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JOHNSON v. OFFSHORE EXPRESS, INC.
United States Court of Appeals, Fifth Circuit, 3 June 1988
845 F.2d 1347

Vessel owner held liable under the Jones Act for failing to provide proper equipment to enable a seaman of limited height and experience to make upper bunks.

FACTS: Barbara Johnson (Johnson), the plaintiff-appellee, was hired by Offshore Express Inc. (Offshore) the defendant-appellant on or about April 22, 1983 and was assigned to the M/V Champion Express. Johnson held an able bodied seamen's license but due to her short stature and limited experience, it was agreed she would perform duties inside the enclosed areas of the cabin only.

On April 27, 1983 while the vessel was moored to an offshore drilling platform in four to six foot seas, the mate told the plaintiff to make the upper bunks in the passenger quarters. The plaintiff asserted that while she was making an upper bunk, a shift by the vessel caused her to fall approximately six feet to the deck. She testified that she was making the upper bunk while kneeling on the mattress with her legs dangling over the edge. No one saw the accident, although a cook in the next compartment heard a disturbance and found Johnson lying on the deck in obvious pain.

After the initial hospitalization following the accident, Johnson complained of severe headaches, back pain and urinary problems. Johnson began medical treatment with Drs. Craco and Llewelyn. The doctors performed back surgery on her in order to relieve compression of nerve roots, believed to have been brought on by trauma of the fall. Johnson remained in the hospital following the surgery and showed signs of significant improvement in physical and occupational therapy, but her condition began to deteriorate. Johnson exhibited among other things, a ten degree hip flexion and curvature of the spine. She was diagnosed as suffering from arachnoiditis, a complication of the initial back surgery, which necessitated a second corrective operation. Johnson was then transferred to the Touro Pain Center where Dr. Morse, a psychiatrist and neurologist concluded Johnson was suffering from arachnoiditis, a complication of an unseaworthy condition.

Johnson filed suit in U.S. District Court for the Eastern District of Louisiana. She advanced claims against Offshore for Jones Act negligence and unseaworthiness under general maritime law. The court awarded Johnson damages of $37,180 for past lost wages; $123,708 for future lost wages; and $370,000 for past physical and occupational therapy, but her condition began to deteriorate. Johnson exhibited among other things, a ten degree hip flexion and curvature of the spine. She was diagnosed as suffering from arachnoiditis, a complication of the initial back surgery, which necessitated a second corrective operation. Johnson was then transferred to the Touro Pain Center where Dr. Morse, a psychiatrist and neurologist concluded Johnson was suffering from arachnoiditis, a complication of an unseaworthy condition.

ISSUES: 1. Whether Offshore was liable under Jones Act negligence and unseaworthiness, for failing to provide proper equipment to enable a seaman of limited height and experience to make upper bunks? 2. Whether the court abused its discretion by not granting a new trial under Federal Rule of Civil Procedure, 60(b)?

ANALYSIS: The Fifth Circuit Court of Appeals affirmed the liability finding of the district court against Offshore. Determinations of negligence and unseaworthiness in Admiralty are factual questions and are binding on appeal, unless clearly erroneous. Landry v. Oceanic Contractors, Inc., 731 F.2d 299, 302 (5th Cir. 1984).