

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. S – 1462 of 2003

BETWEEN

BRENTON BROOKS

Plaintiff

AND

SYNE CONTRACTORS LIMITED

Defendant

Before: The HONOURABLE MR. JUSTICE DAVID ALEXANDER (Ag.)

Appearances:

Mr. S. Roopnarine for the Plaintiff;

Mr. G. Mungalsingh for the Defendant;

REASONS

1. Brenton Brooks, the Plaintiff in this action claims against the Defendant Syne Contractors Limited damages for personal injuries and consequential loss caused by the negligence and / or nuisance and / or breach of contract of employment of the defendant their servants and / or agents on the 22nd May, 2003.
2. In paragraph 3 of his statement of claim, the Plaintiff alleges that on the 22nd May, 2003, whilst in the course of his employment he was directed by his supervisor to start a forklift and bring same down a hill. As the Plaintiff was driving the forklift within the Defendant's compound and proceeding down the hill, the forklift went into a large pot hole and overturned. At paragraph 4,

the Plaintiff pleads that this accident was caused by the negligence and / or nuisance and / or breach of contract of employment of the Defendant.

3. The particulars of negligence and / or breach of contract of employment and / or nuisance pleaded at paragraph 5 (a) – (k) can in summary amount to the defendant's failure to provide a safe place of work and safe equipment.
4. As a result of this accident, the Plaintiff says at paragraph 7 that he received severe personal injuries, loss and expense.
5. In paragraph 3 of its defence, the Defendant denies paragraph 3 of the statement of claim and alleges that the Plaintiff without the authority, knowledge, consent and / or instructions of the Defendant its servants and / or agents and without the keys to the said forklift, started same by using a u-nail and tried driving same down a hill which is too steep for a forklift or any vehicle, thereby losing control of same which overturned and fell on his left foot.
6. The straight-forward issue on the pleadings is whether the said accident and resulting alleged injuries, loss and damage were caused by the negligence of the defendant; nuisance and breach of contract of employment did not arise for consideration .
7. On the 22nd May, 2003, the Plaintiff was a labourer in the employ of the Defendant which was engaged in the manufacture of concrete cylinders.
8. In his evidence-in-chief, the Plaintiff stated that on the 22nd May, 2003, at about 9:00 am to 9:30 am he was working in the Defendant's compound when the foreman told him to start the forklift and bring it down the hill. He as a labourer was not authorized to drive the forklift, but had to do so when asked

by the foreman, because had he not complied with the foreman's instructions he would have lost his job.

9. Pursuant to the foreman's instructions, the Plaintiff started and moved the forklift. While going down the hill, he realized the brakes were not working effectively and within seconds, the forklift went into a large pothole and tilted over to its left side. The Plaintiff's left foot was trapped beneath the forklift.
10. In answer to Mr. Mungalsingh in cross-examination the Plaintiff said that his foreman was Lalman Ramsingh. He said he had driven a forklift about a dozen times and had driven this particular forklift once or twice. He said that the foreman probably knew he was not authorized to drive the forklift.
11. When asked by Mr. Mungalsingh whether he knew anyone who was dismissed for failing to follow the foreman's instructions he said Smoky, but he was not there when Smoky was fired, neither did he know who fired him. The Plaintiff said another person so dismissed was someone whom he knows as Ras, but again did not know who fired him.
12. The Plaintiff further stated in cross-examination that he had to walk up the path along which the accident occurred where he would see a big pothole, the whole road had potholes. His past knowledge made him realize that the forklift's brakes were not working effectively, a tradesman in the yard was always repairing it.
13. The Defendant's first witness was the said Lalman Ramsingh, the foreman / forklift operator employed by the Defendant. In his evidence-in-chief he testified that there was no water to manufacture new cylinders that day so there could be no production. The workers all decided to change and go home. Most of them were ready to leave when suddenly he heard the forklift in factory No. 3 start. He then heard a crash and some of the workers

including Ramkaran Hadai, another forklift operator in the Defendant's employ and himself went and saw the forklift on top of the Plaintiff's left instep. Ramsingh further stated that the Plaintiff told him he had used a u-nail in the ignition to get the forklift started. All the workers who were present including Hadai and himself saw the u-nail which was still in the ignition.

14. In answer to Mr. Roopnarine in cross-examination, Ramsingh said at the time he heard the forklift start he was at the gate outside the compound. Hadai at that time was in the garage. Ramsingh stated that the Plaintiff was not authorized to drive the forklift and if he was found driving it, he Ramsingh would get in trouble.
15. In contrast to Ramsingh's testimony, Hadai who also testified on the Defendant's behalf stated in cross-examination that when he heard the forklift start, both he and Ramsingh were just outside the garage. He admitted that Ramsingh would be lying if he said he was at the gate when the forklift started. Ramsingh was next to him.
16. There is no evidence or even a suggestion as to why the Plaintiff would venture to drive the forklift without permission when he had no authority to do so and at a time when his foreman and co-workers were still on the compound.
17. I do not believe Ramsingh's evidence that he was at the gate when he heard the forklift. I prefer Hadai's version. I am of the opinion that Ramsingh placed himself at the gate in an attempt to distance himself from the fact that he wrongfully instructed the Plaintiff to drive the forklift knowing that the Plaintiff had no authority to do so, which was detrimental to Ramsingh.

18. The Plaintiff on the other hand knew that he was not authorized to drive the forklift but did not protest to Ramsingh when Ramsingh instructed him to drive it. I do not believe the Plaintiff's evidence that he was aware of the dismissal of two workers for disobeying instructions. The Plaintiff testified that he drove the forklift once or twice before. Knowing that he was not authorized to drive the forklift, the Plaintiff could have reported to someone in higher authority that Ramsingh instructed him to drive it; he chose not to do so.
19. Even if the road on which the Plaintiff drove the forklift was dangerous or unsafe as alleged and I find it was not, the Plaintiff by his admission was familiar with the terrain. He stated that he was aware that the forklift was not working properly yet he willingly proceeded to drive it.
20. The Defendant on these facts cannot be held liable for the Plaintiff's mishap. The Defendant did nothing which could be seen as being responsible for the accident. This accident was caused solely by the Plaintiff driving the forklift when he had no authority to do so. In Norris v William Moss & Sons, Ltd [1954] 1All E R 324 the Plaintiff who was employed by the Defendant as a scaffold erector suffered personal injuries when he used the wrong method in an effort to correct a fault in one of the standards. Somervell L.J. agreed with the finding of the trial judge that the cause of the accident was the method by which the Plaintiff set about this work and not the failure of the foreman to take steps. Somervell L.J. concluded that the claim failed on the point of causation. Had the Plaintiff performed that work in the natural and proper manner, there would have been no accident at all.
21. Although the road upon which the Plaintiff's accident occurred is part of the defendant's premises, the Plaintiff's duties were not performed there. There is no evidence that that road was a risk to the Defendant's employees.

22. I have considered the evidence and the submissions of both Counsel and I find as follows:

(I) The road upon which the accident occurred was not unsafe for the purposes of this action;

(II) Lalman Ramsingh instructed the Plaintiff to drive the forklift;

(III) The Plaintiff assented to drive the forklift when he was under no obligation to do so;

(IV) The Defendant is not guilty of negligence as alleged.

23. In the circumstances, the Plaintiff's claim is dismissed with costs certified fit for advocate Attorney to be paid by the Plaintiff to the Defendant to be taxed in default of agreement.

April 12, 2010

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DAVID ALEXANDER
Former Acting Judge