



## Chandran a/ Subbiah v. Dockers Marine Pte Ltd

[2009] SGCA 58

**Country:** Singapore

**Region:** Asia

**Year:** 2009

**Court:** Court of Appeal

**Health Topics:** Occupational health

**Human Rights:** Right to favorable working conditions

### Facts

The appellant was assigned to ensure the proper alignment of the cargo containers when moving cargo containers into and out of a hatch within vessels. This required him to repeatedly enter and leave the hatch. He did so via the only means of access available to them – a metal rung ladder hanging vertically alongside the inner hull of the vessel. More precisely, the access route is better described as a continuous chain of ladders placed on top of one another to form a continuous link leading from the deck of the vessel into the hatch. Each section of that chain comprised an individual ladder that had been welded at three different points. The very top of each ladder was welded to the hull of the vessel itself while two other, smaller, welded points at the bottom of the ladder attached it to the ladder next in line. By negotiating the chain of ladders all aligned vertically, the appellant had to gain access to the hatch as well as secure the positioning of the loaded containers. Before the work commenced, his supervisor did not conduct any safety briefings. Soon after work commenced, a swissloc had to be adjusted. A swissloc is a twist lock used to secure containers after they have been satisfactorily positioned.

As part of the loading process for the cargo containers, swissloc(s) had to be manually fastened and unfastened. In order to adjust a swissloc, the appellant descended, without any safety equipment, into the hatch via the ladders. Unexpectedly, when the appellant was about ten metres from the bottom of the hatch, the ladder which he was on (the defective ladder) suddenly detached from the hull of the vessel as well as the adjoining ladder below. This caused the appellant to fall onto the top of a single-decked container immediately below and injured him severely. The appellant suffered from visual defects, cognitive impairment and headaches.

The appellant claimed that the respondent had breached: (a) its common law duty of care as an employer and by its negligence caused the accident; (b) its common law duty as an occupier of the vessel at the material time; and (c) its statutory duty under the Factories Act (Cap 104, 1998 Rev Ed) (Factories Act). The High Court Judge rejected every one of these grounds. Dissatisfied with the amount of compensation assessed under the Work Injury Compensation Act (Cap 354, 1998 Rev Ed) for no fault accidents, the appellant brought appeal against the respondent, his employer, claiming damages for personal injuries and consequential losses he suffered.

### Decision and Reasoning

The court held the respondent fully liable for the injuries that the appellant suffered from falling from heights in workplaces. The court concluded that the golden rule required employers to take reasonable care for the safety of their employees in all the circumstances and is part of the employer's obligations to its employee. Applying the golden rule, an employer's responsibility for the safety of his employees cannot be waived simply because the employees are sent to work at a site controlled by others. Therefore, the court held that this golden rule applied to the respondent. The employer has a duty to provide a safe place of work to its employees including ensuring that the premises of a third party were safe even he does not have control over the premises.

With regard to the standard of the reasonable care in the golden rule, the court found that the general principles established in the tort of negligence apply to the doctrine of employer's responsibility as well. In satisfaction of the reasonable care duty, the employer should (a) carry out a risk assessment exercise, including inspecting the access to the hatch in question and the defective ladder for signs of danger to its workers, prior to the commencement of work; and (b) take reasonable measures to minimize the risk of its workers falling from heights by providing safety equipment such as safety belts and safety harnesses. Since the respondent should have performed these two duties but did not do so, the respondent failed to take

reasonable care for the safety for the appellant. Accordingly, the court took the proposition that “if it is foreseeable that its workers will have to work from heights, the employer will, in addition, be obligated to take all reasonable measures to minimize the risk of its workers falling and injuring themselves.”

Since the respondent did little to take reasonable care to ensure the safety of its employees, especially failing to observe safety requirements in all cases where employees work at heights, the respondent was held to be fully liable for the injuries that the appellant suffered because of falling from the heights in workplaces.

### **Decision Excerpts**

“An employee who has been injured at the workplace because of the negligence of his employer should be mindful that his ability to obtain compensation is not confined solely to a claim in tort. Such liability may be contractual, tortious or even based on the breach of statutory duty. However, unlike vicarious liability, the employer’s duty of care is in substance only one aspect of the tort of negligence and not a discrete or novel head of tortious liability with its own peculiar rules. It is unnecessary to establish, in each case, the existence of a duty of care. Such a duty is imposed on an employer as soon as the employment relationship is established.” (para 13)

“Today, it is trite, for convenience to say in an abbreviated way, that the common law requires employers take reasonable care for the safety of their employees in all the circumstances of the matter.” (para 15)

“[E]mployers should undertake a preliminary risk assessment before allowing its employees to commence work reasonable and, indeed, self-evident in principle. Simply put, this means that all employers should ordinarily familiarise themselves with the work environment in which their employees will have to function and ascertain if there are any likely risks that ought to give rise to safety concerns. Since the golden rule calls for an employer to take reasonable care to prevent harm from befalling its workers, it is a logical (and reasonable) extension to expect an employer to take steps to ascertain the existence of such dangers prior to the commencement of work.” (para 31)