SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 522 OF 1999

BETWEEN:

SAMIN GEORGE

Plaintiff

and

ADMIRALTY TRANSPORT COMPANY LIMITED

Defendant

Appearances:

Mr. Arthur Williams for the plaintiff
Mr. Samuel Commissiong for the defendant

2001:November 5, 6, 21

JUDGMENT

ALLEYNE J.

[1] The defendant owns and operates a ferry boat which shuttles passengers between St. Vincent and Bequia. The vessel runs a scheduled service, leaving its respective ports at fixed hours for the crossing of one hour each way. The vessel has a lower deck, by way of which passengers enter and leave, a second deck on which are located the restaurant and bar, and an upper deck on which passengers are seated for the crossing. The vessel is of steel construction, with steel decks and stairways connecting the decks to each other. The stairways each have a handrail on either side, constructed of steel, and at the top of each stairway is a

warning sign painted in white on a red ground, warning passengers and others to exercise caution and to hold on to the hand rails when using the stairs.

[2] The plaintiff, who is a Syrian who had at the relevant time lived in St. Vincent and worked as a salesman for about four years, was a regular passenger on the vessel, making the round trip journey three times a week in connection with his occupation as a salesman. He was a fare-paying passenger. The plaintiff speaks the English language with only limited fluency, and claims to be unable to read or write English, notwithstanding that he has been in business in St. Vincent for several years.

[3] On October 13, 1998, the plaintiff, along with a number of other persons, was a passenger on the Admiralty 11 on its scheduled journey to Bequia leaving St. Vincent at 10.30 a.m.. He sat on the upper deck on the journey.

[4] As is not unusual, it rained in the course of the journey. One of the stairways by way of which passengers access and leave the upper deck is uncovered and gets wet when it rains. It is this stairway that the plaintiff chose to use when preparing to leave the vessel towards the end of the journey. This was not the first time it had rained during the plaintiff's frequent crossings to and from Bequia.

[5] It is disputed whether the incident leading to this claim occurred before or after the vessel had docked at Bequia. The plaintiff claimed that at the relevant time the vessel had already docked. However, the captain of the vessel, Elvis Gooding, and the defendant's witness Michelle Lully both assert that the vessel had not yet, at the time that the plaintiff began to descend the stairway, rounded the point into the harbour, and was several minutes away from docking.

[6] Lully's husband is apparently a close friend of Gooding, who is both Captain of the vessel and owner of the defendant company, which owns and operates the vessel. The witness Lully nevertheless claims to be no more than an acquaintance of

Gooding. However that may be, I believe the witnesses for the defendant on the question as to the location of the vessel at the time of the accident.

[7] On attempting to descend the stairway, the plaintiff slipped and fell, suffering quite severe injuries from which he has not yet fully recovered. Contrary to what the defendant pleaded in its defence, the plaintiff was not at the time carrying a heavy bag, but at most had a waist pouch around his waist.

[8] The plaintiff alleges that the slippery and therefore dangerous condition of the wet stairway was the cause of his otherwise unexplained fall. He claimed that after his fall he observed oil in water at the foot of the stairway, but there is no evidence to suggest that there was oil on the steps, or that the presence of oil contributed in any way to the accident. The witness Gooding, Captain of the vessel, was emphatic that there is no reason for oil to be anywhere in that part of the vessel, and that indeed there was no oil present. In any event, I do not believe that the presence of oil contributed in any way to the accident.

[9] In essence, the plaintiff's claim is based on the doctrine *res ipsa loquitur.* On the other hand, the defendant says that the negligence of the plaintiff in the manner in which he attempted to descend the stairway was the cause of his misfortune.

[10] The defendant's witness, Lully, who was sitting on the upper deck of the vessel very near to the stairway, gave evidence that in descending the stairway, the plaintiff held on to the side railings, swung both legs out, and attempted to slide down the rails with his feet off the ground. That as a result of this manoeuvre, he slipped and fell. After his fall, several other persons gathered around him and gave him assistance. It does not appear that any other passenger fell on the stairway on that day or, so far as the evidence goes, at any other time.

[11] The plaintiff, who at the time of trial was 38 years old and would have been about 35 at the date of the incident, says that at his age he would not do such a thing. In

cross-examination he said simply "I step. I fall. That's all. I don't know otherwise."

[12] I was impressed by the evidence of Michelle Lully, who struck me as a witness of truth. I am satisfied, from her evidence and the evidence of the captain, Gooding, that there were signs at strategic locations warning of the necessity for caution in descending the stairs, and of the need to hold on to the handrails in doing so. Although there are discrepancies with regard to the precise location of these signs, I am satisfied that they were adequate in size and colour, and were readily visible to all users of the stairway. In that respect, I am satisfied that the defendants used all reasonable and necessary means to bring to the attention of passengers the necessary precautions in the use of the stairway in the circumstances.

[13] The vessel routinely carried passengers of different nationalities, including particularly French and German speaking passengers, and it was suggested to the witness Gooding that it was insufficient that the warning be in the English language only. The plaintiff claims to read Arabic. It cannot be expected that the vessel should carry warning signs in every language spoken by passengers or prospective passengers, and in my view it is sufficient that the warnings be painted in English, the official language of St. Vincent and the Grenadines.

[14] I am not persuaded that there was oil present in that area, or that the presence of oil played any part in the accident. The plaintiff himself disclaimed the presence of oil on the steps, saying only that he saw traces of oil on the deck where he lay after the fall. I accept the assurance of the Captain, Gooding, that there was no oil in that part of the vessel. I find as a fact that there was water from rain on the steps and handrail of the vessel, and that in those circumstances the plaintiff's fall was contributed to by the reckless manner in which he appears to have attempted to descend the stairway.

[15] Learned Counsel for the defendant in his closing argument pointed out that the plaintiff, a regular traveller on the vessel, was familiar with the vessel in all

conditions, including in particular in rainy conditions. The cause of the accident was the unusual and inappropriate manner in which the plaintiff used the stairway, and not any unusual danger resulting from the condition of the stairway. There is a duty on both parties in relation to the matter of safety. Counsel argued that the defendant had fully met its responsibilities in that regard, and that the accident was caused solely by the improper manner in which the plaintiff used the stairway, whereby he became a trespasser.

[16] Counsel referred the court to Clerk & Lindsell on Torts 11th edition, paragraph 1141-1149. Counsel submitted that there are inherent difficulties in negotiating stairways on a moving vessel in wet conditions, of which the plaintiff ought to have been aware, and that it was his negligence in improperly using the stairway that caused the accident.

[17] Learned Counsel referred to the case of Davies v De Havilland Aircraft Co. Ltd. [1950] 2 All ER 582, per Somervell L.J.

> "if there was a slight depression in the concrete in which water collected when it rained so that the floor became slippery, I do not think that, on the evidence, that amounts to a breach of s.25(1). It would be impracticable to maintain passages and roads and pathways so that there was never a slippery place, especially after rain, on which a man might slip. Slipping is quite a common incident of life. ….
>
> In my view, (his Lordship continued) the same general approach …. leads me to hold that there was no breach of duty at common law."

Counsel urged on the court the view expressed by Lord Somervell, with which I find myself in full agreement, that "I find it impossible to say that the mere existence of that which I have found might have resulted in the plaintiff slipping indicates any failure to take reasonable care to protect those employed (or in the instant case invitees) from unnecessary risk."

[18] The case of London Graving Dock Co. v Horton [1951] 2 All ER 1 at page 5 *et seq.* is a clear illustration of the principle stated by Lord Porter that

> "an invitor's duty to an invitee is to provide reasonably safe premises or else show that the invitee accepted the risk with full knowledge of the dangers involved. … Admittedly, the duty of a master to his servant is higher than that of an invitor to his invitee. … The duty, however, is not "to prevent damage," but to "use reasonable care" to prevent it, and it has to be determined what is reasonable care. This problem is dealt with in the latter part of the statement of Willes, J., by which I understand him to mean: Even if there is unusual danger, the duty to use reasonable care to prevent damage may be performed by notice, lighting or guarding, and the recognition that the invitor may fulfil the obligations imposed on him by notice or lighting indicates that adequate warning to the invitee may be a compliance with the duty which is owed by the invitor."

[19] In the same case Lord Normand, at page 10, adopted as "of high authority" the judgment of Lord Atkinson in Cavalier v Pope in which Lord Atkinson said of the leading case of Indermaur v Dames [1866] L.R. 1 C.P. 274

> "one of the essential facts necessary to bring a case within that principle (*that warning is a discharge of the invitor's duty*) is that the injured person must not have had knowledge or notice of the existence of the danger through which he has suffered. If he knows the danger and runs the risk he has no cause of action."

His Lordship went on to say that

> "When there is already knowledge, notice or warning will have no effect and the omission of it can do no harm. So, the defendant who has failed to give warning may yet succeed if he proves that the injured person had knowledge of the unusual danger. But whether it be knowledge gained without a warning or knowledge conveyed by a warning, it must be sufficient to avert the peril arising from the unusual danger. The knowledge must, therefore, be full knowledge of the nature and the extent of the danger."

[20] Lord Oaksey put it in this way:

> "The duty of an invitor to an invitee is … to give him a fair warning of any danger on the premises which he cannot be expected to foresee. Premises inevitably contain a great variety of dangers, some great, some slight, some usual, some unusual, and it is … a question of fact whether the danger is so slight or so usual that no warning is needed, or so great or so unusual that the invitee, with the actual knowledge of the premises

> which he is known by the invitor to possess, ought, in the opinion of an ordinarily careful invitor, to be warned of it.
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> (A)n invitor who invites someone onto his premises which are reasonably safe has committed no breach of duty, nor has he if the invitee knows the danger or has been adequately warned about it.
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> (A)n occupier owes no duty to an invitee in respect of "usual" dangers, since the invitee is only entitled to expect that the invitor will take care to prevent damage from unusual danger, but "where there is evidence of neglect," i.e., where there is danger which may be found by the tribunal to be unusual, it is a question of fact whether reasonable care has been taken by notice, lighting, guarding or otherwise, and, therefore, there has been no neglect."

[21] Lord Mac Dermott was at one with the rest of the House of Lords in affirming the statement of the law in Indermaur as long regarded as an authoritative exposition of the duty owed by an invitor to his invitee. His Lordship then entered into an in depth analysis of the principle regarding the duty of care, the meaning of "unusual danger", and the implications for the invitor *viz a viz* the invitee. His Lordship, at page 17 of the report, in a dissenting judgment, declares that

> "The invitor's liability being in respect of danger of which he knows or ought to know, he is, at least, under an obligation to use reasonable care to make himself aware of defects that may injure his invitee."

[22] His Lordship, at page 19, after undertaking an analysis of the case of Fairman v Perpetual Investment Buildng Society [1923] A.C. 74, whose facts are somewhat similar to the facts of the present case, and pointing to the trial judge's finding of fact that he did not "think that he could possibly find that the staircase as a whole, or that this particular place could be described in plain English as dangerous", declared that

> "It may be that this latter finding must be linked with the view that the claimant failed to see the obvious and was, therefore, the author of her own misfortune. But whether that be so or not, the other finding meant that the occupier did not know and ought not to have known of the defect, and on that ground alone, the claim of an invitee was bound to fail."

His Lordship continued:

> "I am not entirely clear as to what exactly Lord Sumner intended to include in "the present circumstances", but I think he must, at least, have had in mind the plaintiff's familiarity with the stairs, that they were well lighted and their condition was plain to be seen, and, also – and this, I think, was implicit throughout the case – that the kind of defect which had appeared was easily avoidable by people using the stairs."

[23] His Lordship, in a comprehensive analysis, continued with reference to the judgment of Willes J.:

> "Further, the terms he chose to use, particularly with regard to what he described as
>
> > "… the question whether such reasonable care has been taken, by notice, lighting, guarding or otherwise …"
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> seem to me to suggest that he would have been content in appropriate cases to leave it to the jury to find as a matter of fact whether the giving of notice amounted to the taking of reasonable care. That view, resting as it does on the text of the judgment, ought not to exclude other considerations, but, if well founded, it reaches beyond the immediate point to the heart of the controversy, for it means, not only that Willes, J. had more in mind than dangers which are hidden (and which, therefore, pass out of that category when revealed), but that the ultimate test he considered applicable to all cases within the rules was one of reasonable care."

[24] In concluding his judgment His Lordship continued:

> "And I think that, in so far as the duty of the invitor has been described as a duty to take reasonable care that his premises are reasonably safe, it has been put too high to be accurate as a general proposition. … But occupiers would be placed in an intolerable position if on *all* occasions

their obligation to invitees was of that nature and they had to make their actual premises reasonably safe, irrespective of whether due and timely warnings or other precaution might suffice to avert the danger. I think it is clear from the terms in which Willes, J. spoke in Indermaur v Dames that, if the respondent is correct in the substance of his contention, the duty of the invitor, stated generally, is to take reasonable care to prevent damage to his invitee from the relevant danger – and that does not necessarily and invariably mean making the premises reasonably safe..

it remains to choose between these conflicting views. In my opinion that propounded by the respondent is to be preferred. It accords better, as it seems to me, with the language employed by Willes, J., in Indermaur v Dames, including his use of the expression "unusual danger". It respects the settled distinction between *sciens* and *volens* in this branch of our jurisprudence, a distinction which the appellants' contention would, in effect, obliterate. It provides a rational criterion of responsibility over a wider range of circumstances, being equally applicable to avoidable and unavoidable dangers and to invitees of all kinds and degrees. And, not least, though in a sense this is but to enlarge on what I have just said, it applies to a relationship which, as already observed, is infinitely varied in character, a test of liability which is correspondingly flexible and adaptable. For what is reasonable in any given case must depend on all the relevant circumstances, including such factors as the nature of the invitation, the nature of the danger, the knowledge of the invitees, and the practicability of the possible means of removing or reducing the risk. So in some instances notice may suffice – in certain cases, indeed, such as those relating to dangers which lurk in navigable waters, notice may be the usual as well as the best means of protecting the invitee. In other instances fencing, or watching, or repair, or re-construction may be requisite. And lastly, I see nothing in all this to bear harshly on the occupier. He controls the premises, he serves his own interest by the

> invitation, he has left to him all the pleas open to one accused of negligent conduct. Why should he be exonerated, or partly exonerated, from the duty of taking reasonable care? I have been unable to find any satisfactory answer to that question in principle or authority."

[25] Lord Mac Dermott's judgment dissented from the opinions of the majority of their Lordships, who held that it was the defendants' duty to provide reasonably safe premises or else show that the plaintiff had accepted the risk with full knowledge of the dangers involved.

[26] The Trinidad case of Hoyte v Kirpalani [1972] 19 WIR 310 applied the Indermaur principle and the decision in Stowell v Railway Executive [1949] 2 All ER 193 that the only duty imposed on the occupier is to prevent damage from unusual danger. Reference was made to the case of Fraser v Diamond Dairy Co. Ltd., a decision of the High Court in this jurisdiction.

[27] I find as a fact that the defendant has met the duty to provide reasonably safe premises, and to use reasonable care to prevent damage by providing adequate warning by signs at the top of the staircase in highly visible form. In addition, I find that, having travelled on the vessel on that route on a regular basis, three times weekly over a period of about four years, in all weather conditions, the plaintiff had full knowledge of the risk inherent in travel by means of that vessel, and accepted the risk, such as it was.

[28] The plaintiff's case is therefore dismissed and judgment is entered for the defendant with costs.

Brian G.K. Alleyne
High Court Judge