IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MC 31/2014

[2018] SCSC 177

CARLOS BARRA
Applicant

versus

HIS ENTERPRISE PTY LTD (HEREIN REP BY MR HAROLD STRAVENS OF PROVIDENCE INDUSTRIAL ESTATE.
Respondent

Heard:

Counsel: Mr Derjacques for Applicant

Mr Chetty for respondent

Delivered: 19th of February 2018

JUDGMENT

Nunkoo J

[1] The Appellant claimed SR 350,000.as damages from the Respondents. The facts as alleged by the Appellant are that he was working as mason for Rs 3000 monthly with the Respondent for three years until his contract was terminated on May 2009. The Appellant had a major accident whilst in the course of his employment with the Respondent and suffered injury.

[2] He averred that the Respondent had failed to provide him with a safe system of work and this constituted a faute against the Appellant.

[3] Appellant had an accident at work and he fractured his mandible and lost seven teeth; he suffered from pain during treatment and still suffers pain in the mouth.

[4] In their defence, Respondents denied that the Appellant was employed as a mason and it was averred that he was working as a handy man. The Respondents averred that he was never requested to climb on top on the roof.

[5] The Respondent averred that the Appellant was under the effect of drug that day and later he was dismissed as he continued to consume alcohol and drugs.

[6] The Learned Senior Magistrate gave judgment in favour of the Respondent.

[7] The Appellant has appealed on the following grounds:

I. The Honourable Magistrate erred in law in failing to find that the Appellant has proven his case on a balance of probabilities and the Respondent was liable in law.
II. There was sufficient evidence on record for a proper finding of liability.
III. The accident occurred whilst the Appellant was performing his duties, as an employee and was not "on a frolic of his own."
IV. The work done by the Appellant was not at his own risk.
V. The foreman did not afford proper supervision.
VI. The work was not secured and a safe system of work was not effected nor effective.

[8] I have gone through the evidence on record.

[9] The issue is whether the Appellant got the injuries whilst doing work for the Respondent or whilst doing something on his own, that is was on a frolic of his own, as it is commonly put, for which he was not authorised. There is a factual issue which is crucial to the case of the Appellant. The Appellant's version is that he was instructed by the representative of the Respondent company, one Mr Harold Stravens, to help to fix the iron sheets on the roof

together with his supervisor one Jeffrey Restico. The Appellant's version is that he and his supervisor Jeffrey had placed two iron sheets to be screwed. There was a problem with the extension wires and that did not reach the spot where they had to fix the screws. So he was trying to bring the wires towards that spot when it got stuck. He was trying to pull it when it went loose and he fell.

[10] What is being said by the defence is that the Appellant was smoking drugs; that he was employed as a handyman; and he had nothing to do on the roof. Therefore the Respondent is not liable for the injuries of the Appellant.

[11] The Representative of the Company, one Harold Stravens deponed to that effect. The supervisor, Jeffrey Bristol stated that Appellant had gone on the roof without his being needed there.

[12] There is evidence from Witness Dean Florentine who deponed to say that on that day he was working together with the plaintiff. At a point in time he heard a noise; it was Appellant who had fallen down from the roof and he could see he was bleeding. He deponed to say that the iron sheets were misplaced.

The evidence of the supervisor, Jeffrey Bristol,to the effect that Appellant was not required on the roof cannot be believed. It was his duty to supervise. It was always open for him to call the Appellant to order and ensure that he did what he was required to do. It was so easy to ask the Appellant to stay on the ground from where he was supposed to move the iron sheets upwards, that is stay down and continue his work there rather going up on the roof. To that extent there was a failure on the part of the supervisor. There is no evidence that he did that. Witness Mickey cannot be believed. He was working just by the same building as the Appellant. The only thing he saw is that the Appellant went for lunch and came back at one and he saw him rolling a cigarette and smoking it. He could not say whether he saw Appellant on the roof and if so why.

The question that is to be addressed is in regard to the instruction given to the Appellant. What was the instruction given to the Appellant on that day? The Appellant has deponed to the effect that his manager had asked him to work on the roof with the supervisor Jeffrey.

[13] I concur with the submission of Learned Counsel for the Appellant that on a preponderance of evidence there should have been a finding in favour of the Appellant.

[14] I find that there was enough evidence on record to decide in favour of the Plaintiff on a balance of probalities.

[15] I allow the appeal and order that the Defendant pays the amount SR 350,000.00 as damages as per his plaint.

Signed, dated and delivered at Ile du Port on 19th of February 2018.

S Nunkoo
Judge of the Supreme Court