

1979 May 24

[L. LOIZOU, DEMETRIADES AND SAVVIDES, JJ.]

NICOS KOKKINOTRIMITHIOTIS,

Appellant-Plaintiff.

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Respondent-Defendant.

(Civil Appeal No. 5678).

Damages—General damages—Personal injuries—Thigh and foot fractures and dislocation of toes—Two operations—Quite serious pain, suffering and inconvenience during first two to four weeks—Could not bear any weight at all for three months after the accident—Using crutches and a walking stick after that period and able to walk unaided six months after the accident—Will not be able in future to indulge in athletics, strenuous sports and any other activity calling for excessive loading of the thigh and of the injured toes—Plaintiff aged 19 at the time of the accident—Award of £ 2,000.—Sustained.

The appellant-plaintiff received injuries on the right thigh and left foot in a traffic accident. X-rays showed a displaced fracture of the right femur and a fracture of the metatarsal bones of the left foot and dislocation of the I.P. Joint of the second toe. The fracture of the right femur was initially temporarily immobilised by a skeletal traction and eventually, when his general condition improved, it was reduced openly using an intramedullary nail. The fractures of the toes of the left foot were reduced by an operation performed on the day of the accident but attempts to put back in position the dislocated second toe failed. For three months after the accident the appellant could not bear any weight at all and after that period he was using crutches and then a walking stick and in six months after the accident he was able to walk unaided. The pain, suffering and inconvenience during the first 2 to 4 weeks were quite serious, improving gradually over the following two months. As a result of the injuries the appellant will not be able in future to indulge in athletics, strenuous

sports and any other activity calling for excessive loading of the thigh and of the injured toes. Pain will also be experienced in changeable weather and acting or pulling may be experienced occasionally when there is overloading of the affected limbs.

5 The plaintiff, who was 19 years old at the time of the accident, appealed against an award of £ 2,000 general damages on a full liability basis.

10 *Held*, that this is not a case in which this Court would be justified in interfering with the trial Court's assessment of general damages; that this matter is primarily within the province of the trial Court and this Court has not been satisfied that the general damages awarded are manifestly low as to warrant interference by this Court; and that, accordingly, the appeal must be dismissed.

15 *Appeal dismissed.*

Appeal.

20 Appeal by plaintiff against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C. and Orphanides, S.D.J.) dated the 27th January, 1977, (Action No. 3857/72) whereby he was awarded the sum of £2,000.- as general damages, on a full liability basis, for injuries received as a result of an accident while serving in the National Guard.

E. Markidou, (Mrs.), for the appellant.

M. Flourentzos with Gl. HjiPetrou, for the respondent.

25 *Cur. adv. vult.*

30 L. LOIZOU J. read the following judgment of the Court. The appellant was the plaintiff in Action No 3857/72 of the District Court of Nicosia. At the material time he was serving in the National Guard and by the action he was claiming damages against the Republic for injuries received as a result of an accident which he attributed to the negligence of another person serving in the National Guard, who was the driver of an articulated artillery army vehicle consisting of a six wheeler lorry towing a trailer on which a canon was mounted.

35 The trial Court found that the accident was due to a greater extent to the failure of the plaintiff to take reasonable precautions for his safety and in apportioning liability found the plaintiff 2/3rds to blame and the driver 1/3rd. The appeal, as origi-

nally filed, was against both liability and quantum of general damages, but in the course of the hearing of the appeal learned counsel appearing for the appellant, very rightly in our view, abandoned the appeal against liability and only pursued the appeal with regard to general damages on the ground that they were manifestly low. 5

The relevant grounds of appeal on this issue are as follows:

“ B. The trial Court erred in Law and/or in fact in assessing the general damages. Indeed on the evidence adduced the damages awarded are manifestly low. 10

I. The trial Court erred in Law and/or in fact in deciding the issue of general damages in that:

(a) It disregarded the fact that the plaintiff was at the time of the accident 19 years old and that the disabilities that remained would interfere with the plaintiff’s enjoyment of life. 15

(b) It reached the conclusion without any evidence to that effect that the plaintiff was not the kind of person who would enjoy his life as the rest of the people. 20

(c) It took into consideration part of the testimony of P.W.I. and without reason it disregarded the rest of it.”

The general damages awarded by the Court on a full liability basis were £ 2,000.– and the special damages £ 711.– and in view of the apportionment of liability the plaintiff was awarded the round figure of £ 900. We find it unnecessary to go into any detail in so far as the circumstances under which the accident occurred are concerned and we will only deal with matters which are relevant for the assessment of general damages. 25 30

The plaintiff after he was injured was taken to hospital and from there, in the afternoon of the same day, he was conveyed to the private clinic of Dr. Ioannou. He was injured on the right thigh and left foot. X-rays showed a displaced fracture of the right femur and a fracture of the metatarsal bones of the left foot and dislocation of the I.P. joint of the second toe. The fracture of the right femur was initially temporarily immobilised 35

by a skeletal traction and eventually, when his general condition improved, it was reduced openly on the 29th March, 1972, using an intramedullary nail. The fractures of the toes of the left foot were reduced by an operation performed on the day of the accident but attempts to put back in position the dislocated second toe failed. The plaintiff for three months after the accident could not bear any weight at all and after that period he was using crutches and then a walking stick and in six months after the accident he was able to walk unaided. The pain, suffering and inconvenience during the first 2 to 4 weeks were quite serious, improving gradually over the following two months.

The trial Court deal in great detail with the medical evidence adduced on behalf of the parties and conclude as follows:

“ Having considered the medical evidence in its general context, we find very few and insignificant differences unaffected the picture as a whole. Undoubtedly the plaintiff suffered a good deal of pain, discomfort and inconvenience during the first weeks he was in the clinic with his right and left foot immobilised in plaster. He was subjected to at least two operations, one for the reduction of the femoral fracture and the other for the reduction of the fractured metatarsal bones. He was then walking with crutches and walking stick and only became able to discard them both six months after the accident. His second toe is now dislocated and this affects him in the wearing of normal type of shoes which may, in its turn, have as a result the formation of callosities. Furthermore, this will interfere with the plaintiff’s ability to stand on tip toe repetitively, although this disability can be corrected, to a certain degree, by a plastic operation which may cost him about £ 200.— and will put him off work for at least six weeks.

As a result of the injuries the plaintiff will not be able in future to indulge in athletics, strenuous sports and any other activity calling for excessive loading of the thigh and of the injured toes. Pain will also be experienced in changeable weather and aching or pulling may be experienced occasionally when there is overloading of the affected limbs.”

Learned counsel for the appellant agrees with the finding of

the trial Court as to the residual disability of the appellant. Her complaints, *inter alia*, are that although the Court found that as a result of the injuries the plaintiff will not be able in future to indulge in athletics, strenuous sports and any other activity calling for excessive loading of the thigh and of the injured toes, they go on to say that this cannot be such a serious deprivation because persons who are participating in athletics or a particular sport in their early years of life they give up their active participation later on in their life. But the Court do in fact say that this is not a rule without exception and that they did not know if the plaintiff does not fall within the exception although according to the evidence it was not clear whether he was actually participating or showing any particular and strong interests in athletics or sports.

Learned counsel also complains that the trial Court were wrong in saying that the plaintiff was studying to become an architect whereas in fact he is studying to become a civil engineer which involves more difficult duties and disagrees with the opinion of the Court that plaintiff's disability will not interfere with his chosen career or in every day ordinary life.

After referring to certain precedents from Kemp and Kemp counsel submitted that the general damages are manifestly low. We have considered all aspects of this case as put forward before us and in the light of previous decisions of this Court and we have not been persuaded that this is a case in which we would be justified in interfering with the trial Court's assessment of general damages. This matter is primarily within the province of the trial Court and we have not been satisfied that the general damages awarded are manifestly low as to warrant interference by this Court.

In the result the appeal is dismissed but there will be no order as to costs in the appeal as no costs are claimed by counsel for the respondent.

Appeal dismissed. No order as to costs.