JASON SHARP v TOP FLIGHT SCAFFOLDING LTD [2013] EWHC 479 (QB)

In this case the court had to consider both primary liability and contributory negligence where the facts of this scaffolding accident were largely agreed.

The claimant was an experienced scaffolder and had worked in the industry for over 20 years. For much of that time he had worked for the defendant or another company owned by the defendant's proprietor.

On the 23rd November 2009, the claimant and an unskilled labourer with little experience of scaffolding had to erect a scaffold at the rear of a terraced house. It was common ground between the parties that this was a very simple type of scaffold that the claimant had erected on many previous occasions.

Due to the nature of the property, the scaffolding materials had to be transported through the house and the claimant erected the scaffold with his labourer passing the equipment up to him. It was only when the scaffold had been completed and the claimant was standing on the top of it that the two of them realised that a long ladder, which would provide external access to the scaffold, could not be brought through the house by one man alone. Thus, the claimant found himself stranded at the top of the scaffold. He told the labourer to go out to the lorry and phone the office. While the labourer was phoning the office, he heard a shout and discovered that the claimant had fallen from the scaffold into the neighbouring property.

There were no witnesses to the accident and due to his injuries, the claimant was unable to give evidence. However, both sides accepted that on the basis of where the claimant fell, he must have been attempting to climb down the outside of the scaffold.

The claimant alleged that the defendant was liable for the accident on the basis of various breaches of the Work at Height Regulations 2005 and a failure to provide him with a safe system of work. In particular, he alleged that he had not had sufficient training and had not been provided with a site specific risk assessment and a method statement for constructing the scaffold.

The defendant denied liability alleging that the claimant was an experienced scaffolder and knew very well how to construct such a scaffold. Further, there were sufficient short ladders on the lorry which would have enabled the claimant to build internal access to the scaffold rather than rely on a long external ladder. In the premises, the defendant denied liability on the basis that it was not in breach of any duty or alternatively in so far as any breach of duty was proved, such breach of duty was not causative of the accident.

Although the facts of the accident were not in issue, there was an issue so far as the claimant's training was concerned. It was his case that he had had no formal training and that although he had obtained a certificate of competency in 1998, he had had no training since the Work at Height Regulations 2005 had come into force. Although the defendant was unable to produce any documentation, it alleged that the claimant had had what were described as "toolbox talks" on at least two occasions since the regulations had come into force.

Although the defendant's own health and safety policy provided for a site specific risk assessment, the defendant alleged that this was not necessary for such a simple job being carried out by such an experienced scaffolder.

The court accepted that in a case such as this the starting point was to consider whether there was any breach of duty on the part of the defendant before considering the claimant's conduct (see Bhatt v Fontaine Motors [2010] EWCA Civ 863). Further, in Sherlock v Chester City Council [2004] EWCA Civ 201, the Court of Appeal held that although the employee in that case was experienced and well trained, the employers should have carried out a risk assessment so as to identify the possible precautions which needed to be taken and to have advised the employee accordingly.

In this case, the court described the defendant's training facilities as "lamentable" and found that the defendant had failed in its common law duty to provide the claimant with adequate training. Further, the court criticised the defendant for failing to carry out a site specific risk assessment and provide a method statement.

As to causation, the court found that had the claimant been properly trained and had there been a site specific risk assessment and a method statement, the claimant would in all probability have incorporated the use of internal ladders in the construction of the scaffold so that the accident could have been avoided. Thus, primary liability was found against the defendant.

However, the court was also severely critical of the claimant's conduct, in the first place for building the scaffold without any consideration as to what means of access should be incorporated but more particularly for taking the deliberate decision to climb down the outside of the scaffold in the knowledge that it was obviously dangerous. In the circumstances, the court assessed the claimant's responsibility for the accident at 60%.

Conclusion

This case reiterates the principle laid down in Sherlock that an employer cannot simply rely on the fact that an employee is very experienced and that even for such an employee there is a need to provide adequate training, a site specific risk assessment and a method statement to ensure that the correct procedures are followed. If an employee fails to follow his training and instructions then he will have only himself to blame but if such training and instructions are not given, courts are very unlikely to find that such breaches of duty were not causative of the accident.

On the other hand, where an employee as in this case embarks on a course of action which as a matter of common sense is clearly dangerous, courts will not hesitate to find a substantial contribution by way of contributory negligence.

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