

50334

IN THE SUPREME COURT  
OF THE TERRITORY OF  
PAPUA AND NEW GUINEA.)

CORAM: OLLERENSHAW, A.C.J.

Thursday,  
17th September, 1964.  
9.30 a.m.

BETWEEN      PETER BRIAN MARSHALL  
                                         Plaintiff

AND      HORNIBROOK CONSTRUCTIONS LIMITED and  
                                         KAYSER ENGINEERS AND CONSTRUCTORS INC.  
                                         trading as HORNIBROOK-KAYSER PAPUA

Defendants.

Heard at  
Pt. Moresby  
10th, 11th, 12th  
13th and 14th  
August, 1964.

J U D G M E N T

In this action the plaintiff seeks to recover damages for personal injuries received by him in an accident that occurred in the course of an operation in the construction of the Sirinumu Dam, some thirty-five miles from Port Moresby. He was employed in this construction by the defendants as a plant operator, although he was required at times also to assist in other activities. On the 2nd day of July, 1962, while assisting in the raising of a cage supported by a wire rope or flying fox over the gorge where the wall of the dam now stands, he received injuries in the accident, the serious and permanent injury being to his right leg.

In the circumstances it has not been possible to write a full judgment; however, having come to a firm conclusion I have decided to deliver this brief judgment and bring in my verdict to-day and possibly publish my reasons more fully when time permits.

I accept the plaintiff as a witness of truth.

I find that there was negligence on the part of the defendants. This was the negligence of Rodney King, a Civil Engineer and their Projects Manager in charge of the construction of the dam, and a Mr. Vermeer, the Project Engineer employed there by the defendants, who was not called as a witness although his whereabouts were known in time

and his evidence was available to the defendants. They performed the operation in a negligent manner in that they did not employ the moveable and fixed appliances and plant at the site in a safe way, more particularly inasmuch as the spreader block instead of the anchor block was used to support the weight of the rope and cago. Although Mr. Vormeer was the person actually in charge on the spot of the particular part of the operation in which the plaintiff was assisting, the Projects Manager had the overall supervision of the whole operation and, in my finding, he permitted the use of the spreader block if he did not, himself, give instructions for it to be used.

I find that <sup>this</sup> negligence caused the accident.

I find that the plaintiff was not guilty of contributory negligence, nor did he accept the risk in my view of the proper consideration of those defences in their application to this case.

I consider that the defence of common employment is not available to the defendants. In clear language it was abolished as a defence from the 1st day of January, 1963, by Section 18 of the Law Reform (Miscellaneous Provisions) Ordinance, 1962, and, in my opinion, this operated retrospectively in favour of the plaintiff and against the defendants. If necessary this view is fortified by reference to Section 24 of the Ordinance, which expressly enacts that its provision in Part IX for apportionment in the case of contributory negligence by an employee in claims for damages against an employer is not to apply to claims arising from acts or omissions occurring before the commencement of the Ordinance.

The question of the amount of damages has required particular consideration. Bearing in mind the various heads of damage, both special and general: vide: e.g., Parmant v. Pawelski, (1949) 79 C.L.R. 406, Paff v. Speed (1960-1961) 105 C.L.R. 549, per Fullagar J., at p.558 and Toohey v. Hollier, (1954-1955) 92 C.L.R. 618, per Dixon, C.J., McTiernan and Kitto J.J., at p.624, and doing the best I can in all his circumstances, I have arrived at a figure.

I find a verdict and pronounce judgment for the plaintiff in the sum of \$8,750, and I direct that judgment with costs be entered accordingly.

I order that the exhibits remain in Court until the time for appeal has expired or until further order.

I certify for senior Counsel.

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