

Privy Council Appeal No. 9 of 1975

Rita Bennett - - - - - *Appellant*

v.

Paramount Dry Cleaners Limited - - - - - *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 31ST MARCH 1977

Present at the Hearing :

LORD DIPLOCK

VISCOUNT DILHORNE

LORD SALMON

[*Delivered by* LORD DIPLOCK]

On 12th May 1970 the plaintiff sustained an accident at work at the respondent's dry cleaning establishment. She was employed as a presser in a room in which there were four steam pressing machines arranged in a semi-circle. Two of these, Nos. 1 and 2, were described as small machines, the others, Nos. 3 and 4, as large ones. The plaintiff's right arm was caught between the pads of machine No. 3 when the upper pad descended to press a skirt. As a result she sustained severe burns to her hand, wrist and forearm.

According to the plaintiff, the accident occurred when she herself was engaged in pressing a skirt on No. 3 machine. Her evidence was that while she was spraying the skirt with her hand directly over it, a fellow employee, Miss Ida Griffiths, negligently pressed a button which caused the upper pad of the press to come down with a slam upon the plaintiff's arm. The trial judge (Melville J.), sitting without a jury, rejected the plaintiff's evidence as to how the accident happened and preferred the evidence of Miss Griffiths. This was to the effect that she alone was operating machine No. 3 and that the plaintiff was working at the adjacent small machine No. 2. Machine No. 3 was operated by pressing two buttons and Miss Griffiths had not seen the plaintiff's hand on the machine before she pressed the two buttons which made the upper pad come down upon the lower pad. It was only when she had taken a step towards machine No. 4, which she was also operating, that she glanced behind and "saw something stretched out". At first she did not know it was a hand, but when she turned round fully she saw the plaintiff's hand in the machine. The learned judge found as a fact that the plaintiff had her hand resting on the pad of machine No. 3 when Miss Griffiths pressed the buttons and brought the upper pad down upon the plaintiff's hand. He held that Miss Griffiths for whose acts the defendant company was vicariously liable was guilty of negligence in failing to notice the plaintiff's hand on the machine before she pressed the buttons, but that the plaintiff was guilty of contributory negligence by putting her hand upon the pad of machine No. 3 when she knew that Miss Griffiths was

engaged in operating it. He apportioned the blame at 50/50 and gave judgment for the plaintiff for \$1,534.30, being one-half of the figure at which he assessed the damage which she had sustained.

Against this judgment the defendant company appealed to the Court of Appeal of Jamaica. The Court of Appeal allowed the appeal and ordered judgment to be entered in favour of the defendant company. They did so on the ground that once the judge had rejected the plaintiff's evidence as to the manner in which the accident occurred, there was no evidence upon which he was entitled to infer that the plaintiff's hand was already on the pad of machine No. 3 when Miss Griffiths pushed the buttons.

In their Lordships' view, this was not a case in which an Appellate Court was entitled to reverse the finding of fact by the trial judge. There had been, as there often is in cases of this kind, considerable conflict of evidence. The judge had seen and heard the witnesses and was in a much better position to assess where the truth lay than were the members of an Appellate Court who are restricted to forming their opinion, not even on a verbatim transcript of the evidence, but on the judge's own notes of it. Furthermore, the material before the judge included his own observation of where the burns were situated on the plaintiff's arm and what a witness estimated to be the speed at which the upper pad descended on the lower one once the buttons had been pressed. From this he could draw his own inference as to the likelihood or otherwise of the plaintiff's getting her arm so far under the descending pad if it had not been already there by the time the buttons were pressed. Their Lordships accordingly conclude that the Court of Appeal of Jamaica ought to have affirmed the judgment of the trial judge and dismissed the defendant company's appeal.

The plaintiff has now appealed to Her Majesty in Council from the judgment of the Court of Appeal; but not content with seeking to affirm the judgment of Melville J. Counsel has submitted on her behalf that the finding of the trial judge that the plaintiff was guilty of any contributory negligence ought to be reversed. What is contended is not that if the judge's finding of fact as to how the accident occurred is right, the plaintiff was not guilty of contributory negligence, but that the judge was wrong in disbelieving the plaintiff's evidence and believing that of the witnesses for the defendant.

There was no cross-appeal by the plaintiff to the Court of Appeal of Jamaica against Melville J.'s finding of contributory negligence. In these circumstances the submission is a hopeless one and their Lordships cannot entertain it.

Their Lordships will humbly advise Her Majesty that this appeal should be allowed, and that the judgment of Melville J. should be restored. The plaintiff must have her costs in the Court of Appeal of Jamaica but one-half only of the costs of her appeal to this Board.

... ..

In the Privy Council

RITA BENNETT

v.

**PARAMOUNT DRY CLEANERS
LIMITED**

DELIVERED BY
LORD DIPLOCK