

1969

Dec. 11

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PETROS
KOULIAS
v.

IOANNIS CHR.
POLYDORIDES
& OTHERS

[JOSEPHIDES, STAVRINIDES AND LOIZOU, JJ.]

PETROS KOULIAS,

Appellant-Plaintiff,

v.

IOANNIS CHR. POLYDORIDES AND OTHERS,

Respondents-Defendants.

(Civil Appeal No. 4832).

Practice—Pleadings—Particulars—Claim based on negligence or negligent medical treatment—Full particulars must be given—Defence—Defence being a mere traverse no particulars required to be given (excepting the part alleging negligence by plaintiff).

Pleadings—Particulars—Claim based on negligence—Full particulars to be given.

Particulars—When required—See hereabove.

Civil Procedure—Pleadings—Particulars.

This is an appeal by the plaintiff in the action against an order of the trial Court directing him to give full particulars regarding his claim based on negligence and refusing to order defendants to give particulars in relation to a mere traverse.

Held, (1). It is well settled that it is not enough for the plaintiff in his statement of claim to allege merely that the defendant acted negligently and thereby caused him damage; he must also set out facts which show that the alleged negligence was a breach of a duty which the defendant owed to the plaintiff. There should follow an allegation of the precise breach of that duty. In other words particulars must always be given in the pleading showing in what respect the defendant was negligent (see *Bullen and Leake* on Precedents of Pleadings, 11th edition. p. 533; and p. 567 regarding negligence against medical practitioner).

(2) Regarding the defence, we are satisfied that as the defence was a mere traverse, except part of paragraph 7 of the defence alleging negligence or carelessness on the part of the plaintiff, the trial Judge rightly refused to order the defendants (now

respondents) to give any particulars except those which he included in his ruling and referred to hereabove.

Appeal dismissed with costs.

Cases referred to:

Gautret v. Egerton [1867] L.R. 2 C.P. 371;

West Rand Central Gold Mining Co. v. R. [1905] 2 K.B. 391.

Appeal.

Appeal by plaintiff against the order of the District Court of Famagusta (Pikis, D.J.) dated 8th July, 1969 (Action No. 913/68) whereby he was directed to give certain particulars with regard to paragraph 8 of his statement of claim and defendants 1 and 2 were directed to give certain particulars as regards their allegation in paragraph 7 of the defence.

Chr. Mitsides, for the appellant.

Y. Chrysostomis, for the respondents.

The judgment of the Court was delivered by:

JOSEPHIDES, J.: This is an appeal by the plaintiff against the order made by a Judge in the District Court of Famagusta, who directed the plaintiff to give certain particulars with regard to paragraph 8 of his statement of claim, and who further ordered the defendants No.1 and 2 (respondents) to give certain particulars as regards their allegations in paragraph 7 of the defence.

The plaintiff's (appellant's) claim in this case is, *inter alia*, against the two defendants (respondents), who are medical practitioners, and it is based on negligence or negligent medical treatment. In paragraph 8 of the statement of claim the plaintiff alleges negligence and/or negligent medical treatment against the two defendant doctors. The third defendant in the case is the patient who suffered the alleged injuries, and the plaintiff in this case claims damages against her for slander.

Paragraph 8 of the statement of claim reads as follows:-

"8. After the date of her departure from the clinic Defendant No. 3 never visited the Plaintiff for treatment and/or was treated by the Plaintiff for any burns and it is

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alleged that the burns were attended to and treated by Defendant No. 1 and a certain Polyvios Mavrommatis or either of them for the period from 19.9.65 till the end of December, 1965, and beginning of January, 1966. By January, 1966, the burns which have developed into ulcers and this was due to the negligence of the Defendant No. 1 and/or a certain Dr. Polyvios Mavrommatis, and/or either of them and/or to the improper and unskilled treatment of the burns by Defendant No. 1 and/or a certain Dr. Polyvios Mavrommatis, and/or either of them and/or the failing of Defendant No. 1 and/or a certain Dr. Polyvios Mavrommatis or either of them to use such skill or take such care in the treatment of the burns of Defendant No. 3 as to be expected from a reasonable and prudent person qualified to exercise the profession of a Doctor and/or the improper and unskillful treatment of Defendant's No. 3 and/or generally through the acts and omissions and/or through the negligent acts or omissions of Defendant No. 1 and/or a certain Dr. Polyvios Mavrommatis and/or either of them which caused scars disfigurement and/or any symptoms of incapacity which the Defendant No. 3 may have sustained, which disfigurement and/or incapacity the plaintiff denies in any case as being due to the burns."

It is obvious from a perusal of that paragraph that the particulars given are inadequate. The question which arises for determination is whether the order made by the learned Judge was the proper order with regard to the particulars which he required the plaintiff to furnish the defendants.

It is well settled that it is not enough for the plaintiff in his statement of claim to allege merely that the defendant acted negligently and thereby caused him damage; he must also set out facts which show that the alleged negligence was a breach of a duty which the defendant owed to the plaintiff. The statement of claim "ought to state the facts upon which the supposed duty is founded, and the duty to the plaintiff with the breach of which the defendant is charged." (Per Willes, J. in *Gautret v. Egerton* [1867] L.R. 2 C.P. 371, cited with approval in *West Rand Central Gold Mining Co. v. R.* [1905] 2 K.B. 391). There should follow an allegation of the precise breach of that duty, of which the plaintiff complains; in other words, particulars must always be given in the pleading, showing in what respect the defendant was negligent; and lastly, the details of the damage sustained. (See Bullen and Leake on

Precedents of Pleadings, eleventh edition, page 533). This is exactly the position in Cyprus, as laid down in the decided cases.

. If one looks at Bullen & Leake, quoted above, one will see precedents of statements of claim in cases of alleged negligence against medical practitioners. At page 567, in paragraph 6 of the statement of claim, no less than nine paragraphs, giving full particulars of the alleged medical negligence, are set out:

- “(a) Administering an injection of Thiopentone (Pentothal) into the medial or inner side of the front part of the plaintiff’s left elbow which he knew or ought to have known was a dangerous area for administering an injection.
- (b) Failing to avoid administering an injection of Pentothal into the medial or inner side of the front part of the plaintiff’s left elbow.
- (c) Failing to take any or any proper or effective measures whether by way of examination, test or otherwise to ensure that an injection of Pentothal could be and would be safely administered into the medial or inner side of the front part of the plaintiff’s left elbow.
- (d) Failing to stop or to pause for a few seconds or at all after injecting a fraction of a millilitre of the said Pentothal or to inquire of the plaintiff whether or not she suffered any pain following such injection.
- (e) Administering about 2 cc.s of the said Pentothal before discontinuing the injection in the plaintiff’s left arm and after the plaintiff had complained of severe pain in the left arm and hand.
- (f) Causing or permitting the said Pentothal to be injected into an artery of the plaintiff.
- (g) Failing to take any or any adequate or proper precautions to avoid injecting the said Pentothal into an artery in the medial or inner side of the front part of the plaintiff’s left elbow.
- (h) Failing to take any or any proper or effective or timely measures to correct or to remedy the injection of

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Pentothal into an artery of the plaintiff and in particular:

- (i) Failing to keep a needle and syringe 'in situ' after the plaintiff had complained of pain in the left arm and hand; or
- (ii) Failing immediately to inject a local anaesthetic of Procaine into the artery at the site of the original injection and through the same needle; which should have been left 'in situ' until the Procaine was prepared and injected; or
- (iii) Failing to perform an immediate blocking of the brachial plexus with local anaesthesia or temporarily to put out of action the sympathetic or constrictor nerves or to allow the arteries to dilate.

(i)

Another precedent appears at page 569 of Bullen & Leake.

It is sufficient in the present case to look at paragraph 8 of the statement of claim to see that it falls far short of the requirements as shown in those precedents. The learned Judge, having these principles in mind, directed the plaintiff to give the following particulars to the defendants:-

- “(a) The duty of defendant 1 and 2 towards defendant 3.
- (b) Particulars of breach of this duty by defendant 1 and defendant 2.
- (c) Particulars of allegations of improper and unskillful treatment by defendant 1 and defendant 2.
- (d) Particulars of alternative allegations or contributory negligence against defendant 3.
- (e) Particulars of the alleged duty of care giving rise to a claim for damages as pleaded in paragraph 11(d) of the statement of claim.”

With regard to paragraph (d) there is no appeal.

The other complaint of the plaintiff (appellant) is that the learned Judge refused to order the defendants (respondents) to give particulars of their defence except in one respect, to which

we shall revert later. The plaintiff's complaint as regards the particulars required by him, in regard to paragraph 7 of the defence is that "these are matters within the knowledge and done by the defendants 1 and 2 and they should be disclosed before the trial as they are positive allegations of fact which defendants must prove."

The order made by the learned Judge with regard to paragraph 7 of the defence is that the defendants 1 and 2 should only give particulars of their allegations that plaintiff, his servants or agents, were responsible for the damage suffered by defendant 3.

Having gone through the pleadings and having heard argument today, we are satisfied that as the defence was a mere traverse, except with regard to part of paragraph 7, we are of the view that the learned Judge rightly refused to order the defendants (respondents) to give any particulars except those which he included in his ruling and to which we have referred earlier.

In the circumstances the appeal is dismissed with costs, and it is hereby ordered that —

- (a) the plaintiff (appellant) shall, within two weeks from today, file and deliver the particulars ordered by the District Court on the 8th July, 1969; and
- (b) the defendants 1 and 2 (respondents) shall, within two weeks from today, file and deliver the particulars ordered by the District Court on the aforesaid date.

Appeal dismissed with costs.

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