[VASSILIADES, P. JOSEPHIDES & HADJIANASTASSIOU JJ.]

YIANGOS KATSARI AND OTHERS,
Appellants-Defendants,

v.

ANDROULLA HAMBI,
Respondent-Plaintiff.

(*Civil Appeal No.* 4742).

Assault—Sections 26, 27, 28 *and* 61(3) *of the Civil Wrongs Law, Cap.* 148—*Damages (general and special) for assault during a quarrel—Joint tort-feasors—Appeal against award of damages—Medical evidence—Two doctors giving evidence—Second doctor's evidence discarded by Court of Appeal—Trial Judge's findings based on this doctor's evidence set aside—Appeal allowed—Damages reduced as follows*: (*a*) *Special damages from* £100 *to* £8; (*b*) *General damages from* £200 *to* £50.

Practice—Costs—No costs to witness discredited by Court of Appeal.

Damages—Assault—The Civil Wrongs Law, Cap. 148, *sections* 26, 27, 28 *and* 61(3).

Civil Procedure—Appeal—Findings of fact made by trial Courts—Approach of the Court of Appeal to such findings—Findings entirely unsatisfactory and unacceptable should be set aside as lacking in this case the necessary foundation.

Appeal—Findings of fact made by trial Courts—Principles applicable to appeals against such findings—Well settled.

Findings of fact made by trial Courts—Appeals against—Approach of the Court of Appeal—Principles applicable.

Cases referred to:

Vassiliou v. *Vassiliou* XVI C.L.R. 70;

Patsalides v. *Afsharian* (1965) 1 C.L.R. 134;

Palantzi v. *Agrotis* (1968) 1 C.L.R. 448.

The facts sufficiently appear in the judgment of the Court whereby damages (general and special) for assault awarded by

the trial Court were considerably reduced on appeal by the defendants in the action because the relevant findings of the trial Court were held by the Court of Appeal to lack the necessary foundation.

Appeal.

Appeal by defendants against the judgment of the District Court of Famagusta (S. Demetriou D.J.) dated the 28th May 1968 (Action No. 677/66) whereby they were adjudged to pay to the plaintiff the sum of £300.100 mils as damages for assault.

K. Saveriades, for the appellants.

M. Montanios, for the respondent.

The following judgment was delivered by:

VASSILIADES, P.: This is an appeal from a judgment of the District Court of Famagusta awarding to the respondent (plaintiff in the action) £300.100 mils damages for assault against the appellants; and costs. The appeal is taken on nine different grounds set out in the notice filed, which, however, may be summed up in three: (1) That the findings of the trial Court are against the weight of the evidence on record; (2) that the Court failed to consider material facts in determining the issue of liability; and (3) that the amount of special damages awarded finds no support in the evidence; and the amount of general damages awarded (£200) is unjustified and, in any case, greatly exaggerated.

The plaintiff, a married woman and the mother of four children, is described as a labourer at packing stores in Famagusta. She is apparently a woman of low intelligence, stated by her own medical witness to be "a chronic neurotic person" who had been in the mental hospital for treatment some four or five years before the incident which gave rise to this case.

The defendants are: a taxi-driver; his wife, a hospital mid-wife; and the taxi-driver's mother. The parties are neighbours. Their houses, in one of the suburbs of Famagusta, are not far from one another, on opposite sides of the same street. For some two or three years they were on good terms; and during that period the mid-wife defendant helped the plaintiff with some injections. But later the women started quarrelling;

and some times incidents were reported to the police who, however, did not seem to attach much importance to them. There is also evidence that the second defendant (the mid-wife) instituted a private prosecution against the plaintiff for public insult. Unfortunately there is nothing more on the record regarding that matter. But it indicates the relations between these neighbours; and that insulting was one of the weapons used in their quarrels.

On March 4, 1966, there was one such incident between the women but without, it seems, immediate consequences. Two days later, on March 6, 1966, in the afternoon, there was another incident; the one which gave rise to this case. It started with insulting in the street. Each side charges the other with starting the quarrel. The trial Judge, however, apparently disregarding that "it takes two (at least) to make a quarrel", accepted completely the version of the plaintiff; and rejected completely the version of the defendants, notwithstanding the fact that in the last part of his judgment the Judge found that the quarrel was provoked by plaintiff's conduct. Without going into detail, we can say at once that in the light of all the circumstances of the case as they appear from the record, accepting entirely the version of the one side and rejecting entirely the version of the other, led to findings which appear to us unconvincing and unsatisfactory.

Be that as it may, however, whether the neurotic plaintiff put the match or the midwife defendant did, they, both, must have fed the first spark with plenty of inflammable material as they were soon engaged in a proper female fight; with a good grip on each other's hair; a torrent of shouting; and plenty of activity in channelling to one another the anger burning in their heated blood.

As usual on such occasions, intervention soon came in. The mother-in-law with a stick to help her daughter; the husband taxi-driver to help; or separate; or both. We do not think that in the circumstances of this case, we need analyse the fight; nor do we accept the suggestion that either giving or taking was on a one-way flow. We can go directly to the results.

The plaintiff, who had a bleeding wound on the head and several bruises and scratches, reported the matter to the Police. In the usual routine, she was taken straight away to the casualty

clinic of Famagusta Hospital, where she was examined and treated by a Government doctor. We take the description of her condition from the doctor's evidence. He was not called for the plaintiff; and the defence had to call him. He said:—

"Plaintiff was brought to the hospital on that day (6.3.66) and I examined her. I found the following:— Scratches on both knees, redness on the right buttock which was longish as if caused by a stick, abrasion on the left forearm in the size of a pea. Also on the same spot there was a bruise. There was a cutting wound on the occipital region (back) of the head, which was quarter of an inch long. It was not very deep, superficial. I fixed one stitch on it. There was a bruise on the left temporal region (side of the head soft part). Plaintiff was X-rayed. All wounds with the exception of the bruise on the left forearm, were fresh.

.....

The bruise on the left forearm was not fresh and plaintiff told me also that it was the result of an old quarrel with another person.

.....

She did not complain of giddiness and I think she did not suffer concussion."

In cross-examination, answering questions from counsel for the plaintiff, the doctor said:—

"She showed to me her bruises all over her body. She complained that she was hit with a stick and she must have been feeling pain. She came several times and she was always telling me that she was feeling pain on her back and other parts of her body.

.....

The bruises on her behind were several and parallel. They were two or three hits with a stick.

.....

When I say she did not have concussion, I mean at that time. There are concussions that do not cause loss of consciousness but they show post concussional syndroms."

These were the findings of the doctor who examined the plaintiff on the same day; and saw her "several times" there-

after when she went to him. She never complained of or presented symptoms of concussion on such occasions.

The police took the matter to Court by prosecuting the three defendants for aggravated assault and public disturbance. Unfortunately the information we have regarding that prosecution is extremely scanty. (See p. 13, C. of the record). We have it from one of the plaintiff's witnesses that she gave evidence in the criminal case in June, 1966; and we have it from counsel that the second appellant (the midwife) pleaded guilty to the assault and was bound over to keep the peace; while the other two appellants were discharged. Apparently no claim for compensation was raised or considered at that stage.

The record, however, shows that on April 29, 1966, viz. nearly eight weeks after the incident, and pending the criminal proceedings instituted by the police, the plaintiff filed the present action on a generally indorsed writ, with a claim on the scale between £200 and £2,000, for defamation and assault. No statement of claim was filed or delivered to the other side until the following November (4.11.66). There the claim was made for £195 special damages for the injuries received at the assault: plus general damages for the injuries in question and for defamation. The defence followed some two months later, with a denial of facts; denial of liability; and with a counterclaim for £500 damages for "shock". So the storm was fully blown high in the tea-cup of the incident in March.

In the meantime another factor came in. A private medical practitioner with four years practice who describing his qualifications in the witness box said that he was a psychiatrist and neurologist, examined the plaintiff in September 1966, more than six months after the incident. His evidence, taken as a whole and seen in the light of the evidence of the Hospital doctor who examined the plaintiff on the day of the assault (and saw her several times thereafter) leaves, in our view, much to be desired. We find it unconvincing and unacceptable. We shall cite a few extracts; and leave it at that. The witness said:

> "When she (the plaintiff) came to me (22.9.66) she was complaining of headaches, giddiness, tinnitus, irritability and emotional lability. She is still under my observation (12.3.68) but the treatment was terminated one or two

months ago, when she stopped taking tablets. These symptoms and the condition of the plaintiff are attributed to the concussion she sustained because of the beating in 1966.

.....

I know the history of the plaintiff. She is a chronic neurotic person.....

The symptoms I diagnozed when I examined her, may have been present before I examined her and before the injuries she received. These are symptoms of a neurotic person.

.....

The concussion is more obvious and can be more effectively detected soon after the injury.

.....

Every blow on the head carries a concussion. From the history of the patient and my observations I came to the conclusion that the plaintiff was mildly concussed.

.....

These post concussional syndroms, usually take between one to four years for such syndrom to clear out. After a few months a normal person may start work.

.....

In this case I estimated her (plaintiff's) incapacity to work after 5-6 months to be 35%–40% and this degree of incapacity was purely due to the post concussional syndroms as such. But as they were exaggerated because of her disposition, her incapacity was in fact up to 85%–90%. This incapacity was gradually decreasing over a period of until 1969 when she will go back to her condition that she was before the beating. This plaintiff was not able to work for a period of two years."

The value and weight of such evidence is, we think, obvious on the face of it.

The case went to trial on March 12, 1968. It was a strongly contested and protracted trial which lasted for five days. Judgment was reserved; and was delivered more than two months

later on May 28, 1968. In the course of the hearing the counterclaim for defamation was withdrawn; and it was dismissed.

As we have already said, the trial Judge found for the plaintiff. Nevertheless, he held that the insulting words complained of, were uttered in the heat of the quarrel; and were merely vulgar abuse for which no damage should be awarded. This matter does not arise in the appeal; and we prefer to say nothing about it.

Regarding the claim for damages for the assault, the Judge felt bound to accept the evidence of the two doctors (the Hospital doctor and the private practitioner) "in toto" (p. 41). How the Judge could reconcile the evidence of both doctors and accept it all, I confess that I find myself unable to understand. As to the amount of compensation, the Judge found that the plaintiff still had to pay to her doctor his fees amounting to £30; and that she incurred £5 expenses for medicines and £3 for transport. Moreover, the Judge awarded £62.100 mils for loss of wages for 69 working days out of a period of two-and-a-half months to which plaintiff's advocate confined, according to the judgment, his client's claim for wages, in his final address. Moreover, the Judge awarded £200 general damages for the assault in question; and gave judgment to the plaintiff against all three defendants for £300.100 mils, with costs. In doing so, the Judge took into consideration that "the defendants were extremely annoyed with the plaintiff who being a person of neurotic disposition, provoked them in a manner which led them to commit the tort under trial." (See p. 8 of the judgment).

The civil wrong known as assault and the remedies available to the plaintiff, are covered in our Civil Wrongs Law (Cap. 148) by sections 26, 27, 28 and 61(3) (former section 58(3)). The position was considered soon after the enactment of this codifying statute, in *Vassiliou* v. *Vassiliou*, 16 C.L.R. p. 70. The defendant in that case assaulted and beat the plaintiff with a thick piece of wood and broke his arm. For this the defendant was prosecuted by the Police upon a charge for assault causing actual bodily harm. He pleaded guilty to the charge; and was sentenced to a fine. But no compensation for injury to the respondent was asked for, or was awarded. The plaintiff instituted a civil action claiming damages for assault. The damage suffered was agreed at £10. The District

Court held that the plaintiff was entitled to compensation for loss of time and medical expenses; but not entitled to general damages. The defendant appealed, contending that section 58(3) (now section 61(3)) prevented the plaintiff from recovering any damages. The Court of Appeal held that the plaintiff was entitled to compensation for the injuries caused by the assault; and dismissed the appeal with costs. Ever since, the usual practice in such cases, as far as I have known it at the Bar and on the Bench, is for the prosecution to raise the question of compensation upon conviction; and the criminal Court, if the sum is not very large and is agreed between the parties concerned, to order payment of compensation as part of the punishment under section 26(f) of the Criminal Code (Cap. 154), saving the parties the expense of litigation; and saving a lot of valuable public time. In all other cases the criminal Court will make no order for compensation so that the complainant may be free to pursue his civil remedy, if he will so decide.

Here there was a civil claim for compensation already pending in the form of a civil action, at the time of the conviction in the criminal case. And yet nothing was said about it, as far as we know; and no attempt was made to have the matter decided there and then, so as to save the parties the time and expense involved in the civil action.

After hearing exhaustively both sides in this appeal, we are clearly of opinion that both the claim in the action and the evidence adduced in support of such claim, are grossly exaggerated; and to that extent, untenable. We think that counsel for the appellants rightly conceded at the hearing of the appeal, that all three appellants were sufficiently involved in the assault to be treated as joint tort-feasors. The assault itself was never really in dispute. The circumstances in which the assault was committed, as far as material to the claim for compensation, can be clearly seen from the record. Both sides, animated and provoked by vulgar abuse from all parties, engaged themselves in a fight; out of which the plaintiff seems to have got the worse. The consequences of the fight in the form of injuries to the plaintiff, are those found by the Hospital doctor who examined the plaintiff on the same day; and saw her several times thereafter in connection with those injuries. There is nothing on the record to throw any doubt whatever on the correctness of that evidence. On the other hand the

evidence of the doctor called in support of plaintiff's claim, who first saw the plaintiff more than six months after the assault and discovered that the plaintiff had suffered mild concussion which he treated with unnamed pills for over a year; but still found that the plaintiff had not fully recovered and that she would not do so until 1969 (three years after the assault) is, as far as inconsistent with the evidence of the first doctor, entirely unsatisfactory and unacceptable. (See *Patsalides* v. *Afsharian* (1965) 1 C.L.R. 134; *Palantzi* v. *Agrotis* (1968) 1 C.L.R. 448, on the approach of this Court to trial Court findings). The findings of the trial Judge, based on the second doctor's evidence, are set aside as lacking the necessary foundation; and are substituted by finding that the assault caused to the plaintiff the injuries found and described by the first doctor (D.W.3). The appeal must therefore be allowed to that extent; and the judgment be varied accordingly. And now the question arises whether we should send the case back to the District Court to assess the damages; or we should proceed to do so ourselves on the material before us. In the circumstances of this case, as already described in this judgment, we preferred the latter course. We find that the amount of compensation to which the plaintiff is entitled for the injuries received in the assault in question, is £8, special damages for medicines and transport (as found by the trial Judge) and £50.— compensation by way of general damages.

In the result, the appeal is allowed; and the amount of the judgment is reduced to £58.— against all the defendants. With costs in the District Court on the amount recovered; no costs to the witness whose evidence was rejected (P.W.3); and no costs in the appeal.

Appeal allowed; order for costs as above.