[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

FERHAT HASSAN AND OTHERS,
Appellants-Defendants,

v.

KATERINA CHARALAMBOUS NEOPHYTOU,
Respondent-Plaintiff.

(*Civil Appeal No.* 5057).

Damages—Personal injuries—Road accident—Appeal against award of general damages—Principles upon which the Court of Appeal will intervene—Restated—Sixty-one year old woman sustaining head injury with cerebral concussion—Rendered to a certain extent a permanent invalid—Small risk of epilepsy—Award of £5,500 *general damages—Not disturbed on appeal.*

General damages—Personal injuries—Assessment—Appeal—Approach of the Appellate Court.

Appeal—Point of law—Not raised at the trial—Extent to which it can be entertained by the Court of Appeal—Principles applicable—Such point may be raised for the first time on appeal in cases where the facts are either admitted or proved beyond controversy—Otherwise this cannot be done as in the instant case the material facts not being beyond controversy—See further immediately herebelow.

Point of law raised for the first time on appeal—In the present action an amount of £375 *claimed (and awarded) as special damages for personal injuries by the plaintiff lady was money spent by her husband—From the record it is not clear whether the said amount was paid by the husband as necessaries which he had a duty to provide or whether he has paid them on behalf of his wife who, thus, has a liability to reimburse him—Consequently the Court of Appeal cannot allow the appellant to argue for the first time before the Court of Appeal that the said amount of* £375 *being expenses incurred by the husband ought not to have been included in the amount of special damages awarded to the plaintiff wife (respondent).* (*See* Nissis (No. 2) *v.* The Republic (1967) 3 *C.L.R.* 671 ; *cf.* Gage *v.* King [1961] 1 *Q.B.* 188).

In this road accident and personal injuries case the plaintiff lady was awarded £5,500 general damages as well as a further amount as special damages (including £375 expenses incurred by the husband of the plaintiff (now respondent). The defendant took the present appeal against the award of general damages and sought for the first time to raise the point of law that the aforesaid amount of £375 being expenses incurred by the husband ought not in law to have been awarded to the plaintiff wife. It would seem that it is not clear from the record whether the said amount of £375 was paid by the husband as necessaries which he had a duty to provide (in which case the wife could not claim that amount by her action) or whether he has paid those expenses on behalf of his wife who, thus, having a liability to reimburse her husband, could in law claim from the defendant (appellant) as she did in this case. The plaintiff cross-appealed.

Dismissing both the appeal and the cross-appeal, the Supreme Court :—

Held, (1). We have to examine whether the amount of £5,500 general damages awarded by the trial Court is, indeed, either so high or so low as to call for our intervention. The relevant principles of law, which we have repeated more than once, were mentioned by this Court very recently in *Mesimeris* v. *Kakoullis* (reported in this Part at p. 138 *ante*). See also in this respect the passage from the decision of Lord Wright in the House of Lords in *Davies and Another* v. *Powell Duffryn Associated Collieries Ltd.* [1942] 1 All E.R. 657, at p. 664 (see the passage quoted *post* in the judgment).

(2) Having duly taken into account that the respondent though an elderly woman, has suffered considerable pain and suffering due to serious injuries and has been rendered, to a certain extent, a permanent invalid, and that there does exist a small risk of epilepsy, we cannot agree that the amount of £5,500 is so high or wrong in principle as to call for our intervention ; nor do we agree that it is so low as to be inadequate.

(3) (*Regarding the disputed part of the special damages viz. the said amount of £375 being expenses incurred by the husband of the plaintiff* (*respondent*) supra) :

(*a*) We are now faced with a situation in which, without the relevant facts being either admitted or proved beyond controversy after a due investigation, we

are called upon to resolve an issue of law raised for the first time on appeal.

(*b*) In the light of the relevant principles we have decided not to deal, in this appeal, with the said issue of law, which was not raised in the Court below, and, consequently, we are not prepared to disallow the disputed amount of special damages *i.e.* the amount of £375 being expenses incurred by the husband of the plaintiff (see *Nissis (No. 2)* v. *The Republic* (1967) 3 C.L.R. 671 ; cf. *Gage* v. *King* [1961] 1 Q.B. 188).

Appeal and cross-appeal dismissed. No order as to costs.

Cases referred to :

Nissis (No. 2) v. *The Republic* (1967) 3 C.L.R. 671 ;

Gage v. *King* [1961] 1 Q.B. 188 ;

Mesimeris v. *Kakoullis* (reported in this Part at p. 138 *ante*) ;

Davies and Another v. *Powell Duffryn Associated Collieries Ltd* [1942] 1 All E.R. 657, at p. 664, *per* Lord Wright.

Appeal and cross-appeal.

Appeal and cross-appeal against the judgment of the District Court of Limassol (Stylianides, Ag. P.D.C. and Chrysostomis, Ag. D.J.) dated the 31st January, 1972, (Action No. 3119/70) whereby the defendants were ordered to pay to the plaintiff No. 2 the sum of £6,095 as general and special damages for injuries which she suffered in a traffic accident.

A. Dana, for the appellant.

A. Myrianthis, for the respondent.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P.: This is an appeal against the judgment of the District Court of Limassol as regards only that part of it by means of which the respondent (who was plaintiff No. 2 in the Court below) was awarded general and special damages for injuries which she suffered in a traffic accident ; the other plaintiff, No. 1, was the husband of the respondent. The traffic accident in question occurred on the 30th August, 1969, and, at the time, the respondent was about sixty years old.

The issue of liability in negligence of the appellants (defendants in the Court below) is not in dispute in this appeal.

As regards the special damages, which were assessed at £595, there is no dispute to the extent of an amount of £220, which represents medical expenses and transport expenses. The disputed part of the special damages is an amount of £375, consisting of an amount of £200 which was paid by the husband of the respondent to a niece of his as her remuneration for assisting with the household duties when the respondent was recovering from her injuries, and of another two amounts of £40 and £135 respectively, which were paid, again by the husband of the respondent, for household help during other periods totalling about 16½ months.

Counsel for the appellants has argued that the said £375 were expenses incurred by the husband, and not by the respondent, and, therefore, she was not entitled to them by way of special damages. It was objected by counsel for the respondent that this is an issue of law raised for the first time on appeal, having not been raised at the trial, and that, therefore, it cannot be examined by this Court. The extent to which a Court of Appeal can entertain a question of law which has not been raised at the trial has been considered in, *inter alia*, *Nissis* (*No.* 2) v. *The Republic* (1967) 3 C.L.R. 671 ; it seems that when a question of law is raised for the first time on appeal and this is done in connection with facts which are either admitted or proved beyond controversy after a full investigation, such question may be entertained on appeal ; otherwise this cannot be done.

In relation to the contention that the respondent was not entitled in law to the disputed part of special damages reference may be made to *Gage* v. *King* [1961] 1 Q.B. 188, where it was held, in a situation similar to the present one, that it is an issue of fact whether a husband has paid the expenses concerned as necessaries, which he had a duty to provide, or whether he has paid them on behalf of his wife, who has a liability to reimburse him.

In the present case, the husband of the respondent has, admittedly, said, while giving evidence, that it was he who paid the expenses in question ; but, in view of the state of the pleadings, he must be treated as having given evidence in order to prove special damages which were claimed by his wife—having been included in the particulars of special

damages claimed by her—and not as having said that he himself incurred the relevant expenses as necessaries which he had a duty to provide. Had the above legal issue, which has, as already stated, been raised before us for the first time, been brought up before the trial Court, no doubt the husband could possibly have been recalled to testify further as to the exact basis on which he had paid those expenses ; and his wife, the respondent, who did not give evidence, could have been called to testify on this point ; thus, the matter in issue could have been investigated fully, whereas we are now faced with a situation in which, without the relevant facts being either admitted or proved beyond controversy after a due investigation, we are called upon to resolve an issue of law raised for the first time on appeal.

In the light, therefore, of the relevant principle to which we have referred earlier, we have decided not to accept to deal, in this appeal, with the said issue of law, which was not raised before the Court below, and, consequently, we are not prepared to disallow the disputed amount of special damages.

Regarding the general damages, which were assessed at £5,500, the appellants complain that they are too high and the respondent complains that they are too low ; we are faced with an appeal and a cross-appeal on this point.

In relation to the injuries and the state of health of the respondent there was filed by consent a joint medical report, by four doctors, from both sides. It gives a very detailed account of the injuries which she suffered, their treatment and of her resulting condition ; it reads as follows :—

" *Re*: *Mrs. Katerina Neophytou, aged* 61, *from Limassol*

We, the undersigned doctors, having on this day examined jointly Mrs. Katerina Neophytou of Limassol aged 61 who on the 30th August, 1969, was involved in a traffic accident as a result of which she sustained a head injury with cerebral concussion (unconscious for a short time) we agreed on the following :—

Following the accident she developed symptoms of a post-concussional syndrome and some four months later she developed signs and symptoms which were suggestive of a space occupying lesion.

The patient was operated upon by Dr. Spanos on the 31st January, 1970 and removed bilateral subdural haematoma Lt, Rt side, both of which seemed to be of the chronic type and of the same age judging from the thickness of their outer membranes.

Following the operation she made a steady improvement but certain residual signs and symptoms are still present as revealed by today's examination.

She still complains of headaches originating from the left upper frontal region and reflecting to the occiput, dizziness precipitated and/or aggravated by postural changes, some weakness of the lower limbs, forgetfulness, absentmindedness, moodiness, emotional lability and precipitancy and/or occasional incontinence of urine.

The neuro-psychiatric examination revealed certain changes suggesting personality deterioration such as the ones described above plus certain intellectual impairment ; also neurological signs and symptoms (some weakness of the lower limbs, extensor Rt. plantar flex precipitancy of micturition etc.).

Conclusion :

This patient met with a car accident as a result of which she sustained a head injury with cerebral concussion. Soon after she developed a post-concussional syndrome and some time later signs and symptoms of a space occupying lesion and Dr. Spanos removed on 31st January, 1970, bilateral subdural haematoma.

The sequence in the development of symptoms as well as Dr. Spanos findings leave no doubt that the haematomata were caused by the head injury as a result of the accident.

In view of the fact that over two years elapsed since the accident took place and nearly two years since the operation was performed we are of the opinion that both subjective complaints and clinical findings are of a permanent nature.

With regard now to the possibility of the patient developing epilepsy at some future date we agree that in view of the fact that over two years elapsed since the accident took place and in view of the E.E.G. findings the risk of epilepsy is less but nevertheless still exists."

On the basis of the contents of the report, and having made some allowance for any possible exaggerations in the evidence of the respondent's husband about the after-effects of the injuries of his wife, we have to examine whether the amount of £5,500 is, indeed, either so high or so low as to call for our intervention. The relevant

principles of law, which we have repeated more than once, were mentioned by this Court very recently in *Mesimeris* v. *Kakoullis* (reported in this Part at p. 138 *ante*). We might, however, usefully cite a passage from the decision of Lord Wright, in the House of Lords, in *Davies and Another* v. *Powell Duffryn Associated Collieries, Ltd.* [1942] 1 All E.R. 657, 664, which reads as follows :—

"No doubt an Appellate Court is always reluctant to interfere with a finding of the trial Judge on any question of fact, but it is particularly reluctant to interfere with a finding on damages. Such a finding differs from an ordinary finding of fact in that it is generally much more a matter of speculation and estimate. No doubt this statement is truer in respect of some cases than of others. The damages in some cases may be objective and depend on definite facts and established rules of law, as, for instance, in general damages for breach of contract for the sale of goods. In these cases the finding as to amount of damages differs little from any other finding of fact, and can equally be reviewed if there is error in law or in fact. At the other end of the scale would come damages for pain and suffering or wrongs such as slander. These latter cases are almost entirely matter of impression and of common sense, and are only subject to review in very special cases. There is an obvious difference between cases tried with a jury and cases tried by a Judge alone. Where the verdict is that of a jury, it will only be set aside if the Appellate Court is satisfied that the verdict on damages is such that it is out of all proportion to the circumstances of the case (*Mechanical & General Inventions Co.* v. *Austin*). Where, however, the award is that of the Judge alone, the appeal is by way of rehearing on damages as on all other issues, but as there is generally so much room for individual choice so that the assessment of damages is more like an exercise of discretion than an ordinary act of decision, the Appellate Court is particularly slow to reverse the trial Judge on a question of the amount of damages. It is difficult to lay down any precise rule which will cover all cases, but a good general guide is given by Greer, L.J., in *Flint* v. *Lovell*, at p. 360. In effect, the Court, before it interferes with an award of damages, should be satisfied that the Judge has acted upon a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage

suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the Appellate Court is to interfere, whether on the ground of excess or insufficiency."

Having taken duly into account that the respondent, though an elderly woman, has suffered considerable pain and suffering due to serious injuries and has been rendered, to a certain extent, a permanent invalid, and that there does still run a small risk of epilepsy, we cannot agree that the amount of £5,500 is so high or wrong in principle as to call for our intervention ; nor do we agree that it is so low as to be inadequate.

As a result, the appeal and the cross-appeal are dismissed, with no order as to costs.

Appeal and cross-appeal dismissed. No order as to costs.