

IN THE SEYCHELLES COURT OF APPEAL

BENJAMIN JEANNE

Appellant

VERSUS

RAYMOND BONTE

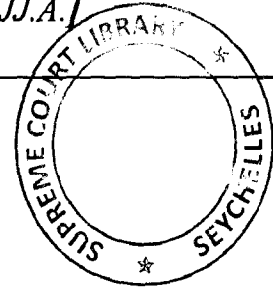
Respondent

SCA No. 4 of 2003

[Before: Ayoola, P., Silungwe and De Silva J.J.A.]

Mr. S. Rouillon for the Appellant

Mr. F. Bonte for the Respondent



JUDGMENT OF THE COURT

(Delivered by De Silva, J.A.)

In his amended plaint, the plaintiff (now the appellant) averred that the defendant (now the respondent) was the owner of a fishing boat and that he was a fisherman employed by the defendant on his boat. On a date unknown in October 1997, in the course of his employment, he fell down and suffered severe injuries to his left shoulder. He further averred that the injuries, pain and suffering, were the result of the defendant's fault and/or negligence inasmuch as the defendant did not take proper care for the safety of the plaintiff and failed to provide a safe and secure system of work. He claimed, inter alia, moral damages for injury, pain, suffering and permanent disability in a sum of Sr.150,000/-.

In the statement of defence it was admitted that in October 1997 the plaintiff slipped on the boat "and leaned on his left arm". The material evidence of the plaintiff in regard to how he fell inside the boat reads thus:

- “Q What made you fall?
A I slipped on the skeletons of the fish.
Q That is the fish bones... were on the floor and you slipped on it?
A Yes.
Q What was your job in the boat, were you also cutting fish like the other people?
A Yes, I was also a fisherman, I cut the fish and I cleaned it also.
Q So, it could be that you also would have put one of the skeletons there in the boat itself.
A There were lots of those skeletons, I cannot say who put it there.”*

It is of relevance to note that the defendant did not lead any evidence to the contrary. The finding of the learned trial Judge was:

“On the basis of the evidence it was the practice for the fishermen on the boat to throw the fish bones on the deck as they cleaned the fish.... In these conditions the plaintiff slipped due to his sole negligence.”

It seems to us that the “*practice*” was one which was fraught with grave danger to those working on the boat. Article 1382(2) of the Civil Code states:

“Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances, in which the damage was caused. It may be the result of a positive act or an omission”.

In our view the practice of throwing fish bones on the deck was an unsafe system of work and the respondent had failed to take due and proper

care to ensure the safety of the appellant. The liability of the respondent was thus established on a preponderance of probabilities.

For these reasons, the appeal is allowed, the judgment is set aside and the case is remitted to the Supreme Court for the assessment of moral damages.

Dated at Victoria, Mahe this ... 5 day of December 2003