
O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

RITA BENNETT Appellant

- and -

PARAMOUNT DRY CLEANERS LIMITED Respondent

CASE FOR THE RESPONDENT

RECORD

- 10 1. This is an appeal from the Judgment and Order of the Court of Appeal of Jamaica dated 29th November, 1974 allowing the Respondent's appeal against the Judgment of Mr. Justice Melville dated 8th December, 1972 and is brought pursuant to the Order of that Court dated the 28th February, 1975 granting the Appellant Final Leave to appeal to Her Majesty In Council. p.32 L.1
p.27 L.1
p.41 L.5
- 20 2. This action was commenced by the Appellant by Writ of Summons in the Supreme Court of Jamaica against the Respondent on the 23rd November, 1970 claiming damages for personal injuries caused by the negligence of the Respondent its servants or agents whilst the Appellant was employed to the Respondent as a Laundress and in the course of the said employment. The Appellant alleged in the Statement of Claim that the Respondent: p.1 L.1
- (a) Failed to take any or any proper precaution for the safety of the Appellant; p.2 L.10

RECORD

p.2 L.12

(b) Employed a fellow servant with the Appellant which fellow servant was incompetent and/or negligent in pressing a button on one of the machines being operated by the Appellant thus causing the upper part of the said machine to descend on the right forearm of the Appellant whilst the Appellant was engaged in her work.

p.2 L.21

(c) That the said fellow servant was incompetent and unskilled in the operation of power steam pressing machines, which the Respondent well knew or ought to have known but of which the Appellant was ignorant and by the negligence and default of the Respondent the said fellow servant was employed to work along with the Appellant.

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3. The Appellant succeeded in the Supreme Court at first instance before Melville J. who found that the Respondent was 50% to blame for the accident and the Appellant 50% contributorily negligent and ordered that Judgment be entered for the Respondent for \$1534.30 with costs to be agreed or taxed. The Respondent's appeal to the Court was allowed and Judgment was entered for the Respondent against the Appellant with costs to be agreed or taxed.

p.40 L.46

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4. The principal facts of the case appear from the oral evidence given at the trial of the action and the Judgment of Mr. Justice Melville and of the Judgments of the Court of Appeal. So far as they are material may be summarised as follows :

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p.12 L.9

(a) The Appellant alleged that she was operating a machine along with a fellow servant and that she had placed a shirt on the machine, so had the other employee. She was spraying both shirts with water with a spray gun when the fellow servant touched the button on the machine causing the top of the machine to come down on her right hand.

p.12 L.17

p.13 L.45

p.14 L.1

(b) The Appellant further alleged, although not pleaded; that the machine was defective as slammed down on her hand when only one button

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	was pressed instead of coming down gradually when both buttons were pressed.	<u>RECORD</u> p.17 L.30
	(c) The Respondent's evidence was that the Appellant was not operating a machine along with a fellow servant at the time of the accident. That the Appellant was at the time being shown how to do the work properly by the manager of the Respondent's company.	p.16 L.26 p.16 L.40 p.20 L.30
10	(d) That the fellow servant did not press the button causing the machine to slam down on the Appellant's hand.	p.17 L.30
	(e) That the machine was not defective but was in proper working order and condition at the material time and that the accident was caused by the Appellant placing her hand on the machine at some time after the Respondent's employee had pressed the button for the top of the machine to descend and was in the act of attending to another machine.	p.17 L.12 p.25 L.9
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	5. The Learned Trial Judge Melville J. rejected the Appellant's evidence as to how the accident happened and also that she was at the material time operating the same machine as another servant of the Respondent.	p.25 L.7
	The Learned Trial Judge also rejected the evidence of the Appellant that the Respondent's machine was defective and so slammed down on her hand and accepted the evidence of the Respondent's servant that the machine was in proper working order and condition at the time of the accident.	p.25 L.38
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	6. The Learned Trial Judge having rejected the evidence of the Appellant as to how the accident happened nevertheless found that whilst the Respondent's manager was showing the Appellant how to press a skirt on a machine, the Appellant then had her hand resting on another machine that the Respondent's fellow servant was then operating who carelessly brought machine down on Appellant's hand. The Learned Trial Judge as a consequence of	p.25 L.23 p.25 L.31
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RECORD

p.25 L.34

the said finding held that the Respondent's servant ought to have taken care to see no one's hand was on machine before pressing button to bring down top of machine and was therefore negligent, but the Appellant was not taking care for her own safety by putting her hand on pad of the machine knowing that the servant was operating it at the time and so she was therefore guilty of contributory negligence.

7. The substantial issue arising on this appeal is whether or not the Learned Trial Judge having rejected the Appellant's evidence as to how the accident happened and that the machine was defective there was any evidence to support the finding that the Respondent's servant was guilty of negligence. 10

8. The Court of Appeal held that the finding that the Respondent's servant was negligent was not supported by evidence and set aside the Judgment of the Learned Trial Judge and entered Judgment for the Respondent with costs. 20

p.38 L.7

9. The Judgment of the Court of Appeal was delivered by Mr. Justice Graham-Perkins J.A. who held that :

"There is, therefore, a conflict between this finding based on an acceptance of Griffiths" evidence and the finding at (i) and (ii) above, that Griffiths pressed the button of No.3 machine when the respondent's hand was resting on the pad. There is also apparent inconsistency between the finding that "Chin showing the respondent how shirt to be pressed..... (Respondent) then by or near No.3 machine", and the later finding "Chin showing (the respondent) how to press skirt....Respondent then had hand resting on pad of No.3" 30

p.38 L.19

But there is a more fundamental objection to the finding that Griffiths pressed the buttons on her machine when the respondent's hand was resting on the pad of that machine and that Griffiths was negligent in so doing. The objection to that finding is that there was not a scintilla of evidence on which it could be based nor from which it could be 40

10 inferred. When once the learned trial judge reached the conclusion that the respondent was not, at the material time, operating the No.3 machine, and that the account advanced by her as to the circumstances in which she received her injury was to be rejected in toto, there ceased to be any evidential basis on which to found a conclusion that she had her hand resting on the pad of the No.3 machine when Griffiths pressed the button of that machine."

"Indeed this theory as to the cause of the accident was not, at any time, adumbrated by anyone during the trial. It certainly was not suggested in the pleadings." p.38 L.37

The Learned Judge of Appeal then held that the trial Judge's conclusion that the Respondent's servant was negligent was not supported by the evidence and must be set aside.

20 10. The Court of Appeal also considered the question as to whether or not the Respondent was negligent in not providing a safe system of work and also rejected the Appellant's contention that the Respondent was negligent on this basis or that there was no evidence on which the Learned Trial Judge could so find. Mr. Justice Graham-Perkins in delivering the Judgment of the Court said: p.39 L.1

30 " In our view once the respondent's evidence is rejected, and once the conclusion is reached that it was not open to the learned trial judge to assign a theory of his own as to the cause of the respondent's injury there can be no justification in the circumstances of this case, for any debate as to the failure in the appellant to provide a safe system of work. In our opinion Mr. Parkinson is in error in thinking that it is open to this Court, in the state of the evidence led at the trial, to examine any such question." p.39 L.17

40 The Court of Appeal therefore came to the conclusion

RECORD

that the Learned Trial Judge having rejected the Appellant's evidence as to how the accident happened or that the machine was defective had no evidence before him on which he could make a finding of negligence against the Respondent on the state of the evidence or, was there any evidence from which such a finding could be inferred and that the Learned Trial Judge erred and allowed the appeal and set aside the Judgment entered in favour of the Appellant.

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11. It is therefore submitted that the decision of the Court of Appeal is correct in its criticisms of the findings made by the Learned Trial Judge in favour of the Appellant and it is further submitted that it is correct when it set aside the said findings and entered Judgment in favour of the Respondent.

12. The Respondent therefore humbly submits that the decision of the Court of Appeal is right and should be affirmed and that this appeal should be dismissed with costs both here and below for the following, amongst other reasons

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R E A S O N S

1. BECAUSE the evidence adduced by the Appellant at the trial as to how the accident happened was rejected by the Learned Trial Judge.
2. BECAUSE the Learned Trial Judge having rejected the evidence of the Appellant erred as a matter of law when he found that the Respondent's servant was negligent there being no evidence to support such a finding.
3. BECAUSE the Judgment of the Court of Appeal is right and ought to be affirmed.

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R.N.A. HENRIQUES

No. 9 of 1975

IN THE PRIVY COUNCIL

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