

[TRIANAFYLLIDES, P., STAVRIDES, L. LOIZOU, JJ.]

1974  
Mar. 21

MOUSTAFA KEMAL AND ANOTHER.

MOUSTAFA  
KEMAL  
AND ANOTHER

*Appellants - Defendants,*

v.

v.

ANDREAS IOANNIDES,

ANDREAS  
IOANNIDES

*Respondent - Plaintiff.*

(Civil Appeal No. 5166).

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*Damages—General damages—Personal injuries—Forty-nine years' old married man sustaining concussion—Unconscious for ten days—Under treatment as an out-patient for six months—After effects—Sexual impotence—Change of personality and diminution of intellectual performance—Award of £6,000—So high as to be outside the brackets within which general damages could have been awarded in respect of the particular situation in the present instance—Award reduced on appeal to £4,500.*

*Personal injuries—General damages—Quantum—See supra.*

This is an appeal by the defendants in the action against the judgment of the Court below awarding £6,000 general damages to the plaintiff (now respondent) in respect of personal injuries suffered by the latter due to the negligent conduct of the appellants (defendants). After reviewing the facts and referring to comparable cases, the Supreme Court allowed partly the appeal against the said award and reduced the damages to £4,500, holding that the award appealed from was so high as to be an entirely erroneous estimate. The facts sufficiently appear in the judgment of the Court.

Cases referred to :

*Constantinides v. Hji Ioannou* (1966) 1 C.L.R. 191:

*Djermal v. Zim Israel Navigation Co. Ltd. and Another* (1968) 1 C.L.R. 309:

*Cook v. J. L. Kier and Co. Ltd.* [1970] 1 W.L.R. 774:

*Elliott v. Corporation of Preston* [1971] 2 Lloyd's Rep. 328, at pp. 328, 330.

1974  
Mar. 21

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KEMAL  
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### Appeal.

Appeal by defendants against the judgment of the District Court of Limassol (Loris, P.D.C. and Hadjitsan-garis, D.J.) dated the 31st January, 1973. (Action No. 3427/71) whereby the sum of £6,000.- was awarded to the plaintiff as general damages, payable by the defen-dants, in respect of personal injuries suffered by the plaintiff due to the negligent conduct of the defendants.

*M. Aziz with E. Uluay*, for the appellants.

*J. Potamitis*, for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by :-

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TRIANTAFYLIDIS, P. : This is an appeal regarding the amount of C£6,000 which was awarded as general da-mages to the respondent, as plaintiff before the Court below, payable by the appellants, as defendants before such Court, in respect of personal injuries suffered by the respondent due to negligent conduct of the appel-lants.

It was agreed at the trial that the respondent had him-self been guilty of contributory negligence to the extent of 10% ; also, the special damages were fixed, by con-sent, at C£684.560 mils.

The respondent was, at the time of the accident, a married man, forty-nine years old; his wife was a year older; according to evidence on record his marriage was a happy one and his marital relations were normal. The respondent was employed at the British Sovereign Base Areas; and he was a person of a sociable nature.

What the trial Court took mainly into account in assessing the general damages was that, as a result of the injuries which he suffered, the respondent became sexually impotent; and that, as was stated in the Court's judgment, his impotence is of a permanent nature.

The respondent suffered concussion, due to which he remained unconscious for ten days; he was in hospital from October 10, 1970 (when he was injured) till No-vember 2, 1970, and was under treatment as an out-patient for at least six months.

The after-effects of the concussion are stated in a common report filed by specialists for both sides; according to such report the appellant was found to have suffered a change of personality of a moderate degree, as a result of which he, among other things, manifests a general irritability and intolerance to noise, as well as lack of initiative and of sociability; he has, also, suffered a diminution of his intellectual performance, with consequential lowering of the level of his ability for work; moreover, as already mentioned, he has become sexually impotent.

The trial Court took, also, into account that though the respondent did not lose his job and he is still earning the same salary—(having been treated generously in this connection by his employers, who have assigned to him less strenuous duties in view of his reduced capability for work)—it is to be expected, nevertheless, that, if he ever loses his present job, he is going to be in a disadvantageous position in the labour market, in view of his diminished intellectual performance

We should observe, before proceeding any further, that regarding the sexual impotence aspect of this case the trial Court seems to have taken a more pessimistic view than what was warranted by evidence on record. It appears that four or five months prior to the trial (which took place towards the end of 1972) the respondent, though still unable to have sexual intercourse, started having occasional erections in the morning and he regained some of his libido. When a medical specialist, who was called as a witness by the respondent, was asked whether the impairment of the sexual potency of the respondent was of a permanent nature he replied that he could not confirm this with certainty; this witness added that in the normal course the respondent would have been sexually active until the age of about sixty-five years.

It has been submitted by counsel for the appellants that the general damages awarded are manifestly excessive; but this proposition has been strenuously opposed by counsel for the respondent.

Each case has, of course, to be decided on its own merits and it is with this caution in mind that we shall

1974  
Mar 21  
—  
MOUSTAFA  
KEMAL  
AND ANOTHER  
v  
ANDREAS  
IOANNIDES

1974  
Mar. 21

MOUSTAFA  
KEMAL  
AND ANOTHER

v.

ANDREAS  
IOANNIDES

refer to some comparable cases :

In *Constantinides v. Hji Ioannou* (1966) 1 C.L.R. 191, an award of C£1,700 for much more serious injuries and residual incapacity, including sexual impotence, was increased, on appeal, to C£2,500.

Two years later in *Djema! v. Zim Israel Navigation Co. Ltd. and Another* (1968) 1 C.L.R. 309, an award of C£4,150 was increased, on appeal, to C£6,000; there existed in that case, too, sexual impotence, plus a 65% incapacity for any work of any kind.

In *Cook v. J. L. Kier and Co. Ltd.* [1970] 1 W.L.R. 774, an award of £3,000 in respect of sexual impotence, caused to a married man forty-one years old, in conjunction with other very serious injuries, such as complete loss of the sense of taste and smell, as well as inability to walk properly, was increased to £7,000.

We have not lost sight of the warning given by Salmon L.J. in the case of *Elliott v. Corporation of Preston* [1971] 2 Lloyd's Rep. 328, 330, to the effect that when one is assessing pain, suffering and deprivation of the pleasures of life, there is no device by which one can measure damages so nicely as to say that damages should be £6,000 and not £7,000. as was in issue in that case: that was, also, a case of sexual impotence coupled with other severe injuries.

Looking, however, at the particular facts before us we have reached the conclusion that in the present case the general damages of C£6,000 are so high as to be outside the brackets within which general damages could have been awarded in respect of the particular situation in the present instance, and, so, we have decided to reduce them to C£4,500, with the result that the judgment appealed from should be varied accordingly.

Consequently, when the amount of C£684,560 mils. agreed as special damages, as well as the amount of C£4,500 as general damages, are reduced by 10%, as agreed between the parties, due to the contributory negli-

gence of the respondent, the total sum payable now to him is £4,666.104 mils.

1974  
Mar 21  
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The costs of the trial are to be borne by the appellants, and of this appeal by the respondent.

MOUSTAFA  
KEMAL  
AND ANOTHLR

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*Appeal partly allowed.  
Order for costs as above.*

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IOANNIDES