

The Burger Court Opinion Writing Database

Scindia Steam Navigation Co. v. De los Santos

451 U.S. 156 (1981)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 6, 1981

RE: 79-512 - Scindia Steam Navigation Co., Ltd.
v. Lauro de Los Santos

Dear Byron:

Please add the following at the end of your opinion:

"THE CHIEF JUSTICE took no part
in the decision of this case."

Regards,



Justice White

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 4, 1980

RE: No. 79-512 Scindia Steam Navigation Co., Ltd. v.
De Los Santos

Dear Chief:

Byron has agreed to undertake the opinion for the
Court in the above.

Sincerely,

Burke

The Chief Justice

cc: The Conference

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U.S. DEPARTMENT OF JUSTICE

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 6, 1981

RE: No. 79-512 Scindia Steam Navigation Co., Ltd.,
v. Lauro De Los Santos

Dear Byron:

I am having some problems with your opinion. Perhaps it's in the nature of the beast, but it does seem to me trial judges may experience considerable difficulty applying your standards, which I must say are not wholly clear to me. Of course I am with you on the result and I'll write you further when I have something to offer.

Sincerely,



Justice White

cc: The Conference

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To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

1st DRAFT

From: Mr. Justice Brennan

SUPREME COURT OF THE UNITED STATES

APR 15 1981

No. 79-512

Scindia Steam Navigation Co., } On Writ of Certiorari to the
Ltd., Petitioner, } United States Court of
v. } Appeals for the Ninth
Lauro De Los Santos et al. } Circuit.

[April —, 1981]

JUSTICE BRENNAN, concurring.

My views are that under the 1972 Amendments: (1) a shipowner has a general duty to exercise reasonable care under the circumstances; (2) in exercising reasonable care, the shipowner must take reasonable steps to determine whether the ship's equipment is safe before turning that equipment over to the stevedore; (3) the shipowner has a duty to inspect the equipment turned over to the stevedore or to supervise the stevedore if a custom, contract provision, law or regulation creates either of those duties; and (4) if the shipowner has actual knowledge that equipment in the control of the stevedore is in an unsafe condition, and a reasonable belief that the stevedore will not remedy that condition, the shipowner has a duty either to halt the stevedoring operation, to make the stevedore eliminate the unsafe condition, or to eliminate the unsafe condition itself.

Since I read the Court's opinion to be consistent with these views, I join the Court's opinion.

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To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Burger
Mr. Justice Brennan

2nd DRAFT

From: Mr. Justice Brennan

SUPREME COURT OF THE UNITED STATES

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APR 18 1981

No. 79-512

Scindia Steam Navigation Co., } On Writ of Certiorari to the
Ltd., Petitioner, } United States Court of
v. } Appeals for the Ninth
Lauro De Los Santos et al. } Circuit.

[April —, 1981]

JUSTICE BRENNAN, with whom JUSTICE BLACKMUN joins, concurring.

My views are that under the 1972 Amendments: (1) a shipowner has a general duty to exercise reasonable care under the circumstances; (2) in exercising reasonable care, the shipowner must take reasonable steps to determine whether the ship's equipment is safe before turning that equipment over to the stevedore; (3) the shipowner has a duty to inspect the equipment turned over to the stevedore or to supervise the stevedore if a custom, contract provision, law or regulation creates either of those duties; and (4) if the shipowner has actual knowledge that equipment in the control of the stevedore is in an unsafe condition, and a reasonable belief that the stevedore will not remedy that condition, the shipowner has a duty either to halt the stevedoring operation, to make the stevedore eliminate the unsafe condition, or to eliminate the unsafe condition itself.

Since I read the Court's opinion to be consistent with these views, I join the Court's opinion.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 6, 1981

Re: No. 79-512, Scindia Steam Nav.
v. De Los Santos

Dear Byron,

I am glad to join your opinion
for the Court.

Sincerely yours,

P.S.

Justice White

Copies to the Conference

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U.S. DEPARTMENT OF JUSTICE

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 2, 1981

MEMORANDUM TO THE CONFERENCE

Re: 79-512 - Scindia Steam Navigation Co., Ltd.
v. Lauro De Los Santos

Although the vote was to affirm the judgment in this case, there was more than one view expressed with respect to the Court of Appeals' construction of §905(b) of the Longshoremen's Act; and as the disarray in the Courts of Appeals also indicates, there is a range of possibilities. We should probably opt for one of them and this draft does. I am unsure, however, that it reflects the views of the Conference. I am more sure that it will not stem the tide of litigation under §905(b).

BW

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10: THE CHIEF
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 2 APR 1981

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-512

Scindia Steam Navigation Co., } On Writ of Certiorari to the
Ltd., Petitioner, } United States Court of
v. } Appeals for the Ninth
Lauro De Los Santos et al. } Circuit.

[April —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

Respondent Santos, a longshoreman and an employee of respondent, Seattle Stevedore Co., was injured while he was helping load the M/S Jalaratna, a vessel owned by petitioner, Scindia Navigation Co., Ltd. He later brought an action against Scindia pursuant to § 905 (b) of the Longshoremen's and Harbor Workers Compensation Act (Act), as amended in 1972,¹ which provides in relevant part as follows:

"In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 933 of this title, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. . . . The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies available under this chapter."²

¹ Pub. L. 92-576, 86 Stat. 1251, amending 33 U. S. C. §§ 901-950.

² Section 933, referred to in § 905 (b), among other things provides that

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To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

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3 APR 1981

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-512

Scindia Steam Navigation Co., } On Writ of Certiorari to the
Ltd., Petitioner, } United States Court of
v. } Appeals for the Ninth
Lauro De Los Santos et al. } Circuit.

[April —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

Respondent Santos, a longshoreman and an employee of respondent, Seattle Stevedore Co., was injured while he was helping load the M/S Jalaratna, a vessel owned by petitioner, Scindia Steam Navigation Co., Ltd. He later brought an action against Scindia pursuant to § 905 (b) of the Longshoremen's and Harbor Workers, Compensation Act (Act), as amended in 1972,¹ which provides in relevant part as follows:

"In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 933 of this title, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. . . . The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this chapter."²

¹ Pub. L. 92-576, 86 Stat. 1251, amending 33 U. S. C. §§ 901-950.

² Section 933, referred to in § 905 (b), among other things provides that

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OFFICE OF THE CLERK OF THE SUPREME COURT

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 6, 1981

Re: 79-512 - Scindia Steam Navigation Co., Ltd.
v. De Los Santos

Dear Bill,

Your comment is a fair one, at least with respect to the extent of the shipowner's duty once he learns of a condition hazardous to the longshoremen, whether it be with respect to the ship's gear or the operations of the stevedore itself. But the difficulties in application are no greater than they would be under the test of what is reasonable under all of the circumstances and not as great as they would be under the Court of Appeals' view that the ship has the duty to inspect and if it should have known about a hazardous condition it must intervene if the hazard is thought to present an unreasonable risk of harm to the longshoremen. The Court of Appeals' view expands the uncertainty as compared to the circulating draft. The latter at least would make clear to trial courts and courts of appeals that the ship has no continuing duty to inspect and should not be charged with the stevedore's negligence on the ground that it should have known about the danger and prevented it from causing injury. This seems to me to be the position most consistent with congressional intent to confine the ship's liability to damages caused by its own negligence.

Sincerely yours,



Mr. Justice Brennan

Copies to the Conference

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To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rhnquist
Mr. Justice Stevens

p. 22 & stylistic changes

From: Mr. Justice White

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-512

Scindia Steam Navigation Co., } On Writ of Certiorari to the
Ltd., Petitioner, } United States Court of
v. } Appeals for the Ninth
Lauro De Los Santos et al. } Circuit.

[April —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

Respondent Santos, a longshoreman and an employee of respondent, Seattle Stevedore Co., was injured while he was helping load the M/S Jalaratna, a vessel owned by petitioner, Scindia Steam Navigation Co., Ltd. He later brought an action against Scindia pursuant to § 905 (b) of the Longshoremen's and Harbor Workers' Compensation Act (Act), as amended in 1972,¹ which provides in relevant part as follows:

"In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 933 of this title, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. . . . The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this chapter."²

¹ Pub. L. 92-576, 86 Stat. 1251, amending 33 U. S. C. §§ 901-950.

² Section 933, referred to in § 905 (b), among other things provides that

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To: The Chief Justice
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Mr. Justice Stewart
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Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

STYLISTIC CHANGES MANUSCRIPT

20

From: Mr. Justice White

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-512

Scindia Steam Navigation Co.,) On Writ of Certiorari to the
Ltd., Petitioner,) United States Court of
v.) Appeals for the Ninth
Lauro De Los Santos et al.) Circuit,

[April —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

Respondent Santos, a longshoreman and an employee of respondent, Seattle Stevedore Co., was injured while he was helping load the M/S Jalaratna, a vessel owned by petitioner, Scindia Steam Navigation Co., Ltd. He later brought an action against Scindia pursuant to § 5 (b) of the Longshoremen's and Harbor Workers' Compensation Act (Act), as amended in 1972,¹ which, as set forth in 33 U. S. C. § 905 (b), provides in relevant part as follows:

"In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 933 of this title, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. . . . The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this chapter."²

¹ Pub. L. 92-576, 86 Stat. 1251, amending 33 U. S. C. §§ 901-950.

² Section 933, referred to in § 905 (b), among other things provides that

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Supreme Court of the United States
Washington, D. C. 20543

April 27, 198

CHAMBERS OF
JUSTICE BYRON R. WHITE

Cases Held for No. 79-512:

Scindia Steam Navigation Co., Ltd. v. Lauro De Los Santos, et al.

(1) Harris v. Reederi, No. 78-1851 (petition for rehearing), 596 F.2d 92 (CA4 1979)

Petr, a longshoreman, injured his hand when a load of tobacco was being lowered by a winch into the hold of resp's vessel. Pet produced evidence that the winch had not been working properly on the day of the accident, that his injury was caused by a sudden drift of the load caused by the defective winch, and that prior to the accident the mate of the vessel had been informed of the defective winch and had responded that he would have the winch repaired but that the longshoremen should continue working.

The jury returned a verdict for resp, the shipowner. The CA affirmed a judgment in favor of the shipowner in a brief opinion stating that the DC had not erred in rejecting petr's proposed jury instruction, based on §343A, since it "was concededly contrary to the rule as declared in Chavis v. Finnlines, Ltd., O/Y (4th Cir. 1978) 553 F.2d 1072, and Riddle v. Exxon Transp. Co. (4th Cir. 1977) 563 F.2d 1103." In each of those cases the CA4 held that the DC's failure to give a §343A instruction, if erroneous, was harmless error, since the longshoreman's injury was due solely to the negligence of the stevedore.

:

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 16, 1981

Re: No. 79-512 - Scindia Steam Navigation Co. v.
Lauro De Los Santos

Dear Bill:

Please join me.

Sincerely,

T.M.

T.M.

Justice Brennan

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 8, 1981

Re: No. 79-512 - Scindia Steam Navigation Co.
v. Lauro De Los Santos

Dear Byron:

For now, I shall wait to see what Bill Brennan has to say.

Sincerely,



Mr. Justice White

cc: The Conference

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U.S. SUPREME COURT ARCHIVES

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 15, 1981

Re: No. 79-512 - Scindia Steam Navigation Co.
v. Lauro De Los Santos

Dear Bill:

Please join me in your concurring opinion, circulated today, by which you join Byron's opinion.

Sincerely,



Mr. Justice Brennan

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 6, 1981

No. 79-512 Scindia Steam Navigation Co. v. Santos

Dear Byron:

Please join me in your opinion for the Court.

You are quite right in stating, in your memorandum of transmittal, that "more than one view" was expressed at Conference with respect to the construction of § 905(b). I think you have done well in writing down the middle.

I may, however, write a brief concurring opinion.

As I will be away fulfilling two out of town commitments during the next couple of weeks, it will be a while before I get to this.

Sincerely,

Lewis

Mr. Justice White

LFP/lab

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U.S. SUPREME COURT ARCHIVES

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

4-14-81

From: Mr. Justice Powell

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SUPREME COURT OF THE UNITED STATES

No. 79-512

Scindia Steam Navigation Co.,) On Writ of Certiorari to the
Ltd., Petitioner,) United States Court of
v.) Appeals for the Ninth
Lauro De Los Santos et al.) Circuit.

[April —, 1981]

JUSTICE POWELL, concurring.

I join the Court's opinion because I agree with its basic thrust—placing the primary burden on the stevedore for avoiding injuries caused by obvious hazards. I write only to emphasize the distinction between this approach and the general "reasonableness" standard adopted by the Ninth Circuit in this case.

Under the Court's opinion, "the shipowner has no general duty by way of supervision or inspection to exercise reasonable care to discover dangerous conditions that develop within the confines of the cargo operations that are assigned to the stevedore." *Ante*, at 15. In addition, the opinion makes clear that the shipowner has only a limited duty with respect to obvious hazards of which it is aware. Although the shipowner cannot rely in all cases on the judgment and primary responsibility of the stevedore concerning what conditions allow safe work to continue, safety is a "matter of judgment committed to the stevedore in the first instance." *Id.*, at 18. Only where the judgment of the stevedore is "obviously improvident," *ibid.*, and this poor judgment either is known to the shipowner or reasonably should be anticipated under the circumstances, does the shipowner have a duty to intervene.¹

¹ In my view, the Restatement standard adopted by the Second, Fourth, and Fifth Circuits, see *ante*, at 5, n. 9, and discussed most recently in *Evans v. S. S. "Campeche,"* — F. 2d — (CA2 1981), is consistent with

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The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

4-16-81

From: Mr. Justice Powell

2nd DRAFT

Circulated:

APR 16 1981

SUPREME COURT OF THE UNITED STATES

Recirculated:

No. 79-512

Scindia Steam Navigation Co., } On Writ of Certiorari to the
Ltd., Petitioner, } United States Court of
v. } Appeals for the Ninth
Lauro De Los Santos et al. } Circuit.

[April —, 1981]

JUSTICE POWELL, with whom JUSTICE REHNQUIST joins,
concurring.

I join the Court's opinion because I agree with its basic thrust—placing the primary burden on the stevedore for avoiding injuries caused by obvious hazards. I write only to emphasize the distinction between this approach and the general “reasonableness” standard adopted by the Ninth Circuit in this case.

Under the Court's opinion, “the shipowner has no general duty by way of supervision or inspection to exercise reasonable care to discover dangerous conditions that develop within the confines of the cargo operations that are assigned to the stevedore.” *Ante*, at 15. In addition, the opinion makes clear that the shipowner has only a limited duty with respect to obvious hazards of which it is aware. Although the shipowner cannot rely in all cases on the judgment and primary responsibility of the stevedore concerning what conditions allow safe work to continue, safety is a “matter of judgment committed to the stevedore in the first instance.” *Id.*, at 18. Only where the judgment of the stevedore is “obviously improvident,” *ibid.*, and this poor judgment either is known to the shipowner or reasonably should be anticipated under the circumstances, does the shipowner have a duty to intervene.¹

¹ In my view, the Restatement standard adopted by the Second, Fourth, and Fifth Circuits, see *ante*, at 5, n. 9, and discussed most recently in *Evans v. S. S. “Campeche,”* — F. 2d — (CA2 1981), is consistent with

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Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 6, 1981

Re: No. 79-512 Scindia Steam Navigation Co., Ltd.
v. Lauro De Los Santos

Dear Byron:

I think at Conference Lewis and I were the only ones to opt for the Second Circuit standard suggested as to the relationship between negligence of the vessel and the right of the employee of the stevedore to recover. Nonetheless, although I plan to wait and see what Lewis writes, if he does write, I am not having the same problems with your opinion as Bill Brennan is. Surprise!

Sincerely,



Mr. Justice White

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 15, 1981

Re: No. 79-512 Scindia Steam Navigation Co. v. De Los Santos

Dear Lewis:

Please join me in your concurring opinion.

Sincerely,



Mr. Justice Powell

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 6, 1981

Re: 79-512 - Scindia Steam Navigation Co.
v. Lauro De Los Santos

Dear Byron:

Please join me.

Respectfully,



Justice White

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