IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 1103 OF 2013

BETWEEN
ALINAFE MAUNDE ..... PLAINTIFF

AND
UNILEVER SOUTH EAST AFRICA LIMITED..... DEFENDANT

CORAM: HON. JUSTICE R. MBVUNDULA
Malijani, of Counsel, for the Plaintiff
Hara, Counsel for the Defendant
Mpasu, Official Interpreter

JUDGMENT

The plaintiff's case

The plaintiff sued the defendant for breach of statutory duty, to wit sections 13, 58 and 65 of the Occupational Safety, Health and Welfare Act, and negligence. Particulars of breach of statutory duty are stated as follows:

a) Failure to provide a working environment that is safe and without risks to health of workers;
b) Failure to provide protective clothing for the plaintiff;
c) Failure to provide information, instruction, training and supervision to ensure a safe and health work place for the plaintiff. (*sic*)

And particulars of negligence are stated thus:

a) Failure to provide a safe work place;
b) Failure to provide protective wear commensurate with the type of job to be done;
c) Failure to protect the plaintiff from industrial hazards;
d) Failure to keep the work place in a good working condition. *(sic)*

The plaintiff was employed in the defendant's soap factory as a case parker when he got injured on his right hand when his work suit jacket was caught by a metal fixed to a machine's conveyor, referred to by the plaintiff as a wire, and by the defence witnesses as a lace, being metal plates pinning the belt together. I will refer to it as a lace. Mr Banda, one of the defendant's witnesses told the court that it was possible for them to get loose.

The plaintiff claimed that the incident occurred out of the negligence of the defendant in neglecting to fence and guard the conveyor belt, which defect the defendant only rectified after the plaintiff's injury. He also claimed, initially in his witness statement, that he was not familiar with the machine for lack of supervision as well as orientation and induction on the use of the machine, to ensure his safe operation of it, but later in cross-examination conceded that orientation and induction sessions did take place. He said what he meant by safe protective wear were short-sleeved jackets as opposed to long-sleeved ones because had he worn the former the same would not have been caught by the laces.

The defence case

Two witnesses testified for the defendant, namely, Joseph Banda, the defendant's Production Officer, and Wilfred Mwauluka, the defendant's Safety, Health and Environment Analyst. Both filed witness statements which they adopted. Both were further orally examined-in chief.

Both stated that on the day in question they each received a phone call whereby they were informed of the plaintiff's injury in the factory and that they caught up with him at Queen Elizabeth Central Hospital. Both stated that an investigation team was constituted which inquired into the matter. According to Mr Banda the team comprised of Mr Banda himself and three others who interviewed the plaintiff, and the Shift Manager, and also visited the scene of the accident and examined it. He said this during examination in chief but when asked during cross examination

whether they interviewed the plaintiff's workmates, he said they did not interview all the six but the supervisor "and some colleagues there" one of whom switched off the machine. He did not mention the Shift Manager this time around. On this Mr Mwauluka said they interviewed the plaintiff's fellow workmen.

Both defendant's witnesses said that their findings were that the accident occurred when the plaintiff was attempting to align a misaligned conveyor belt, something he was not allowed to do, and in the process his work-suit jacket was caught by the conveyor belt lace which forced his arm to move with the belt and hit the motor guard.

About the plaintiff's claim that he was caught by the lace Mr Banda initially asserted that it was almost, if not totally impossible for that to happen, but he later conceded, under cross examination, that it was possible for the plaintiff to have been caught under the belt, and that that was the only way the plaintiff could have been caught by the laces.

Both Mr Banda and Mr Mwauluka confirmed that it was possible to guard the laces, although it was not normal for one to be caught beneath the belt and, according to Mr Mwauluka, some guarding was provided to the laces after the incident.

Mr Banda told the court that when the investigation team went to the factory, after the incident, the machine was not running but they "role played" what could have happened and came to the misalignment conclusion and that the plaintiff pulled the lower part of the belt and was caught up by the laces. This position, as I understood Mr Banda, was not arrived at out of information gathered from the persons who were present when the injury occurred, but out of assumptions made by the team during the "role play".

Mr Banda agreed that a short-sleeved work-suit would not have been caught by the laces, and so the accident would not have happened, but that the long-sleeved ones had their own utility, namely, to protect the workers from spillages. Similarly Mr Mwauluka said that the long sleeved jacket was meant to protect against chemical hazards, spillages and dust. As I understand, they were of useful utility.

Having confirmed that it was possible to guard the laces, as well as to patch the joints Mr Banda, went on to state that industrial practice was silent on this. He said the

post-accident patching was intended to improve on the process that if anyone was to be careless enough to interfere with the movement of the belt should be protected.

Mr Mwauluka's evidence was that when they found the plaintiff at the hospital he informed them that he was picking soap when the machine caught him. He said during the investigation, of which he was part, they looked at the line, examined the scene and interviewed the plaintiff's fellow workmen. As in the case of Mr Banda he said their finding was that the plaintiff was injured when he attempted to pull the conveyor belt that was in motion in order to re-align it, which he was not authorised to do. The investigation, he said, was to find out the root cause of the accident and to draw some lessons. He denied that the belt had loose wires.

As to the need or otherwise of guarding the laces it was his position that the same was not necessary because by design they were supposed to be as they were, that being the safety standard. He said the post-injury safety measures instituted by the defendant by way of guarding the belt laces were not because there was a problem with them but just an additional control to avoid a repeat of such accidents.

Issues for determination

The issues that stand to be resolved are:

1. Whether the provision of long-sleeved as opposed to short-sleeved wear amounted to negligence and a breach of statutory duty;
2. Whether the accident occurred as a result of non-orientation/induction and lack of supervision;
3. Whether the accident was occasioned by the plaintiff trying to re-align the conveyor belt; and
4. Whether the accident occurred as a result of the plaintiff's jacket being caught by the belt's exposed and unguarded laces.

Consideration of the issues

Whether the provision of long-sleeved as opposed to short-sleeved wear amounted to negligence and a breach of statutory duty

Much as the accident occurred as a result of the plaintiff's work-suit being caught in the conveyor belt, the accident cannot be attributed to that fact, in essence, because

the accident could still have been prevented by taking other measures than provision of a short sleeved work-suit. Further, taking into consideration that the long sleeved work-suits were intended to protect workers from other hazards, the defendant cannot be faulted for providing such work-suits.

Whether the accident occurred as a result of non-orientation/induction and lack of supervision

The plaintiff having conceded during cross-examination to have undergone orientation and induction sessions, the issue must be resolved against him. Regarding supervision the plaintiff's evidence did not establish how provision of the same would have prevented the accident. This issue is also resolved against the plaintiff.

Whether the accident was occasioned by the plaintiff trying to re-align the conveyor belt

To the extent that this conclusion was arrived at out of the so called "role play" and not from the evidence of any eye witness in this court, I find the conclusion to be only speculative and based on hearsay, and reject it.

Whether the accident occurred as a result of the plaintiff's jacket being caught by the belt's exposed and unguarded laces

On a balance of probabilities, as between the evidence of the plaintiff and that of the defendant, that of the plaintiff is to be preferred. The first and main reason is that whereas there may be apparent inconsistences, of little significance, in the plaintiff's evidence, he is the only witness, out of all the three witnesses before this court, who was present and has first-hand knowledge of what transpired when the accident occurred, whereas both the defendant's witnesses were not, rendering their evidence inadmissible hearsay, and the plaintiff's evidence uncontroverted. The defendant's evidence, as far as the injury was occasioned, ought to have consisted of the evidence of the plaintiff's workmates and/or others who were present. Interviewing them alone and reporting what they said does not constitute admissible evidence. Further, where a party fails to call a material witness, at law that party is deemed to have left out that witness on account of a fear that his or her evidence is adverse to that party's case and the same weighs against the said party. So it is in this case.

Secondly the defence evidence was just speculative, in so far as the investigation team arrived at their conclusion from a "role play", according to Mr Banda. As stated earlier that was merely an exercise in assumption and theory as to what might have led to the plaintiff's injury, and not the reality. In the evidence of both defence witnesses there is really nothing substantial to counter the plaintiff's evidence that his jacket was caught by the laces. On the other hand there is admission in the defence evidence that it was possible for the jacket to be caught by the laces in the position they were. Therefore the probability inclines towards the plaintiff's version of events.

Regarding this issue therefore, I accept that the cause of the injury was the fact that the laces were unguarded and caught the plaintiff's jacket whereby he was pulled along by the conveyor belt and in the process injured. In this regard the defendant's negligence is established.

Conclusion

In the final analysis, the plaintiff's claim succeeds, on a balance of probabilities, and judgment on liability entered in his favour, with costs. Damages and costs are to be assessed if not agreed.

Pronounced in open court at Blantyre this 17th day of June 2022.

R. Mbvundula
JUDGE