



LEGAL BRIEFING

Falling short

Robb v Salamis (M&I) Limited (formerly known as Salamis Marine & Industrial Limited)

House of Lords, Lord Hope of Craighead, Lord Clyde, Lord Scott of Foscote, Lord Rodger of Earlsferry and Lord Carswell, [2006] UKHL 56

The Facts

This was an appeal from a decision of the Inner House of the Scottish Court of Sessions that Robb was 50% to blame for an accident and that his employer, Salamis (M&I) Limited (“Salamis”), had not breached the Provision of Use of Work Equipment Regulations 1998.

Robb claimed damages against Salamis for personal injuries suffered while he was working offshore on a semi-submersible production platform. Robb’s sole case was that the accident was caused by Salamis’s breach of regulations 4 and 20 of the Provision and Use of Work Equipment Regulations 1998.

Robb’s accident occurred whilst he was in the accommodation that was provided for men working on the platform. The accommodation was equipped with two-tier bunks. The bunks had suspended ladders held in position by retaining bars to provide access to the top bunks. Robb had been sleeping on the top bunk in the accommodation. The suspended access ladder was not properly engaged within the retaining bars. When Robb attempted to descend from the top bunk both he and the ladder fell to the floor and he was injured. Before descending, Robb did not check to see whether the ladder was properly engaged.

The Issues

1. Had Robb established that Salamis had breached its statutory duty?
2. Was there a sound basis for finding that the accident was caused to any extent by the fault of Robb?

The Decision

The obligation under regulations 4 and 20 (to ensure that work equipment made available to workers could be used by them without impairment to their safety or health) was an absolute and continuing duty on an employer. This extended to every aspect related to an employee’s work.

As the suspended ladders could be removed, they would have to be replaced if they were to be used for the purpose for which they were provided. Carelessness in their replacement was one of the risks that had to be anticipated and addressed before Salamis could be satisfied that the suspended ladders were suitable and that fixing of the ladders to the bunks by clamping or otherwise was unnecessary.

The movable suspended ladders were not suitable for the purpose for which they were provided because of the risk that workers would be injured if they were not replaced properly. To avoid the risk of injury it was necessary for

them to be clamped or otherwise fixed to the sides of the bunks to which they were to provide access. Therefore, Salamis had breached regulations 4(1) and 20 of the Work Equipment Regulations.

As there was a legal basis for the finding of contributory negligence, the appeal court did not interfere with it.

Comment

During the judgment, it was emphasised that an employer's obligation was to anticipate situations which may give rise to accidents and an employer was not permitted to wait for accidents to happen. The employer must take account of work that has to be done in the premises by others than those for whom the work equipment is used or provided and must take into account a "contingency of carelessness". In this case, it was felt that the accident occurred as a result of casual carelessness that Salamis could reasonably be expected to foresee.

Charlene Linneman
January 2007
