

[MALACHTOS, J.]

ANDREAS COSTA ENGLEZOUCES,

Plaintiff,

v.

WESTMINSTER DREDGING CO. LTD.,

Defendants.

(Admiralty Action No. 7/73).

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5 *Damages—General damages—Assessment—Personal injuries—  
Right handed, 38 year old heavy machinery mechanic  
receiving severe injury in his right hand—Resulting in  
partial permanent incapacity—And restricting severely  
his working capacity with the right hand—Award of  
£2,150.*

10 The only issue for consideration in this action for  
special and general damages for the personal injuries  
sustained by plaintiff in an accident, in the course of  
his employment, was that of general damages.

15 Plaintiff received the injuries complained of on the  
5th July, 1972, whilst inspecting the engine of a tug.  
On his admission to the hospital he was found suffering  
from a compound fracture of the head of the 4th meta-  
carpal bone of the right hand and from sprain of the  
right little finger.

His condition was reassessed on 24.8.1972, when he  
was re-examined and it revealed the following :

20 (a) Bony deformity due to the absent prominence of  
the knuckle involved;

(b) moderate weakness of the grip of the right hand;  
and

(c) loss of flexion of the terminal inter phalangeal  
joint of the right little finger.

25 Plaintiff was unable to follow his employment for a  
period of two months from the date of the injury. His  
condition was considered permanent and the residual  
damage consisted of a partial permanent incapacity

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amounting to 15%. In support of his case on the said issue of general damages plaintiff gave evidence himself and called two more witnesses, namely Dr. Thoukis Zambarloukos an orthopaedic surgeon and Gleppos Popof an automobile engineer.

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Plaintiff stated that he is 38 years of age and he is a mechanic of heavy machinery. As a result of the injury he received in this accident, when he is closing his palm the last but one knuckle joint is missing and he feels it inside his palm. As a mechanic of heavy machinery he cannot use his right hand at all. He further stated that he cannot hold and use screw drivers, spanners or files. After the accident he remained at his job, but he was instructing other mechanics what to do. He could not and cannot do any work himself because he cannot use his right hand. He has been out of work since the defendant company completed the work and left Cyprus. When he was working for the defendants his salary was £136.- per month, but he was getting much more due to the fact that he was working over-time.

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The first witness for the plaintiff, Dr. Th. Zambarloukos, stated that he examined the plaintiff on two occasions and his findings appear in two medical certificates *exhibits* 4 and 5 (quoted in full in the judgment at pp. 47 - 49 *post*).

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The said doctor, who also examined the plaintiff on the date of the hearing stated in evidence that the 4th and 5th fingers of his right hand were not closing to the palm. The doctor considered this as a serious disability for a skilful mechanic who uses various tools such as screw drivers, spanners, files etc.... He further stated that generally, the gripping, holding and grasping power of the said hand is severely reduced and this according to the opinion of this witness will affect adversely the plaintiff's working capacity and restrict severely the working capacity of the right hand.

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The second witness for the plaintiff stated that the work of the plaintiff is harder than that of an automobile engineer. Files, spanners and screw drivers are used for the repairs of heavy machinery and in order to use such tools a mechanic has to use his palm. Only small

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screw drivers can be used by a mechanic with the three fingers. When a mechanic has these tools in his palm, he has to hold them tight and then exert force by pulling. And when he feels pain in his palm by gripping a tool he cannot work efficiently.

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Only one witness was called for the defence. Dr. Leontios Papasavvas a special orthopaedic surgeon. He examined plaintiff for the first time on 23.10.1972 and his findings appear in his report, *exhibit 2*, (quoted in full in the judgment at p. 50 *post*).

In giving evidence he stated that only the ring finger remained affected. The flexion of this ring finger is 15 degrees less than that of the left hand and sticks out of the palm. In the case of the plaintiff when the injured part is pressed with force he must feel pain depending on the degree of force exerted on the finger and the hardness of the instrument he is holding with his right hand. When he grips something with the whole of his palm and the projection in his palm gets in the way, he should feel pain.

The learned judge after referring to the evidence of the two doctors held that there was no substantial difference in their evidence except as to the degree to which the incapacity of the plaintiff interferes with the exercise of his profession. On this point the learned judge accepted the evidence of Dr. Zambarloukos which was supported by the evidence of Popof, the automobile engineer whose evidence he also accepted and

*Held*, (1) there is no doubt that plaintiff is in a position to do his old work, but certainly he will be at a disadvantage and discomfort which his disability entails.

(2) Taking all factors into account and, in particular, the fact that he is a heavy machinery mechanic and a right handed man, I assess the general damages to £2,150. Defendants to pay to plaintiff the costs of this action.

*Judgment and order  
for costs as above.*

40 Admiralty Action.

Admiralty action for damages in respect of injuries

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sustained by the plaintiff in an accident in the course of his employment with the defendants due to their negligence.

*B. Vassiliades*, for the plaintiff.

*R. Michaelides*, for the defendants.

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*Cur. adv. vult.*

The following judgment was delivered by :-

MALACHTOS, J. : The plaintiff in this admiralty action, a heavy machinery mechanic, instituted the present proceedings against his employers claiming special and general damages for personal injuries he sustained in an accident in the course of his employment due to their negligence and/or breach of statutory duty. 10

The defendants on the 5th July, 1972, were the owners of a tug which was towing a barge at the new port of Limassol, which was then under their construction. While the plaintiff was on the said tug inspecting its engine, which was encased in a metallic trunk with the lid open, by reason of negligent navigation the said tug collided with the barge and the lid of the engine, due to the impact, closed forcibly and caught in and injured his right palm. The plaintiff was taken to the Limassol hospital where he was attended to and treated by Dr. P. Michaelides, a specialist orthopaedic surgeon. On admission to the hospital, according to the medical certificate of Dr. Michaelides, *exhibit* 1, the plaintiff was found suffering from the following : 15 20 25

(a) a compound fracture of the head of the 4th metacarpal bone of the right hand; and

(b) sprain of the right little finger.

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The fracture was confirmed by X-ray and treated in plaster and antibiotics.

The plaintiff was attending the hospital as an out-patient and was given a course of physiotherapy up to 24/8/72 when his condition was reassessed and re-examination on that day, according always to *exhibit* 1, revealed the following : 35

(a) bony deformity due to the absent prominence of the knuckle involved;

(b) moderate weakness of the grip of the right hand; and

5 (c) loss of flexion of the terminal inter phalangeal joint of the right little finger.

In the opinion of the doctor the plaintiff was unable to follow his employment for a period of two months from the date of the injury, namely, from 5/7/72 to  
10 5/9/72. His condition was considered permanent and the residual damage, as stated above, consisted of a partial permanent incapacity amounting to 15%.

Before the hearing of the case, liability was admitted in full on the part of the defendants. Also, the special  
15 damages were agreed at £60. So, the only issue that remained for consideration was that of general damages.

In support of his case on this issue the plaintiff gave evidence himself and called two more witnesses, namely, Dr. Thoukis Zambarloukos, an orthopaedic surgeon  
20 and Gleppos Popof an automobile engineer.

Dr. Th. Zambarloukos in giving evidence as P.W.1 stated that he examined the plaintiff for the first time on the 24th January, 1973. His findings, which are included in a medical certificate dated 25/1/73, *exhibit*  
25 4, are the following :

1. A severe contusion of his right hand associated with two lacerated wounds at lateral dorsum of his 4th carpophalangeal joint and a compound fracture of the head of the 4th metacarpal, a fracture of the upper end  
30 of the proximal phalanx of the 4th finger and disruption of the 4th carpophalangeal joint.

2. Sprain of the right little finger.

*Subjective symptoms* : The patient was complaining of limitation of the motion of the 4th and 5th fingers of  
35 his right hand associated with pain and reduced gripping power.

*Objective symptoms* :

(a) *Radiological* : The shape of the head of the 4th

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metacarpal bone was deformed and the prominence of the knuckle at the joint is absent and united in a displaced palmar position with obliteration of the 4th metacarpophalangeal joint.

*Clinical*: At the back of his right hand close to the 4th and 5th metacarpophalangeal joints, there are two scars of lacerations 3/4 of an inch each, one vertical and the other transverse touching each other and forming a T shaped scar. The 4th metacarpophalangeal joint is restricted by 15%. The little finger is stiff and the terminal phalanx with very little passive motion, possible but no active one. Both the 4th and 5th fingers are not closing to the palm, reducing severely the effective gripping power of the hand. At the 4th metacarpophalangeal joint there is some sclerosis with periarticular thickness. In the opinion of this witness the plaintiff sustained a compound double fracture at the adjoining bones of the 4th metacarpophalangeal joint of his right hand and disruption of the joint. There is a definite loss of power in the gripping function of his hand. Grasping by the hand, as a whole, and grasping of an object by a combined use of palm and digits (as it is seen in the use of round headed tools) are severely reduced. Because of the inter relationship of tendon action it is a difficult matter to learn to use even the uninjured fingers when one or two fingers have been injured. The danger of development of traumatic osteoarthritis at the injured joint in the future, is a real one due to the nature of the injury.

This witness further stated that he examined the plaintiff for a second time on 10/1/74 in order to reassess his condition and his findings, which are included in the medical certificate dated 10/1/74, exhibit 5, are the following :

“Further to my previous report dated 25th January, 1973, the above named has been re-examined by me today and new X-rays of his right hand in two projections were taken.

*Present condition.* The patient is complaining of inability to flex the 4th and 5th fingers of his right hand to the palm associated with pain and reduced gripping power of his hand.

He also states that he feels pain at the belly of the extensor muscles of the forearm when closing his other fingers to the palm of the hand.

5      *Objective findings. Radiological.* The X-rays reveal the fractures united at the expense of one cm shortening of the 4th metacarpal bone.

*Clinical.* Both the 4th and 5th fingers are not closing to the palm reducing severely the effective gripping power of the hand.

10      At the 4th metacarpophalangeal joint there is a periarticular thickening and the motion of the joint is restricted by 15%.

15      At the palmar aspect of the 4th metacarpophalangeal joint there is a small hard prominence which is felt by palpation and is painful to touch.

The little finger is stiff at the terminal phalanx.

20      *Opinion.* This fellow, a skilful mechanic has ended with a definite loss of power in the gripping, grasping and holding function of his right hand. Being a mechanic who uses various tools (including round headed tools) he will experience a handicap which will reduce substantially his wage-earning capacity."

25      On the date of the hearing of the case this witness stated that he examined the plaintiff once again on that day and he found that the muscles of the thenar of his right hand were wasted and the small hard prominence which he felt and noted in his certificate of the 10th January, 1974, on the 4th metacarpophalangeal joint,  
30      was still there and was painful to the touch. The 4th and 5th fingers were not closing to the palm. They were sticking out of the palm. He considered this as a serious disability for a skilful mechanic who uses various tools such as screw drivers, spanners, files etc. Generally,  
35      the gripping, holding and grasping power is severely reduced. This, according always to the opinion of this witness, will affect adversely his working capacity. His working capacity with the right hand is severely restricted. Any pressure exerted with the palm of the right  
40      hand or anything held tight in the palm will cause him pain.

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Gleppos Popof in giving evidence as plaintiff's witness 3, stated that the work of the plaintiff is harder than that of an automobile engineer. Files, spanners and screw drivers are used for the repairs of heavy machinery. In order to use the various tools a mechanic has to use his palm. Only small screw drivers a mechanic can use with the three fingers. When a mechanic has these tools in his palm, he has to hold them tight and then exert force by pulling. When a mechanic feels pain in his palm by gripping a tool he cannot work efficiently. 5 10

The plaintiff himself in giving evidence as P.W.2 stated that he is 38 years of age and he is a mechanic of heavy machinery. As a result of the injury he received in this accident, when he is closing his palm the last but one knuckle joint is missing and he feels it inside his palm. As a mechanic of heavy machinery he cannot use his right hand at all. He also stated that he cannot hold and use screw drivers, spanners or files. After the accident he remained at his job but he was instructing other mechanics what to do. He could not and cannot do any work himself because he cannot use his right hand. He has been out of work since the defendant company completed the work and left Cyprus. When he was working for the defendants his basic salary was £136.- per month, but he was getting much more due to the fact that he was working overtime. 15 20 25

The only witness that was called for the defence was Dr. Leontios Papasavvas, a specialist orthopaedic surgeon, who examined the plaintiff for the first time on the 23rd October, 1972. His findings appear in his report, *exhibit 2*, which reads as follows: 30

"The above patient was examined by me on 23. 10.1972 in order to estimate the partial permanent incapacity of his right hand due to the accident of 5.7.1972. 35

*Subjective findings:* He is complaining for stiffness painful of the little and paramedial finger of the right hand, associated with loss of gripping.

*Objective findings:* (a) Stiffness of the phalangeal joints of the little and paramedial finger. (b) Loss 40



of the gripping of the right hand about 15%. (c) You can't see the head of the 4th metacarpal bone at the right angle flexion.

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5 X-rays revealed (a) Fracture of the base of the 1st phalangeal healed in good position. (b) Subhead old fracture of the 4th metacarpal bone which had been healed in displacement to the palmar area.

10 *Conclusion*: The above patient sustained a sub-head fracture of the 4th metacarpal bone which had been healed in displacement to the palmar and for this we have the subjective and objective findings and the dangerous of osteoarthritis changes in the future to be form.

15 I estimate as partial permanent incapacity for this case 20%."

He examined the plaintiff on a second occasion on the 29th January, 1974, in order to reassess his condition and his findings appear in his report, *exhibit 3*, which reads as follows:

20 "According to my previous report the above patient was examined by me on 23.10.1972 and I re-examined him on 29.1.1974.

25 *Subjective findings*: He is still complaining for (a) Pain at the 4th metacarpal-phalangeal joint when he grasps something hard. (b) Loss of gripping of the right hand.

30 *Objective findings*: (a) The flexion of the metacarpophalangeal joint is 80° than 90° normally. (b) The stiffness of the joints of the little and paramedial fingers is better. (c) There is loss of gripping of the right hand about 10-15%. (d) The head of the 4th metacarpal bone is absent at the right angle of flexion. (e) The press of the head of the 4th metacarpal bone is painful.

35 *X-Rays*: Revealed no osteoarthritis changes of the joint.

*Conclusion*: The problem of the patient is the displacement of the head of the 4th metacarpal bone

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at the palmar area and this is the cause of pain,  
and loss of gripping.”

This witness in giving evidence stated that on the date of hearing when he examined the plaintiff he found that there was no atrophy or wasting of the thenar muscle. The thenar muscle is the one corresponding to the thumb and not to the paramedial finger, and was not affected at all by the accident. Although the little finger was affected after the treatment was completely cured. Only the ring finger remained affected. The flexion of this ring finger is 15 degrees less than that of the left hand and sticks out of the palm. In the case of the plaintiff when the injured part is pressed with force he must feel pain depending on the degree of force exerted on the finger and the hardness of the instrument he is holding with his right hand. When he grips something with the whole of his palm and the projection in his palm gets in the way, he should feel pain.

No doubt the plaintiff in giving evidence exaggerated his condition by stating that he cannot work at all as a heavy machinery mechanic due to the injury he received in this accident. The fact, however, remains that he received as a result of this accident a severe injury in his right hand which resulted in his partial permanent incapacity. This is clear from the medical evidence before me both of Dr. Zambarloukos and Dr. Papisavvas who stated that the said injury will be a handicap in the exercise of his profession as a heavy machinery mechanic. There is no substantial difference in the evidence of both doctors except as to the degree to which the incapacity of the plaintiff interferes with the exercise of his profession.

On this point I must say that I accept the evidence of Dr. Zambarloukos which is supported by the evidence of P.W.3 Gleppos Popof the automobile engineer, whose evidence I also accept.

There is no doubt that the plaintiff is in a position to do his old work but certainly he will be at a disadvantage and discomfort which his disability entails.

Taking all factors into account and, in particular, the fact that he is a heavy machinery mechanic and a right

handed man, I assess the general damages to £2,150.-  
and adding to the above sum the sum of £60.- agreed  
special damages, I give judgment in favour of plaintiff  
against the defendants in the sum of £2,210.- with legal  
5 interest at 4% per annum as from today to final pay-  
ment.

The defendants to pay to the plaintiff the costs of  
this action to be assessed by the Registrar.

*Judgment and order  
for costs as above.*

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