TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Sub-Registry, San Fernando

H.C.A. No S - 857 of 2003

BETWEEN

ZORISHA KHAN Plaintiff

AND

PRICESMART TRINIDAD LIMITED Defendant

Before the Honourable Justice
Mr. David Alexander (Ag.)

Appearances:

Mr. R. Bissessar for the Plaintiff

Mr. A. Singh for the Defendant

REASONS

1. In this action, the Plaintiff Zorisha Khan claims against the Defendant Pricesmart Trinidad Limited, damages for personal injury and consequential loss caused by the negligence of the defendant, its servants and / or agents whilst performing her duties as an employee of the defendant at the defendant's workplace on or about the 26th October, 2001.

2. At Paragraph 2 of her statement of claim, under the heading Particulars of Accident, the Plaintiff alleges that on the 26th October, 2001, at around 10:30 am, she was in the course of her employment as a meat cutter in the defendant's Meat Department where she was sealing and packaging meat, when while moving about she slipped on meat fat on the floor and fell heavily to the ground.

3. The particulars of Negligence allege that the defendant, its servants and / or agents failed and / or neglected to:-

    i. take any and / or any reasonable care to ensure a safe system of work for the Plaintiff;

    ii. ensure that the floor of the Meat Department was regularly cleaned of meat fat and / or kept and / or maintained in a safe and non-hazardous condition;

    iii. provide proper boots / shoes for the plaintiff to prevent her from slipping and falling;

    iv. provide proper equipment and / or machinery for meat cutting that will prevent pieces of meat and / or meat fat from falling unto the floor;

v. ensure that the floor of the meat department was free of material that will be hazardous or dangerous to walk on if wet or slippery.

4. In response, the defendant at paragraph 3(a)(1) of its re-amended defence avers that it implemented systems and procedures for the cleaning of and regularly cleaned the floors of the meat department. Alternatively, the defendant says at paragraph 3(b) of its defence that the said accident was caused wholly and / or contributed to by the plaintiff's negligence in that she:-

a) failed and / or neglected and / or refused to wear the protective or proper boots supplied or made available to her by the defendant;

b) failed to request and / or access the proper boots from the defendant for the performance of her duties;

c) failed to take any or any proper care or necessary precaution for her own safety;

d) failed to heed, observe or pay any or any proper attention when walking along the floor of the meat cutting room.

5. The undisputed facts are that the defendant is a limited liability company engaged mainly in the wholesale and retail of dry goods, household items, frozen meats and produce. By letter dated the 14th April, 2001, the Plaintiff was employed by the defendant as a poultry cutter in its meat department with effect from the 23rd April, 2001. Before joining the defendant's employ, the Plaintiff had had 19 – 20 years experience in the poultry industry having worked at Khan's Poultry Depot and Nutrina.

6. Together with her letter of employment the plaintiff received the defendant's Employee Information Handbook wherein at page 19 under the rubric Safety and Accident Prevention is stated:-

"Safety is one of the many responsibilities we all share. We believe that it is the duty of each and every one of us. Everyone must work to maintain effective controls and procedures to reduce the chance of occupational injuries and industrial health hazards and to provide a safe and comfortable working environment for all employees. Safe work practices and procedures and safety rules and regulations established by the company (including elimination of potential work hazards). If you observe an unsafe condition you should contact your Supervisor immediately. Any injury, whether it requires first aid or not, must be reported to your Supervisor".

And at page 9, under Employee Responsibilities it is provided inter alia that all employees are expected to perform their duties in a safe manner and to adhere to the safety regulations in force in the company.

7 Two or three days before commencing work with the defendant, the plaintiff attended an orientation when the defendant dealt with safety practices and procedures. From time to time, the defendant reminded employees of these practices and procedures.

8 By letter dated 9th July, 2001, the defendant informed the Plaintiff that she was promoted from Poultry Cutter to Poultry Room Supervisor with immediate effect; she was also informed that she would be placed on probation from the 9th July, 2001 to the 8th October, 2001.

9. By letter dated 24th October, 2001, the defendant informed the plaintiff that her probationary period was extended for thirty days with effect from the 9th October, 2001. On the 25th October, 2001, the plaintiff was told by one John Donelly that as she had not successfully completed her probation, her position as Poultry Room Supervisor was terminated and with effect from the 26th October, 2001, she would resume duties as a Meat Cutter. The defendant's letter to the plaintiff dated 26th October, 2001, confirms what John Donelly told her and it is noteworthy that paragraphs 2 and 3 informed her as follows:-

> "The company recognizes the health and safety of its employees as a priority. The events on Friday 19th October, 2001, which led to the illness of the employees in the poultry room and yourself, are considered as negligence on your part. You disregarded the company's policy on the safe use of equipment and placed not only your life but also the lives of the employees in jeopardy.
>
> It has also been noted that the cleanliness of the poultry department is not of the standards of Price Smart and that the Poultry department is not producing the maximum daily quota under your supervision."

10. The plaintiff admits that she was extremely disappointed by her demotion and very angry when she received the defendant's letter of the 26th October, 2001, because the complaints were untrue.

11. Coincidentally, on the said 26th October, 2001, the plaintiff returned to the Meat Department as a Meat Cutter and according to her, at around 10:30 am while she was there sealing and packaging meat she slipped on meat fat which had not been cleaned from the floor and fell heavily. The defendant does not admit this occurrence.

12. The legal question in this case is what is the duty owed by an employer to his employees. The answer in short, is that an employer has a duty at common law to take reasonable care for the safety of his employees. This legal responsibility of employers was described by Lord Herschell in his often quoted statement in Smith v Baker [1891] A.C. 325 at 362 in the following words:

"It is quite clear that the contract between employer and employed involves on the part of the former the duty of taking reasonable care to provide proper appliances and to maintain them in a proper condition, and so to carry on his operations as not to subject those employed by him to unnecessary risk".

13. Whether or not an employer acted in breach of his common law duty to take reasonable care for his employees' safety is a question of fact, that being the case, the courts recognize that it is quite unlikely that one case can be used as binding precedent for another, hence the statement of Lord Keith of Avonholm in Qualcast (Wolverhampton) Ltd V Haynes [1959] A.C. 743 at 755: "In the sphere of negligence where circumstances are so infinite in their variety it is rarely, if ever, that one case can be a binding authority for another."

Lord Denning at page 759 observed:

"What did reasonable care demand of the employers in this particular case? That is not a question of law at all but a question of fact. To solve it the tribunal of fact – be it judge or jury – can take into account any proposition of good sense that is relevant in the circumstances, but it must beware not to treat it as a proposition of law". and at page 760 he continued:

"so here, this being a case governed by the common law and not by any statute or regulation, the standard of care must be fixed by the judge as if he were a jury, without being rigidly bound by the authorities. What is "a proper system of work" is a matter of evidence, not for law books. It changes as the

conditions of work change. The standard goes up as men become wiser. It does not stand still as the law sometimes does."

14. The plaintiff, at paragraph 6 of her witness statement says that the Meat Department floor was required to be cleaned regularly because meat fat and by-products always fell on the floor which caused it to be slippery. Moreover, she was not provided with any safety boots or any other safety gear in order to carry out her duties, but, she was always extremely careful for her own personal safety. She said the defendant's regular cleaners were supposed to clean the Meat Department floor but they never came regularly nor was there any scheduled time or period for cleaning. The questions upon which this case is to be decided are therefore:

i) whether or not the Meat Department was regularly cleaned and

ii) whether or not the defendant provided the plaintiff with safety boots, if not, could the defendant be held liable for her alleged accident and injuries.

As to the first question, the regular cleaning of the room, I find that the defendant discharged its duty in so doing. In cross-examination, the plaintiff stated that the 26th October, 2001, the date of her alleged accident, was her first day of work in the meat room. Between April, 2001, and the 26th October, 2001, she worked only in the poultry room and never had sight of the meat room or ever went inside of it because the poultry room is at the back of the building. In these circumstances, the plaintiff in my view could not say what was the practice and policy for keeping the Meat Room Clean. Also, in contrast to her said paragraph 6, the plaintiff's evidence in cross-examination was that the Poultry Room was cleaned every evening but not properly. When she entered the Meat Room that morning, Emile Montoute, one of the

defendant's employees was cleaning the room, but did not finish before she fell.

15. In cross-examination, the Plaintiff accepted that while cutting any type of meat she would have seen if any fat fell on the ground. Upon seeing this she would clean it up or call someone to clean it. If she did not clean it or call someone else to do so, she would be careful around it. She said she knew she could have slipped on fat but ignored that because she did not think that would have happened. For someone with the plaintiff's experience in the industry her choice that day is inexcusable.

16. The defendant's Employee Information Handbook provides that it is the duty of all employees "to work to maintain effective controls and procedures to reduce the chance of occupational injuries and industrial health hazards and to provide a safe and comfortable working environment for all employees…..if you observe an unsafe condition you should contact your supervisor immediately". Everyone in the defendant's employ had the collective responsibility to ensure safety at the workplace but the Plaintiff's evidence is that she failed to do so on the 26th October, 2001.

17. As to the provision of safety boots, again I find that the defendant on a balance of probabilities did provide the Meat Room employees with safety boots, but that on the 26th October, 2001, the Plaintiff chose not to wear them.

18. The evidence of the three witnesses for the defendant, Rishi Ramlal, Emile Montoute and Chester Keller, all employees of the defendant was that they were each provided by the defendant with safety boots. They were not contradicted. I find it improbable that for no suggested reason, the defendant would single out the plaintiff from amongst its other employees and not provide her with safety boots.

19. Mr. Bissessar, counsel for the plaintiff submitted that it is the employer's duty not only to provide proper footwear, but to ensure that the employee actually wears it. In support thereof, he cited H.C.A. No. 1886 of 1983 between Morris - v - Point Lisas Steel Products Limited in which the plaintiff, a machine operator in the defendant's employ was injured in the right eye by a piece of steel while using the defendant's straightening and cutting machine. As a result, he lost complete sight in that eye. In an action for damages for that injury and consequential loss, Hosein J. in arriving at his decision quoted Edmund Davies L.J. in Bux - v – Slough Metals Ltd. (1974) 1 ALL ER. 262 at page 276 who stated:

> " The question of whether instruction or persuasion or even insistence in using protective equipment should be resorted to is, therefore, at large, the answer depending on the facts of the particular case. One of the most important of these is the nature and degree of the risk of serious harm resulting if it is not worn".

In Hosein's J. judgment, " since the risk was obvious to the defendant and not insidious then the defendant ought to have made goggles available and also given firm instructions that they must be worn and the defendant ought to have educated the men and made it a rule of the factory that goggles must be worn since if an accident did happen the probability was likely to be the loss of sight of one or both eyes."

20. Again, we see the courts – in this instance Emund-Davies L.J. – making it quite clear that the issues in these cases are to be determined on their particular facts. Hosein J. in his judgment placed reliance on Edmund – Davies L.J. by giving due regard to the view that whether or not an employer should insist upon the use of protective equipment depends on the seriousness of the risk involved.

21. Mr. Singh, counsel for the defendant, on this point submitted that where an employer supplies the necessary protective measures, and instructs his employees how to use same and provides some measure of supervision, he is not liable where the employee refuses to use them. He cited in support Qualcast (Wolverhampton) Ltd v Haynes [1959] A.C. 743 at 756 and Woods V Durable Suites Ltd [1953] 1 WLR 857 at 862. Mr. Singh further submitted that there is no duty that an employer is bound through his supervisor to stand over employees of age and experience every moment they are working in order to see that they do what they are supposed to and again relied on Woods V Durable Suites Ltd at page 862 where the plaintiff contracted dermatitis while working with synthetic glue. In an action for damages against the defendant, his employers, he alleged inter alia that there had been insufficient supervision of the workers to ensure that they took the necessary precautionary measures against contracting the disease. Singleton L.J. in his judgment at page 862, stated that he was of the belief that it was not part of the common law of England that an employer is bound, through his foreman, to stand over workmen of age and experience every moment they are working and every time that they cease work, in order to see that they do what they are supposed to do. He stated that the measure of duty at common law " is to take reasonable care and so to carry on their operations as not to subject those employed by them to unnecessary risk".

22. I disagree with Mr. Bissessar's submission with all due respect. The evidence in this case does not suggest that the nature and attendant circumstances of the plaintiff's work and place of work posed any or any great danger to the employees in the meat department. In fact, the plaintiff's alleged accident is the only such accident to have occurred in the defendant's meat room. There was no need in my view for the plaintiff's supervisor to be extra vigilant as to whether or not the plaintiff wore protective boots on the 26th October, 2001, and / or to insist that she did so, she having been a supervisor herself in the

defendant's poultry room and would have known what was required to ensure her safety.

23. In conclusion, I hold that the defendant discharged the legal duty placed on it to take reasonable care for the safety of its employees. I find that in so doing, the defendant regularly caused the meat department floor to be cleaned and provided its employees with the proper attire, including safety boots.

24. In the circumstances, I find the defendant is not liable to the plaintiff for her alleged injury, loss and damage. The Plaintiff's claim is therefore dismissed with costs to be paid by the Plaintiff to the defendant certified fit for advocate attorney to be taxed in default of agreement.

December 11, 2009

David Alexander
Judge (Ag.)