

[STAVRINIDES L LOIZOU, A LOIZOU, JJ]

1 AGATHANGELOS KAMARLINGOS,
2 LEONIDAS PAPETTAS,

Appellants-Defendants,

v

ANDREAS ECONOMIDES,

Respondent-Plaintiff

(Civil Appeal No 5348)

1975
March 28

AGATHANGELOS
KAMARLINGOS
AND ANOTHER

v

ANDREAS
ECONOMIDES

Damages—Special damages—Loss of earnings—No evidence that plaintiff has suffered any damages as a result of his absence from work—Award set aside

5 *Damages—General damages—Personal injuries—Road accident—Misconception by trial judge as to plaintiff's residual incapacity in considering certain injuries as causing permanent incapacity—Award reduced*

10 The appeal on the issue of liability having been abandoned the argument before the Court of Appeal was confined to the item of £120, which was awarded by way of special damages for loss of earnings and to the amount of general damages

15 As far as the first issue was concerned there was no evidence before the trial judge that the plaintiff has suffered any damage at all as a result of his absence from work for a period of six weeks. None of his businesses had come to standstill during his absence but the trial judge awarded the said sum of £120 - because, as he said although he had no concrete figures for any loss of earnings he felt that he had to make
20 an assessment as the plaintiff must have inevitably suffered damage due to this absence from his work. Even the plaintiff himself did not suggest any figures and he did not say definitely that he has suffered any
25 damage, he merely said that if he were present he would probably have a larger income

As far as the amount of general damages is concerned the plaintiff in giving evidence said that the only permanent incapacity that had resulted was that he could

1975
March 28
—

AGATHANGELOS
KAMARLINGOS
AND ANOTHER

v.

ANDREAS
ECONOMIDES

not walk for such distance as he could before the accident.

The trial judge in assessing the general damages considered the injury to plaintiff's shoulder and some post-traumatic symptoms on his head, from the effects of which he had been cured by the time the case went to trial, as causing him permanent incapacity too. 5

Held, (I) With regard to the special damages :

We find no justification for the conclusion reached by the learned trial judge in view of the evidence before him. We must agree with Counsel for the appellant that in the light of the evidence adduced this item of damages has not been proved. 10

Held, (II) With regard to the amount of general damages :

1. The learned trial judge in assessing the sum of £600.- by way of general damages was labouring under a misconception as to plaintiff's residual incapacity in considering the injury to the shoulder and some post-traumatic symptoms on the head as causing him permanent incapacity. 20

2. In view of this we think that the sum of £600.- should be reduced by one third to £400.

Appeal partly allowed.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Papadopoulos, S.D.J.) dated the 11th September, 1974, (Action No. 4331/72) whereby they were ordered to pay to the plaintiff the sum of £1,620.- by way of damages for negligence in a motor car accident. 30

A. Soupashis for Ph. Clerides, for the appellant.

K. Michaelides, for the respondent.

STAVRINIDES, J. : The judgment of the Court will be delivered by Mr. Justice L. Loizou.

L. LOIZOU, J. : This is an appeal from the judgment of the District Court of Nicosia whereby the appellant was adjudged to pay a total of £1,620.- by way of damages for negligence in a motorcar accident case. 35

1975
March 28

AGATHANGELOS
KAMARLINGOS
AND ANOTHER

v.

ANDREAS
ECONOMIDES

Before the commencement of the trial certain items of damage were agreed; the damage to plaintiff's motorcar was agreed at £800.- and the medical expenses at £100.-, both items on a full liability basis, and the issue that the trial Court had to decide in so far as the claim for damages was concerned was an item for £360.- listed in the pleadings under the heading of special damages as loss of earnings and the amount of general damages. The question of liability was also in issue.

10 The learned trial Judge found appellant wholly to blame for the accident and, in addition to the items of damages agreed, awarded £600.- by way of general damages and £120.- for loss of earnings.

The appeal was originally based on three grounds, namely (1) against the decision of the trial Judge with regard to liability, (2) against the award of £600.- as general damages which appellant claims is excessive and (3) against the award of the sum of £120.- for loss of earnings which, it is claimed, has not been satisfactorily proved.

The appellant has today, before the commencement of the appeal, very sensibly in our view, abandoned his appeal in so far as the issue of liability was concerned and the argument before this Court was confined to the amount of general damages awarded and also to the item of £120.- which was awarded by way of special damages for loss of earnings.

We have considered the case very carefully in the light of the arguments advanced by learned counsel and it is our unanimous view that the appellant must succeed on both grounds.

With regard to ground 3 *i.e.* the sum awarded for loss of earnings we have to observe that there is no evidence whatsoever that the plaintiff—respondent in this Court— has suffered any damage at all as a result of his absence from work for a period of six weeks. It appears from the evidence that the plaintiff, who was about 53 at the material time, was running a motorcar spare parts shop together with his brother and also a cosmetics shop alone in which he had an employee as a salesman and, in addition, he had an orange grove at

1975
March 28

AGATHANGELOS
KAMARLINGOS
AND ANOTHER

v

ANDREAS
ECONOMIDES

Morphou where at the time some labourers were engaged in collecting citrus fruit. None of his businesses had to come to a standstill during his absence but the learned trial Judge saw fit to award this sum of £120.- because, as he says in his judgment, although he had no concrete figures for any loss of earnings he felt that he had to make an assessment as the plaintiff must have inevitably suffered damage because of his absence from work.

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We find no justification for this conclusion in view of the evidence before the learned trial Judge. The respondent himself far from suggesting any figures at all or saying definitely that he did suffer any damage merely said in the course of his evidence that if he were present he probably would have a larger income. We do feel that we must agree with learned counsel for the appellant that in the light of the evidence adduced this item of damages has not been proved.

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With regard to ground 2 *i.e.* the question of general damages, the plaintiff himself in giving evidence on oath said that from the injuries he had suffered the only permanent incapacity that had resulted was that he could not walk for such distance as he could before the accident. He explained that when he walked for a distance of four or five miles he felt pain in his knee. The medical evidence with regard to his condition is to this effect: "Although his condition has improved considerably as regards his head injury, teeth and right shoulder the present objective findings from the left knee should be considered as permanent and will give him symptoms from discomfort to real aching after prolonged loading of the joint or when exposed to weather changes".

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The learned trial Judge as it clearly appears from his judgment in assessing the sum of £600.- by way of general damages was labouring under a misconception as to respondent's residual incapacity in considering the injury to the shoulder and some post-traumatic symptoms on the head as causing him permanent incapacity. These were injuries from the effects of which he had been cured by the time the case went to trial. In view of this we think that the sum of £600.- awarded by way of general damages should be reduced by one third to £400.- To

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this extent the appeal succeeds and the judgment of the trial Court is varied accordingly. In the result the damages awarded are reduced by £320.- to £1,300.

5 With regard to costs in this Court we think that it will be fair to award two thirds of the costs to the appellant.

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

1975
March 28
—

AGATHANGELOS
KAMARLINGOS
AND ANOTHER

v

ANDREAS
ECONOMIDES