Lilly about electricity.

The witness had seen Gunnis working on the pump in question on about two previous occasions while the electricity was on. It was not the correct procedure for the electricity to be on while work was in progress on the pump. In answer to a question Robb said that he could not recall any training being given about turning on and off the current while work was being done on the pump. There were seven separate switches for seven different pumps, all located in the same room. The switches are located about six feet from the pump.

Robb also said that he did not know that anyone was working on the pump and that he gave no instructions for anyone to work on it. He admitted that if anyone was working on the pump and the switch was not off then there would be a dangerous situation.

Based on the evidence I find:

- (i) the Plaintiff was injured while he he was engaged in work on a pump on Defendants' premises - this pump had automatic features;
- (ii) the system operating at the time was manifestly unsafe;
- (iii) the electrical switch to isolate the pump had not been turned off;
- (iv) Robb led Lilly to believe that the pump had been isolated. It is significant that Robb said in evidence that he had seen the Plaintiff working on the pump in question on about two previous occasions while the electricity was on,
- (v) the Defendants failed to take any or any adequate precautions for the safety of the Plaintiff while he was engaged in repairing the pump in question.

I accordingly give Judgment for the Plaintiff and award damages as follows:

Pain and Suffering and loss	
of Amenities	\$366,913.00
Handicap on the labour market	\$293,530.00
	<u>\$660,443.00</u>
Special Damages	\$ 4,900.00

Costs to the Plaintiff to be agreed or taxed.

Interest on \$366.913 at 6% per annum with effect from 20th May 1985 to 11th April, 1997 and interest on Special Damages at 6% per annum with effect from 5th April, 1982 to 11th April, 1997.

The case of **Leroy Mills v. Roland Lawson and Keith Skyes**. Assessed on 25th January 1989 by Walker J. (as he then was) is used as a guide in determining the quantum of damages to be awarded.

This case is reported in **Khan's Recent Personal Injury Awards Volume 3 at page 124.**