

1966
Nov. 25
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KYRIAKOS KOSTI
v.
KATERINA
CHRISTOFOROU

[TRIANTAFYLIDIS, STAVRINIDES J.J. & HADJIANASTASSIOU AG. J.]

KYRIAKOS KOSTI,

Appellant-Defendant.

v.

KATERINA CHRISTOFOROU,

Respondent-Plaintiff.

(Civil Appeal No. 4582).

— — —
*Civil Wrongs Road Traffic - Negligence--Damages--Quantum—
Personal injuries received in a traffic accident—General da-
mages Finding of the trial Court regarding the quantum of
the diminution of the earning capacity of respondent -Reason-
able and open to the trial Court on the totality of the material
before it to find as it did Principles upon which the Court of
Appeal will interfere or not with such findings Principles
reiterated in the case of Constantinides v. Hji Ioannou (reported
in this volume at p. 191 ante) applied.*

*Damages General damages for personal injuries--Quantum -Find-
ing of trial Court regarding the quantum - Appeal against
such findings Approach on appeal to awards of general da-
mages Principles applicable - Principles reiterated in the case
of Constantinides v. Hji Ioannou (supra), applied—See, also,
under Civil Wrongs above.*

*Findings of fact --Quantum of general damages—Approach on
appeal to awards of general damages—See above.*

*Practice--Appeal—Findings of fact by the trial Courts regarding
quantum of damages-- Principles upon which the Court of Ap-
peal will interfere with such findings--See above.*

Cases referred to :

*Constantinides v. Hji Ioannou (reported in this vol. at p. 191
ante).*

Appeal.

Appeal against the judgment of the District Court of Ni-
cosia (Dervish P.D.C. & Mavrommatis D.J.) dated the 21st
April, 1966 (Action No. 3008/63) whereby the plaintiff was
awarded an amount of £1,000 by way of damages in respect
of injuries she received in a traffic accident.

V. *Syllouris*, for the appellant.

L. *Mavronicolas*, for the respondent.

The judgment of the Court was delivered by :

TRIANTALEYLIDES, J. : In this appeal the appellant-defendant complains against the award of general damages, of £1,000, made in favour of the respondent-plaintiff, in respect of injuries received in a traffic accident.

The parties having reached agreement regarding the apportionment of liability and the amount of special damages, it was then left to the trial Court to assess the amount of general damages.

The appellant has contended that the finding of the trial Court to the effect that the respondent's earning capacity had been diminished by one third, as a result of her injuries is erroneous and against the weight of evidence; and particularly against the weight of medical opinion which was common ground between the parties, and which reads as follows (at page 12 of the record) :

"The patient having had a crushing injury on the first metatarsal, there is no doubt that she now has a post-traumatic arthritis of the joint above and the joint below the fracture. As a result of this there will be pain in walking, but mostly the pain will be felt after exertion. Taking into consideration her job (i.e. washer-woman) which entails prolonged standing, she will be somewhat inhibited and she will be in a position to carry out her job with a certain amount of pain and discomfort. In our opinion the pain and discomfort are of a permanent nature. She must have had a certain amount of pain and suffering during the treatment and the two operations. To-day's examination revealed no swelling of the injured part". (That examination was on the 21st April, 1966).

We are of the opinion that the trial Court had to quantify the diminution of the earning capacity of the respondent, on the basis of all the material before it including, of course, the medical opinion, and also any other evidence, such as the evidence of respondent herself.

We take the view that on the totality of the material before the Court it was reasonable and properly open to the trial

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Court to find as it did, regarding the quantum of the diminution of the earning capacity of the respondent. Even if any member of this Court might have held a slightly different view regarding such quantum, it is not for this Court to substitute its own evaluation of the relevant material, once we are of the opinion that it was reasonably open to the trial Court to reach the conclusion which it did reach, on the evidence before it. For these reasons the appeal fails.

There is, next, a cross-appeal by respondent who contends that the amount of damages awarded to her is inadequate, mainly on the ground that the trial Court has failed to take into account the earnings she has lost during the period between the filing of the statement of claim and the date of the trial.

The trial Court has stated in its judgment that, in assessing general damages, it had in mind "all the circumstances of this case and especially the pain, suffering and inconvenience of the plaintiff, both past and future and her diminished earning capacity".

We see no reason to accept that when the trial Court was taking into account *both past and future* pain, suffering and inconvenience, it did not likewise, address its mind to the totality of the question of the diminished earning capacity of respondent, including any loss of earnings which could not fairly be said to be covered by the agreement regarding special damages which had been reached between the parties. We, therefore, find that the trial Court has not misdirected itself in any way in this respect.

Bearing, further, in mind the correct principle regarding the approach on appeal to awards of general damages, as such principle has been reiterated recently in cases such as *Constantinides v. HjiIoannou*, (reported in this Vol. at p. 191 *ante*) and the cases referred to therein, we do find that there exists no proper ground requiring this Court to disturb the award of general damages made by the trial Court in this case.

In the circumstances the cross-appeal fails also.

The appeal and cross-appeal are hereby, dismissed with no order as to costs.

Order in terms.