

1968
April 12
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KYRIAKOS
CHRISTODOULIDES
v.
MATHEOS
KYPRIANOU

[JOSEPHIDES, STAVRINIDES & HADJIANASTASSIOU, JJ.]

KYRIAKOS CHRISTODOULIDES,

Appellant-Defendant,

v.

MATHEOS KYPRIANOU,

Respondent-Plaintiff.

(Civil Appeal No. 4670)

Road traffic—Accident—Personal injuries—Damages—General damages—Principles upon which the Court will disturb on appeal a finding of the trial Courts on the quantum of general damages—Principles repeatedly referred to in several cases, restated—In the present case the Court reduced the amount of general damages awarded by the trial Court—As being so extremely excessive as to amount to an erroneous estimate of the damages to which the respondent-plaintiff was entitled.

Damages—General damages—Personal injuries—Quantum of damages—See above.

General damages—See above.

Quantum of damages—See above.

Civil Wrongs—Negligence—Road traffic accident—Personal injuries—Damages—General damages—Quantum of—See above.

Personal injuries—Quantum of general damages—See above.

This is an appeal by the defendant from the judgment of the District Court of Nicosia whereby the plaintiff was awarded £2,800 general damages and £365 special damages for injuries he sustained in a traffic accident. The appeal is taken only against the award of the general damages on the ground that the amount was extremely high. The trial Court found that despite the seriousness of the injuries—full particulars thereof are set out *post* in the judgment—neither the plaintiff's earning capacity nor his future promotion prospects in his career as a police constable were in any way affected.

Applying the well settled principles regarding interference of the Court of Appeal with the quantum of general damages as assessed by trial Courts, reducing to £2,100 the amount of general damages, and allowing the appeal,

the Court by majority (Hadjianastassiou, J. *dissenting*):-

Held, per Josephides J. (Stavrinides J. *concurring*; Hadjianastassiou J. *dissenting*):

(1) The principles on which this Court acts in appeals against the quantum of general damages have been repeatedly referred to in several cases, the most recent of which is *Manoli v. Evipidou* (reported in this Vol. at p. 90 *ante*). The principle is that this Court would not be justified in disturbing the finding of the trial Court on the question of the amount of the general damages unless it is convinced either that the trial Court acted upon some wrong principle of law or that the amount awarded was so extremely high or so very small as to make it in the judgment of this Court an erroneous estimate of the damages to which the plaintiff is entitled.

(2) The trial Court found that "despite the seriousness of the injuries (sustained by the plaintiff) neither his earning capacity nor his future promotion prospects were in any way affected". Pausing there, perhaps it should be observed that although his present earning capacity does not seem to have been affected directly, at least as regards his short-term prospects, nevertheless, I am of the opinion that something must be given under this head because he has lost more than one-half of his hearing (68%) in one ear as a result of the accident.

(3) Having given due consideration to all these factors, and having regard to the amounts which are being awarded as general damages by trial Courts and which are either affirmed or varied by this Court on appeal, I am of the view in this case that the sum of £2,800 awarded as general damages is an erroneous estimate of the damages to which the plaintiff-respondent is entitled to the extent that I feel that this Court should disturb the finding. I am of opinion that the general damages should be reduced to £2,100.

Held, per Hadjianastassiou J. (*in his dissenting judgment*):

In the circumstances of this case, and in view of the diminishing purchase value in the pound, I am not convinced either that the trial Court acted upon some wrong principle, or that the amount awarded was so extremely high as to

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make it an erroneously estimate of the damages. I would dismiss the appeal.

Appeal allowed. Cross-appeal dismissed. Judgment of the District Court varied accordingly.

Cases referred to:

Evipides Manoli v. Kypros Evripidou (reported in this Vol. at p. 90 *ante*).

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Mavrommatis & Stavrinakis, D.J.J.) dated the 14th October, 1967, (Action No. 833/65) whereby he was adjudged to pay to plaintiff the sum of £2,800 general damages and £365 special damages for injuries he sustained in a traffic accident.

X. Clerides, for the appellent.

J. D. Mavronicolas, for the respondent.

The following judgments were delivered by:-

JOSEPHIDES, J.: This is an appeal by the defendant from the judgment of the District Court of Nicosia whereby the plaintiff was awarded the sum of £2,800 general damages and £365 special damages for injuries he sustained in a traffic accident. The appeal is taken only against the award of the general damages.

The principles on which this Court acts in appeals against the quantum of damages have been repeatedly referred to in several cases, the most recent of which is that of *Evipides Manoli* and *Kypros Evripidou*, Civil Appeal 4610, decided on the 28th March, 1968.* The principle is that this Court would not be justified in disturbing the finding of the trial Court on the question of the amount of damages unless it is convinced either that the trial Court acted upon some wrong principle of law or that the amount awarded was so extremely high or so very small as to make it in the judgment of this Court an entirely erroneous estimate of the damages to which the plaintiff is entitled.

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The plaintiff, as a result of the accident, suffered a fracture in the right arm and in the right thigh and, after his treatment was completed, he had almost complete recovery as far as the arm fracture is concerned, a good recovery as far as the thigh fracture is concerned, but he was left with tenderness and thickness mainly of the kneejoint resulting in a limitation of ten degrees of its flexion. As a result of these injuries the plaintiff did not suffer any shortening of the leg or any other defect but, as found by the trial Court, he will have a permanent incapacity in that he will feel pain after prolonged standing or exertion and he will also experience pain and discomfort during changes in the weather.

In addition to this, the plaintiff has a loss of hearing amounting to 68.6 per cent of the normal hearing of one ear, and post-concussional effects in the form of dizziness and irritability. Finally, he suffered pain, suffering and inconvenience at the time of the accident and during his treatment. He was in the Nicosia General Hospital for four days and in a private clinic for two months and three weeks. His arm was placed in plaster and his thigh injury was openly reduced which means that he had an operation, and some time later the doctor operated again to remove the splint.

These are the injuries and the pain and suffering experienced by the plaintiff.

The trial Court found that the plaintiff, who is a police constable, and was aged 24 at the time of the accident, was earning £44 a month at the time of the hearing and that despite his absence from duty in connection with his convalescence he earned fully his increments and that "he is proceeding normally with his career as he is about to take appropriate examinations for promotion to an officer. The above shows that despite the seriousness of the injuries neither his earning capacity nor his future promotion prospects were in any way affected".

Pausing there, perhaps it should be observed that although his present earning capacity does not seem to have been directly affected, at least as regards his short term prospects, nevertheless, I am of the opinion that something must be given under this head because he has lost more than one-half of his hearing in one ear as a result of the accident.

Having given due consideration to all these factors, and

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having regard to the amounts which are being awarded as general damages by trial Courts and which are either affirmed or varied by this Court on appeal, I am of the view that the sum of £2,800 awarded as general damages in this case is an erroneous estimate of the damages to which the plaintiff is entitled to the extent that I feel that this Court should disturb the finding. I would not have interfered if I thought that I would have awarded as a trial Judge a little less. The amount, having regard to what are usual awards in these cases, is definitely excessive and, in all the circumstances of the case, I am of the view that the general damages should be reduced to £2,100.

STAVRINIDES, J. : I agree.

HADJIANASTASSIOU, J.: In view of the fact that Mr. Justice Josephides, has dealt with the facts in the judgment just delivered, I consider it unnecessary to state them again, as to the results of the accident upon the plaintiff.

I would like to add however, a few words about the jurisdiction of this Court on appeals where the main contention is that the damages awarded by the trial Court are excessive.

Having considered the finding of the trial Court and particularly having regard to the injuries sustained by the plaintiff, I have reached the conclusion that the plaintiff-respondent as a result of loss of hearing in one of his ears, his chances of promotion are bound to have been affected up to an extent. I think it is right to say, that this Court ought not to interfere to reverse the finding of the trial Court as to the amount of damages, merely because they think that if they had tried the case in the first instance they would have given lesser sum.

In the present circumstances, and in view of the diminishing purchase value in the pound, I am not convinced either that the trial Court acted upon some wrong principle of law, or that the amount awarded was so extremely high as to make it, in my judgment, an entirely erroneous estimate of the damage to which the plaintiff is entitled. I would, therefore, dismiss the appeal.

JOSEPHIDES, J. : What about costs Mr. Clerides?

Mr. Clerides : I would claim costs on the lowest possible scale. £20 Your Honour.

JOSEPHIDES, J. : In the result appeal is allowed, by major-

ry. The judgment of the District Court is varied by the reduction of the amount awarded for general damages from £2,800 to £2,100. The respondent to pay £20 costs to the appellant. The cross-appeal, which was abandoned, is dismissed.

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Appeal allowed.

Cross-appeal dismissed.

Judgment of the District

Court varied accordingly.

Order for costs as aforesaid.