1969
Oct. 23
Nov. 18

THEODOROS PAPADOPOULLOS
v.
SAVVAKIS G. KOUPPIS ETC.

[TRIANTAFYLLIDES, STAVRINIDES, HADJIANASTASSIOU, JJ.]

THEODOROS PAPADOPOULLOS,

Appellant-Defendant,

v.

SAVVAKIS G. KOUPPIS THROUGH HIS FATHER AND NATURAL GUARDIAN GEORGHIOS P. KOUPPIS,

Respondent-Plaintiff.

(*Civil Appeal No.* 4775).

Appeal—Further evidence—Application for leave to adduce further evidence before the Court of Appeal—Principles applicable well settled—Evidence sought to be adduced could have been made available at the trial with a moderate amount of diligence—Application refused.

Fresh evidence on appeal—See supra.

Evidence—Fresh evidence—See supra.

Appeal—General damages—Personal injuries suffered as a result of a road accident—Traffic collision—Fracture of ankle resulting in slight permanent incapacity with possible development of osteo-arthritis—Award of £600 *not disturbed on appeal—Appeal and cross-appeal dismissed—Principles upon which the Court of Appeal will interfere with such awards.*

General Damages—Appeal—Approach of the Court of Appeal—See supra.

Personal injuries—General damages—Appeal against award—See supra.

Motor Traffic—Road accident—See supra.

Cases referred to:

Felekkis v. *The Police* (1968) 2 C.L.R. 151;

Roumba v. *Shakalli* (reported in this Vol. at p. 537 *ante*).

The facts appear in the rulings and judgment of the Court. In this case the Court of Appeal refused an application for leave to adduce further evidence and dismissed both the appeal and the cross-appeal against the quantum of the general damages awarded by the trial Court to the plaintiff (now respondent).

Appeal and cross-appeal.

Appeal and cross-appeal against the judgment of the District Court of Nicosia (Mavrommatis & Stylianides, D. JJ.) dated the 10th October, 1968 (Action No. 4162/67) whereby the defendant was adjudged to pay to the plaintiff the sum of £988.– as damages for personal injuries suffered by him in the course of a traffic collision.

C. Colocassides, for the appellant.

E. Vrahimi (*Mrs.*), for the respondent.

The following ruling was delivered by:

TRIANTAFYLLIDES, J.: This is an appeal regarding the amount of damages for personal injuries awarded in civil action D.C.N. 4162/67.

It has been part of the case for the appellant – as it appears, also, from the grounds of appeal – that though, at the hearing of the action before the trial Court, Dr. L. Papasavvas, the surgeon who treated the respondent's leg, was called as a witness, no evidence was given by him, or any other medical expert, regarding the actual condition of the respondent on the date of trial; and that the medical evidence given by the said surgeon was based on the condition of the respondent's leg as found to be about six months earlier.

In the course of the argument today, and while replying to counsel for the appellant, counsel for the respondent has applied for an adjournment so that she may file, in the appropriate manner, an application for leave to call as a witness before this Court Dr. Papasavvas, in order to give evidence about the condition at present of the leg of the respondent.

Counsel for the appellant stated that he does not consent to the calling of such evidence before us; but, subject to his

claiming his costs, he did not object to the adjournment applied for by counsel for the respondent.

In the circumstances, we have decided to grant the adjournment on the following terms:—

(a) Counsel for the respondent to file within seven days an application seeking leave to call as a witness before this Court Dr. Papasavvas.

(b) Counsel for the appellant to be at liberty to file an opposition to such application within seven days thereafter.

(c) This appeal is fixed at 11.30 a.m. on the 18th November, 1969. On that day we shall decibe whether or not to allow the application of the respondent, and then we shall proceed, in any case, to continue with the hearing of the appeal; in case the application is allowed, Dr. Papasavvas should be available to give evidence.

(d) The costs for today are awarded against the respondent, to be assessed at the end.

Order accordingly.

The following ruling was delivered by:

TRIANTAFYLLIDES, J.: This is an application by the respondent-plaintiff to adduce, at this stage, during the hearing of this appeal, further evidence before this Court regarding the condition of his leg, which was injured in a traffic collision as a result of which the present proceedings have been instituted.

The application is supported by two affidavits: One sworn by the father of the respondent and the other by the surgeon who has treated respondent's leg and who has given evidence in the Court below.

The principles to be followed in deciding on an application of this nature have been referred to so many times in past cases that it is not, really, necessary to repeat them in this ruling; useful reference in this respect may be made to *Felekkis* v. *Police* (1968) 2 C.L.R. 151.

In the light of such principles, we are of the opinion that the evidence sought to be adduced here, and particularly with regard to the actual condition of the leg of the respondent,

could, and should, with a moderate amount of diligence, have been made available at the trial. It appears from the affidavits before us that the respondent and the surgeon in question were present together at the Court on the day of the trial and arrangements could have been made for the respondent to have been examined then, so as to enable the said surgeon to ascertain the condition of his leg at that time; instead the surgeon, without examining on that date, or shortly before it, the leg of the respondent, gave evidence as to its condition about six months before the trial.

If a more extensive examination was required an adjournment, for a day or two, could have been applied for, at the time of the trial, for the purpose, assuming, as submitted by his counsel, that the respondent could not have been examined by the surgeon before the trial, as he could not leave the National Guard camp where he was posted; but no attempt was made to obtain such an adjournment.

In all the circumstances, we find no merit in this application and we dismiss it.

Application dismissed.

The judgment of the Court was delivered by:

TRIANTAFYLLIDES, J.: In this case the appellant-defendant has challenged, as excessive, the award of general damages made against him by the District Court of Nicosia, in Civil Action 4162/67, in respect of personal injuries suffered by the respondent-plaintiff in the course of a traffic collision which took place in Nicosia on the 30th September, 1967; on the other hand, the respondent has cross-appealed complaining that such award is too low in the circumstances.

At the material time the respondent was employed as a turner.

The main argument of learned counsel for the appellant has been that the said award, *viz.* £600, is manifestly excessive in view of the fact that there has remained practically no incapacity of the injured left leg of the respondent, but only some discomfort at the ankle joint; it was stressed in this respect that the medical evidence on which the trial Court has proceeded to assess the general damages was evidence as to the condition of the leg of the respondent six months before the date of trial; and that at the hearing of the action there was not placed before the trial Court any evidence as to the then condition of the ankle joint.

It is quite clear from the judgment before us that the trial Court had this – no doubt unsatisfactory – position in mind. But the learned trial Judges had nevertheless to decide the case on such material as had been placed before them; and this is their finding:–

> " We are not prepared to say that the plaintiff is not in a position to revert to his old work when demobilized " – he was at the time in the National Guard – "but we may say that he was left with slight permanent incapacity and that he may, if he reverts to his old job, do so with more discomfort and probably with the necessity of having some rest periods ".

On the basis of the above, and no doubt taking into account, too, the pain and suffering of the respondent, whose leg was fractured and had to be for nearly three months in plaster, the Court below assessed the general damages at £600.

The trial Court had before it, also, medical evidence, which stood uncontradicted, that the respondent may suffer, later on in age, osteoarthritis, as a result of his fracture; according to this evidence, such possibility is an increased one as the fracture involved the ankle joint itself; it is more or less certain that there will be, due to osteoarthritis, changes, but it is not certain when such changes will take place.

The principles governing the approach of an appellate Court to an award of damages are well settled and have been stated so often on past occasions that they need not be reiterated on this occasion too; it suffices to mention a recent case, *Roumba* v. *Shakalli* (reported in this Part at p. 537 *ante*), wherein there is ample reference to cases expounding such principles.

Having paid due regard to all aspects of the matter we have reached the conclusion that the amount of £600.– awarded as general damages should not be interfered with either way and, therefore, both the appeal and the cross-appeal fail and are dismissed accordingly.

We have, also, decided to make no order as to costs in the appeal, other than the order already made against the respondent for the adjournment of the appeal on the 23rd October, 1969.

Appeal and cross-appeal dismissed. Order for costs as above.