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

NICOS PATTICHIS,

Appellant-Defendant,

v.

CHARALAMBOS ZENONOS,

Respondent-Plaintiff.

(Civil Appeal No. 5439).

Damages—Causation—Remoteness of damage—Foreseeability—Personal injuries—Plaintiff a person with a psychopathic personality at the time of the accident who was bound to develop a mental illness in the nature of schizophrenia—And he did develop such illness after the accident—Which appeared to have been "triggered" by the psychological shock of the accident—Defendant liable to compensate him for the acceleration of its appearance—Award of £2,500 sustained.

Damages—Special damages—Loss of earnings—Rate of assessment—Though possibly rather on the low side not so inadequate or unreasonable as would entitle Court of Appeal to intervene in order to increase it.

The respondent was involved in a traffic accident with the result that his head struck the inside of his car; though he did not suffer any visible external injuries, he felt dizzy, and by the time he had reached the hospital he was found to be unconscious. His condition was diagnosed as one of cerebral concussion, which, though it improved considerably with treatment, left him with the usual symptoms of a post-concussional condition. The trial Court found that the respondent was, at the time of the accident, a person with a psychopathic personality, who was bound, sooner or later, at a future time which could not be forecasted with any certainty, to develop a mental illness in the nature of schizophrenia. As a matter of fact he did develop such an illness after the accident, and though it could not be attributed to the cerebral concussion which he had suffered as a result of the accident, it appeared, nevertheless, as the trial Court found, to have been trig-

gered by the psychological shock which was caused to him by his having been involved in the accident; and that, therefore, damages had to be awarded to the respondent in respect of "the period of acceleration".

The appellant challenged the decision of the trial Court on the ground that the schizophrenic illness of the respondent was not a foreseeable result of the accident; also, that there had not been established any causative nexus between such illness and the accident; and that, therefore, no general damages could have been awarded in this connection.

Respondent, by means of a cross-appeal, complained that the amount of special damages awarded to him, regarding his loss of earnings for a year, namely at the rate of C£1 per day, is much too low, and that there were not taken into account, in this connection, his total earnings from all his sources of income.

Held, (1) with regard to the Appeal:

1. In the light of the relevant case-law (referred to in the judgment at pp. 347 - 352 *post*), and on the basis of the facts of this particular case, we are not prepared to say that we have been satisfied by the appellant that the finding of the trial Court that the schizophrenic illness of the respondent was "triggered" as a result of the accident, and that, therefore, the appellant was liable to compensate him for the acceleration of its appearance, is wrong.

2. It was a reasonably foreseeable consequence of the traffic accident in question that either driver, one of whom was the respondent, might suffer a psychological shock as a result of it; and it does appear that such shock accelerated the onset of the schizophrenic illness of the respondent; the mere fact that this tragic sequence of the shock was not reasonably foreseeable cannot absolve the appellant from his duty to compensate the respondent. (See Munkman on Damages for Personal Injuries and Death, 5th ed. p. 40 and *Jackson* v. *Holland-America Line Ltd.* [1963] 1 Lloyd's Rep. 477, referred to therein; *Cutler* v. *Vauxhall Motors Ltd.* [1970] 2 All E.R. 56 also referred to therein, is clearly

distinguishable, in view of its special facts, from the present case).

Held, (II) with regard to the cross-appeal:

Possibly the rate of C£1 per day is rather on the low side in the light of the evidence adduced in relation to the loss of earnings of the respondent; but, we cannot say that it is so inadequate, or unreasonable, as would entitle us to intervene in order to increase it; therefore, the cross-appeal is, also, dismissed.

Appeal and cross-appeal dismissed.

Cases referred to:

Overseas Tankship (U.K.), Ltd. v. *Morts Dock & Engineering Co. Ltd.* [1961] 1 All E.R. 404;

Overseas Tankship (U.K.), Ltd. v. *The Miller Steamship Co. Pty. Ltd.* [1966] 2 All E.R. 709;

Hughes v. *Lord Advocate* [1963] 1 All E.R. 705;

Doughty v. *Turner Manufacturing Co. Ltd.* [1964] 1 Q.B. 518;

Tremain v. *Pike and Another* [1969] 3 All E.R. 1303;

Smith v. *Leech Brain & Co. Ltd. and Another* [1962] 2 Q.B. 405;

Owens v. *Liverpool Corporation* [1939] 1 K.B. 394;

Malcolm & Another v. *Broadhurst* [1970] 3 All E.R. 508;

Robinson v. *The Post Office and Another* [1974] 2 All E.R. 737;

Symeonidou v. *Michaelidou* [1969] 1 C.L.R. 394;

Jackson v. *Holland-America Line Ltd.* [1963] 1 Lloyd's Rep. 477;

Cutler v. *Vauxhall Motors Ltd.* [1970] 2 All E.R. 56;

Piliou v. *Marcoullis* (1969) 1 C.L.R. 258;

Antoniades v. *Makrides* (1969) 1 C.L.R. 245;

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NICOS PATTICHIS

v.

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Cases cited in *Charlesworth on Negligence* 5th ed. at pp. 70 - 71 paragraphs 106, 107.

Appeal and Cross-appeal.

Appeal by defendant and cross-appeal by plaintiff against the judgment of the District Court of Nicosia (Demetriades, P.D.C. and Evangelides, Ag. D.J.) dated the 23rd April, 1975 (Action No. 507/72) whereby the defendant was ordered to pay to the plaintiff the sum of £3,717.- as special and general damages in respect of the injuries he suffered in a traffic accident.

G. Pelaghias, for the appellant.

L. Papaphilippou with *P. Papageorghiou*, for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court delivered by:

TRIANTAFYLLIDES, P.: The respondent, who was the plaintiff before the court below, has been awarded, in an action against the appellant, the amount of C£3,717 as special and general damages for injuries suffered in a traffic accident, which took place on September 30, 1971.

The accident occurred when a vehicle driven by the appellant collided with one driven by the respondent, with the result that the head of the respondent struck the inside of his car; though he did not suffer any visible external injuries, he felt dizzy, and by the time he had reached Morphou hospital he was found to be unconscious. His condition was diagnosed as one of cerebral concussion, which, though it improved considerably with treatment, left him, in the end, with the usual symptoms of a post-concussional condition.

The appellant has appealed against the judgment of the trial court as regards the general damages assessed by it; and the respondent has cross-appealed as regards the amount of the special damages.

As found by the trial court, on the basis of expert evidence adduced at the trial (and we might add that there is not really much difference in its essential ele-

ments between the expert evidence adduced by the two sides), the respondent was, at the time of the accident, a person with a psychopathic personality, who was bound, sooner or later, at a future time which could not be forecasted with any certainty, to develop a mental illness in the nature of schizophrenia. As a matter of fact he did develop such an illness after the accident, and though it could not be attributed to the cerebral concussion which he had suffered as a result of the accident, it appeared, nevertheless, to have been triggered by the psychological shock which was caused to him by his having been involved in the accident; it could, of course, have been "triggered", that is to say, accelerated, by any other kind of shock.

The trial court found as a fact, on the basis of all the evidence before it, that there was no doubt that the disability of the respondent, resulting from his schizophrenic condition, would have come about in any event, but that the traffic accident in question accelerated its onset, in that it advanced the date of its appearance, and that, therefore, damages had to be awarded to the respondent in respect of "the period of acceleration".

Counsel for the appellant has challenged the decision of the trial court on the ground that the schizophrenic illness of the respondent was not a foreseeable result of the accident; also, that there had not been established any causative nexus between such illness and the accident; and that, therefore, no general damages could have been awarded in this connection. He did not dispute the proposition that general damages should have been awarded for the post-concussional syndrome, but he argued that in respect of such syndrome only they would have to be much less than the amount of C£2,500 which was awarded as overall general damages.

As regards the point of reasonable foreseeability counsel for the appellant referred to the case of *Overseas Tankship (U.K.), Ltd.* v. *Morts Dock & Engineering Co. Ltd.* [1961] 1 All E.R. 404, which is commonly known as the *Wagon Mound (No. 1)* case and was decided by the Privy Council; it was explained by the Privy Council, subsequently, in the case of *Overseas Tankship (U.K.), Ltd.* v. *The Miller Steamship Co. Pty. Ltd. and Another*

[1966] 2 All E.R. 709, which is commonly known as the *Wagon Mound (No. 2)* case.

It is pertinent to note, also, in this respect, the case of *Hughes* v. *Lord Advocate* [1963] 1 All E.R. 705, where the House of Lords has dealt with the same issue.

A case relied on by counsel for the appellant is that of *Doughty* v. *Turner Manufacturing Co. Ltd.* [1964] 1 Q.B. 518, where it was held that the injuries suffered by the plaintiff were not of a foreseeable nature; but, in that case, what was found not to be foreseeable was the *manner* in which the injuries were suffered, in other words, the particular type of accident; and, the same observation applies, with more or less equal force, to the case of *Tremain* v. *Pike and Another* [1969] 3 All E.R. 1303, where it was held that a master's duty of care towards his servants required him to take reasonable steps to avoid exposing them to a reasonably foreseeable *risk* of injury, and, that on the particular facts of that case, the plaintiff's illness could not be found to be attributable to any breach of that duty.

We think that the case before us comes within what is described by Charlesworth on Negligence, 5th ed., p. 69, para. 105, as being one of the exceptions to the application of the *Wagon Mound* principle, namely that once the type or kind of damage, be it injury to person or property, could have been foreseen in a general way, the defendant is liable for the full extent of the harm caused even though such extent was unforeseeable; and reference may be made, in this respect, to *Smith* v. *Leech Brain & Co. Ltd. and Another,* [1962] 2 Q.B. 405 (which has been, also, referred to by the trial court): that was a case where a workman suffered, as a result of the defendant's negligence, a burn on his lip, which was a foreseeable happening, but, as the workman had a predisposition to cancer, a carcinoma developed on the site of the burn, which was not a foreseeable happening, and in due course the workman died from the disease; it was held that the defendant was liable.

In another case (referred to in Charlesworth, *supra*), that of *Owens* v. *Liverpool Corporation* [1939] 1 K.B. 394, it was held that the defendant must take his victim as he finds him and that in answer to a claim for da-

mages for a fractured skull it is not sufficient to say that the skull concerned had been an unusually fragile one.

It is interesting to note that in *Malcolm & Another* v. *Broadhurst* [1970] 3 All E.R. 508, it was stated, in the judgment of Geoffrey Lane J. (at p. 511), that there is no difference in principle between an "egg-shell skull" and an "egg-shell personality"; furthermore (and in order to avoid lengthy quotations) it is useful to set out hereinbelow what is stated in Charlesworth, *supra* (at pp. 70 - 71, paras. 106, 107) :-

"106. *In Love* v. *Port of London Authority*,[1] the defendants, through their negligence, caused the plaintiff workman to sustain a head injury and from such injury he developed a neurosis although this was aggravated by a pre-existing heart condition. Edmund Davies J. stated [2] : 'One has to remember, of course, that the defendants must take the plaintiff as they find him; that is to say, with his already vulnerable personality .... if what we may call the 70 per cent. heart neurosis would not have prevented the plaintiff from working, but the addition of the 30 per cent. accident neurosis produced total incapacity, the defendants have to recompense the plaintiff for all special damages arising from the 100 per cent. neurosis which developed from these two cases'.

In *Warren* v. *Scruttons* [3] where the plaintiff injured a finger on a frayed rope, which was a foreseeable injury, as a result of the negligence of the employers in supplying such a worn rope for use, and in consequence suffered an aggravation of an existing eye injury, Paull J. held the defendants liable also for the eye injury.

107. In *Sayers* v. *Perrin* [4] where a plaintiff, due to his employer's negligence, suffered an electric shock

1. [1959] 2 Lloyd's Rep. 541.
2. Ibid. at p. 545.
3. [1962] 1 Lloyd's Rep. 497.
4. [1966] Q.L.R. 89.

which damaged nerve cells, thereby allowing poliomyelitis virus to attack these injured cells in his body and bring about paralysis, it was held that as the liability of the employers depended not upon the reasonable foreseeability of the actual result which ensued, but upon whether they could reasonably foresee an injury of such type which might directly result in the condition giving rise to the action, the plaintiff was entitled to succeed.

In *Oman* v. *McIntyre* [1] the Court of Session, Outer House, followed *Smith* v. *Leech Brain & Co. Ltd.* and held the defendants liable in full where the deceased had sustained a leg injury while working for the defendant, which led to fat embolism, bronchopneumonia and then to his eventual death.

In *Bradford* v. *Robinson Rentals Ltd.* [2] a plaintiff radio engineer was required to drive for a long period of time in freezing conditions in his employers' van, which was not equipped with a car heater, and suffered frostbite as a result. The court held that even if the plaintiff was abnormally susceptible to frostbite as distinct from other more usual consequences of prolonged exposure to below-freezing conditions, it would be no defence, since a defendant must still take his victim as he finds him."

A very recent case, of quite some importance in our view, is that of *Robinson* v. *The Post Office and Another*, [1974] 2 All E.R. 737; the headnote of its report reads as follows :-

"On 15th February 1968 the plaintiff, a technician employed by the Post Office, slipped as he was descending a ladder from one of the Post Office's tower wagons. The slipping was caused by oil on the ladder due to leakage of a pump. The plaintiff sustained a wound to his left shin. Some eight hours later he visited his doctor and was given an injection of anti-tetanus serum ('ATS'). The plaintiff had, to the doctor's knowledge, been given a dose of ATS

1. 1962 S.L.T. 168.
2. [1967] 1 W.L.R. 337.

following an accident in 1955. Where a patient had had a previous does of ATS it was essential, because of the risk of reaction, to give a test dose before administering a full dose. The recognised test procedure in 1968 entailed waiting half an hour after injecting a small quantity of ATS to see whether the patient showed any reaction. The doctor did not follow that procedure but followed one of his own, waiting only a minute for a reaction before administering the balance of the full dose. The plaintiff did not suffer any reaction until 24th February when he began to show signs of a reaction. On 26th February he was admitted to hospital suffering from encephalitis. It was known that encephalitis was a possible, though rare, consequence of the administration of ATS. The plaintiff suffered brain damage in consequence of the encephalitis. He brought an action for damages against the Post Office and the doctor. The trial judge found that the Post Office were negligent in allowing the oil to leak on to the ladder and that the doctor was not negligent in deciding to administer ATS. The judge absolved the doctor from liability holding that, although he had been negligent in failing to administer a test dose, 'a proper test dose would have made no difference' since it would not have produced a reaction within half an hour. Accordingly he held the Post Office wholly liable for the plaintiff's injury. The Post Office appealed, contending, *inter alia*, that an essential link between the negligent act and the plaintiff's injury was missing in that it could not have been foreseen that administration of a form of an anti-tetanus prophylaxis would itself give rise to serious illness."

It was held on the above facts that since it was foreseeable that if oil was negligently allowed to escape on to a ladder a workman would be likely to slip and be wounded, in the way in which the plaintiff was injured, and that such an injury might well require medical treatment, it followed that the Post Office, as the defendants, were liable for the encephalitis which set in after medical treatment of the wound of the plaintiff.

Also, a case which was decided by our own Supreme

Court and which is similar, to a certain extent, to the present one is that of *Symeonidou* v. *Michaelidou* (1969) 1 C.L.R. 394.

In the light of the foregoing case-law, and on the basis of the facts of this particular case, we are not prepared to say that we have been satisfied by the appellant that the finding of the trial court that the schizophrenic illness of the respondent was "triggered" as a result of the accident, and that, therefore, the appellant was liable to compensate him for the acceleration of its appearance, is wrong; it was a reasonably foreseeable consequence of the traffic accident in question that either driver, one of whom was the respondent, might suffer a psychological shock as a result of it; and it does appear that such shock accelerated the onset of the schizophrenic illness of the respondent: the mere fact that this tragic sequence of the shock was not reasonably foreseeable cannot absolve the appellant from his duty to compensate the respondent.

The trial court has quite correctly, in the circumstances, awarded to the respondent only general damages for the acceleration of his otherwise unavoidable, due to his psychopathic personality, mental illness, relying, in this respect, on what is stated in Munkman on Damages for Personal Injuries and Death, 5th ed., p. 40, where the case of *Jackson* v. *Holland-America Line Ltd.* [1963] 1 Lloyd's Rep. 477, is referred to; on the other hand the, also, referred to therein case of *Cutler* v. *Vauxhall Motors Ltd.* [1970] 2 All E.R. 56, is clearly distinguishable, in view of its special facts, from the present case.

We agree with counsel for the appellant that the trial court had to speculate a lot in assessing, in addition to what would be the general damages for the post-concussional syndrome and pain and suffering, the general damages for the acceleration of the appearance of the mental illness of the respondent: and, actually, the trial court stated this expressly in its judgment, pointing out, at the same time, that it had not much material on which to rely for this purpose. But, as it has been held in *Piliou* v. *Marcoullis* (1969) 1 C.L.R. 258, the fact that it is difficult to assess damages should not prevent the court from doing its best to reach the most reasonable or just conclusion possible in the circumstances; and this is what

has been done by the trial court in the case in hand.

In view of all relevant considerations we have not been satisfied by the appellant that we should interfere with the assessment of the global figure of general damages of C£2,500 made by the trial court. To do so, in the absence of good reason for adopting such a course, would not be in accordance with the principles, so often expounded by this Court, as regards our powers of intervention on appeal in matters of general damages (see, *inter alia, Antoniades* v. *Makrides* (1969) 1 C.L.R. 245).

The appeal is, therefore, dismissed.

By means of the cross-appeal it has been complained of by the respondent that the amount of special damages, regarding his loss of earnings for a year, which was awarded by the trial court, namely at the rate of C£1 per day, is much too low, and that there were not taken into account, in this connection, the total earnings of the respondent from all his sources of income.

The trial court has referred in its judgment to all the evidence adduced in relation to the loss of earnings of the respondent and has adopted the rate of C£1 per day, as the measure of its assessment, after having taken into consideration all that could be regarded as being properly and safely relevant.

Possibly the rate of C£1 per day is rather on the low side, in the light of the said evidence; but, we cannot say that it is so inadequate, or unreasonable, as would entitle us to intervene in order to increase it: therefore, the cross-appeal is, also, dismissed.

We award in favour of the respondent, against the appellant, two thirds of the costs of this appeal, for one advocate.

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