IN THE MATTER OF THE PETITION OF RIGHT OF ARTHUR BILLARD, . . . } SUPPLIANT;

1920
Sept. 23.
Reasons for Judgment.

AND

HIS MAJESTY THE KING . . . . . RESPONDENT.

Petition of Right; Public Work; Grain elevator; Negligence.

B. was familiar with all machinery connected with grain elevators and the loading and unloading of grain, and on the occasion in question had been sent to one of the shovels (leg No. 2) to instruct a novice how to work it. This man worked the first shovel full without difficulty, but on the second trial it stopped, when B. gave it a jerk which started it. He was then standing with his face towards the platform and on turning round to return to work the rope or bight of the rope coiled around his leg and drew him to the iron block crushing his leg badly. No accident had ever occurred in connection with this machinery which had been in full operation for a very long time.

The machinery was inspected every morning and this particular shovel or leg had been inspected five minutes before the accident, and found in every way satisfactory; and no complaint had ever been made by suppliant in this regard.

Held; On the facts, that the accident was due to suppliant placing himself in the position he was in at the time of the accident, and that he was a victim of his own negligence and carelessness.

PETITION of Right seeking to recover the sum of $10,000 damages for personal injuries alleged to be due to the negligence of the Intercolonial Railway's employees.

The case was tried before the Honourable Mr. Justice Audette at the city of Halifax, on the 24th day of July, 1920.

J. E. Griffith, for suppliant.

J. S. Roper, for respondent.

1920

ARTHUR BILLARD v. THE KING

Reasons for Judgment.

The facts are stated in the reasons for judgment.

AUDETTE J. now (23rd September, 1920), delivered judgment.

The suppliant, by his Petition of Right, seeks to recover the sum of $10,000 damages for personal injuries caused by the negligence of the Intercolonial Railway's employees.

He had worked for the Intercolonial Railway, at loading and unloading grain at the elevator, from January to the 15th April, 1918, when he had left off. However, having come back upon the works on the last day of April, at foreman During's request, he then resumed the same class of work.

On the next morning, the 1st day of May, 1918, having gone back to work, he relates he was told by foreman During to take a new man at leg No. 2 of the elevator, and show him how to work it. This man worked the first shovel full all right he says, but the next time it stopped—he pulled again but it did not go. Then the suppliant said, pull it that way, with a jerk, and that time it started. When the suppliant pulled the rope, he was standing with his face towards the platform—he then turned around to go back, to get away, when the rope or the bight of the rope coiled around his leg, as he turned around to go to his work, and took him to the iron block where he was badly crushed. He further adds, on cross-examination, he really did not know himself how he was caught.

As a result of the accident, he was taken to the hospital, and his leg, after a few days, was amputated.

The suppliant contends that leg No. 2 of the elevator did not work well, was defective, and that he had complained about it to During, and to the oiling man,

Hartland, who inspects the machinery every morning. Hartland had inspected No. 2 five minutes before the accident. Both During and Hartland swear the suppliant never did complain to them about leg No. 2.

No accident had ever occurred at leg No. 2, which had been in full operation for a very long time in the past. And this question of defective machinery, in view of the disinterested testimony of both During and Hartland, as against that of Billard and others, cannot be given entire credence, especially in consideration of the circumstances of the accident, whereby it appears conclusively that Billard, for an experienced man in handling such machinery, had no business and no justification in placing himself in the position he was at the time of the accident,—that is, between the shovel and the block or machine. There was no justification for him to stand by that rope, between the shovel and the block,—he was the victim of his own negligence and carelessness.

It is testified by the suppliant's son that it is dangerous to stand between the two blocks. Witness Hartland says that the amount of slack in the rope depends upon the man himself operating the machine, and if anyone chooses to place himself between the shovel and the machine, he is there at his own risk.

The case cannot in any manner be brought within the ambit of Section 20 of the Exchequer Court Act, which requires, as a condition precedent to recovery, that the accident should be the result of negligence of some officer of the Crown acting within the scope of his duties and employment.

Having so found upon the facts, it becomes unnecessary to discuss the question of common employment (1). Furthermore, it also becomes unnecessary to

(1) *Ryder* v. *The King*, 9 Ex. C.R. 330, and 36 S.C.R. 462.

1920

ARTHUR BILLARD v. THE KING

Reasons for Judgment.

pass upon the improper manner in which the insurance was obtained,—by both antidating the document and having the signature of Billard authenticated by someone who was not present when he signed—together with the third question as to whether his acceptance of the insurance money does not estop him from setting up any claim inconsistent with the regulations governing his insurance. The Chief Justice of Canada, in re *Conrod* v. *The King* (1), says: "The suppliant, having accepted $250, the amount of insurance on the life of the deceased payable by the Association under the rules and regulations, is estopped from setting up any claim inconsistent with those rules and regulations, and therefore, precluded him from maintaining his action."

Therefore, there will be judgment declaring that the suppliant is not entitled to any portion of the relief sought by his Petition of Right.

Solicitor for suppliant: *J. E. Griffith.*

Solicitor for respondent: *T. F. Tobin.*

(1) 49 S.C.R. 577, at 581.