[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

MARIA KARAVALLI THROUGH HER FATHER
ELPIDOROS KARAVALLIS,

Appellant-Plaintiff,

v.

CHARALAMBOS CONSTANTINOU,

Respondent-Defendant.

(*Civil Appeal No.* 5051).

Personal injuries—General damages—Road accident—Eight years old girl sustaining supracondylar fracture of right elbow—Risk of late development of arthritic changes—General damages assessed at £700—Amount awarded not the result of any serious error so as to make it an entirely erroneous estimate of the damage—Cf. infra.

General damages in personal injuries cases—Law as to basis of compensation—Fair and reasonable compensation as distinct from perfect compensation—See Charalambides *v.* Michaelides *reported in this Part at p.* 66, ante.

This is an appeal by the plaintiff against the award of £700 general damages for personal injuries suffered by her as a result of the negligent driving of the defendant (now respondent). The Supreme Court dismissed the appeal holding that the amount awarded by the trial Court was not the result of any serious error so as to make it an entirely erroneous estimate of the damage.

The facts sufficiently appear in the judgment of the Court.

Cases referred to :

Fletcher v. *Autocar and Transporters Ltd.* [1968] 2 W.L.R. 743, at p. 748 *et seq. per* Lord Denning, M.R. ;

H. West and Son Ltd. v. *Shephard* [1964] A.C. 326, at p. 356 ;

Charalambides v. *Michaelides,* reported in this Part at p. 66, *ante.*

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Evangelides and Ioannou, Ag. D.JJ.) dated the 31st December, 1971, (Action No. 3439/70) whereby she was awarded the sum of £778 as damages which she sustained due to the negligent driving of the defendant.

L. Georghiadou (Mrs.), for the appellant.

Ph. Clerides, for the respondent.

The judgment of the Court was delivered by :—

HADJIANASTASSIOU, J.: In this case the plaintiff, Maria Karavalli through her father, claimed damages for injuries sustained by her when she was knocked down whilst walking on the pavement on the main road of Lakatamia village by a car driven negligently by the defendant when he was overtaking a stationary vehicle.

The Full District Court of Nicosia, after hearing evidence from both sides, found that the defendant was solely to blame for the accident and awarded in favour of the plaintiff an amount of £700 general damages and £78 agreed special damages. The plaintiff appealed against the award of the general damages claiming that the sum of £700 was unreasonably low having regard to the medical evidence.

The facts are simple : On April 5, 1970, the plaintiff, a school girl of 8 years of age at the time, was walking with a girl friend on the berm of the main road of Pano Lakatamia towards the direction of Nicosia, when she was knocked down by an oncoming car from the opposite direction driven by the defendant in a negligent manner. The accident occurred, as the Court found, " because the defendant, in overtaking a vehicle or vehicles which were parked on the left side of the road, pulled too much to the right side and hit the plaintiff who was walking on the berm of the road ".

As a result of that accident, the young girl suffered injuries and was taken to the general hospital in Nicosia, where she was treated for supracondylar fracture of the right elbow. This fracture was at the distal end of the humerus and it was an intra articular and was included in the joint capsule. Whilst in the hospital, she was given treatment consisting of close manipulation under general anaesthesia, and her elbow was immobilized in plaster of

paris. The plaster was removed in a month's time and she was attending physiotherapeutic exercises at the physiotherapy department of the hospital. Later on, in July, 1970, she was examined by Dr. Nicos Ioannou, an orthorpaedic surgeon, who continued treating her for a whole year, and his findings were the following :—

> "The range of elbow movements were from 45° of extension to 120°. That means that she lacks the last 45° of full extension and the last 15°–25° of full flexion. If I may say the normal range is from 0° of full extension to 135°–145° ; it depends upon the individual. There was also mild restriction of the supination movement, that means the outward rotation movement, while the pronation, that means the inward rotation of the forearm, was normal. On my palpating in the elbow region, soft tissues sclerosis of the periarticular structures and mild tenderness could be elicited by deep pressure over the elbow region.
>
> The new X-rays taken on the date of the examination showed that there was an old supracondylar fracture which healed in an unacceptable position.
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> This girl sustained a nasty supracondylar fracture of the elbow. It is one of the difficulties to treat fractures in the young people. The fact that it was twice remanipulated during the early stages of treatment indicates that it was an unsightly type of fracture and, unfortunately, it healed with displacement. She attended provocative physiotherapy which lasted for about one year under supervision. However, the injury resulted to serious degree of limitation of the extension-flexion movement and, fortunately, she regained most of the supination and pronation movement."

Finally, the surgeon expressed the opinion that there was no room for further improvement and the present movement is to remain permanent. He further added that there was a great risk of late development of arthritic changes in the elbow due to the limitation of the elbow movements.

Cross examined by counsel for the defendant, he said that on the contrary, the position of the patient might deteriorate if she would develop osteoarthritic changes in the future because (*a*) of the presence of soft tissue sclerosis around the elbow and (*b*) because of the permanent restriction of the elbow movements. He further added

that as far as he knew, there was limitation of a joint, sooner or later, according to the idiosyncrasy of the patient, and it would develop osteoarthritic changes. He repeated, once again, that he did not believe that there would be really a possibility for further improvement.

The patient was further examined by Mr. George Iacovides, a surgeon on January 9, 1971, and during the hearing of this case, and his opinion was as follows :—

> "There is no possibility of future osteoarthritis in this joint. This kind of fracture is an extra-articular one, it is outside the joint. It does not involve the joint itself. This is the main reason that I would not expect any osteoarthritic changes in the future ; and her age, of course, a young child, the regeneration of the tissues is a very good one and at this age especially. As to the functional impairment, there will be a mild difficulty in pushing or pulling heavy objects and lifting very heavy objects. I do not think that such degree of impairment could affect professionally in future any manual labour or a work needing finger dexterity."

Then, questioned by counsel for the plaintiff, he said that he did not think she would be impaired in writing or typing.

The trial Court, in awarding the amount of £700 general damages to the plaintiff, took into consideration the evidence of both surgeons who examined the patient, and accepted that there was a risk of late development of arthritic changes in the elbow, adding at the same time that the risk is not a great one. This finding has not been challenged, and counsel today complains that the award of the general damages was unreasonably low, having regard to the evidence adduced. Although no comparable case has been cited to us, nevertheless, we agree that the compensation to be awarded should be a fair and reasonable one.

The law as to the basis of the compensation has been stated by Lord Denning, M.R., in *Fletcher* v. *Autocar and Transporters Ltd.* [1968] 2 W.L.R. 743 at p. 748 *et seq.* The compensation to be awarded should be a fair and reasonable compensation, and the Court must not attempt to give damages to the full amount or a perfect compensation in money. See also *H. West and Son Ltd.* v. *Shephard* [1964] A.C. 326 at p. 356.

Having regard to the arguments of both counsel on this issue, we would reiterate what we said in *Charalambides* v. *Michaelides*, Civil Appeal No. 5129 dated 18th May, 1973, (unreported)* that so far as damages are concerned, it is a somewhat comparable matter whether this Court think that the Judge's award of damages was wholly erroneous. They awarded the sum of £700 general damages after taking into consideration the medical evidence before them and we are not prepared to accept counsel for the appellant's submission that the award was unreasonably low. Clearly, in different cases of this general type, different Judges would arrive at various figures. Taking into consideration the facts and circumstances of this case, we would affirm the judgment of the trial Court, because we are satisfied that the amount awarded was not the result of any serious error so as to make it an entirely erroneous estimate of the damage. True, of course, the award as a whole is a little on the low side, and we might have been prepared to award a little more, but even if that had been our tendency, the margin between the sum in fact awarded and that which we might have awarded had we been the trial Judges is so little that it would be quite wrong to say that any interference by this Court is called for.

Accordingly, in respect of the ground advanced by the appellant here, it seems to us that she must fail and we, therefore, hold that this appeal must be dismissed with no order as to costs, because counsel, very fairly in our view, has not claimed any.

Appeal dismissed. No order as to costs.

* Now reported in this Part at p. 66, ante.