CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL FROM THE DISTRICT COURTS.

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

1976
Jan. 12

RENE FABREY AND ANOTHER v. NIOVI A. DEMETRIOU AS ADMINISTRATRIX OF THE ESTATE OF THE DECEASED ANGELOS DEMETRIOU

RENE FABREY AND ANOTHER,

Appellants–Defendants,

v.

NIOVI A. DEMETRIOU, AS ADMINISTRATRIX OF THE ESTATE OF THE DECEASED ANGELOS DEMETRIOU,

Respondent–Plaintiff.

(*Civil Appeal No.* 5423).

Damages—General damages—Personal injuries—Sixty-two years old kitchen assistant suffering cerebral concussion, a fracture of his right ankle and a lacerated wound on the left lower jaw—In a position to do work involving standing up all day six months 5 *after the accident—Award of C£ 500—Is within the normal brackets of awards made in circumstances such as those of this case—Not so low and inadequate as to make the Court intervene in order to increase it on appeal.*

Damages—Special damages—Loss of earnings—Assessed on evidence 10 *called by plaintiff—No adequate reason for interfering with assessment of trial Court.*

Evidence—Negligence—Issue of liability—Is decided on the totality of the evidence adduced, irrespective of whether it is evidence called by the plaintiff or by defendants.

15 *Negligence—Liability—Issue of—Is decided on the totality of the evidence adduced.*

Negligence — Contributory negligence — Apportionment of liability — Pedestrian knocked down by motor vehicle as he was about to cross the road—Driver's liability apportioned at 75%—Apportion-

ment not correct in the light of the factual situation—A case in which the driver was to blame to only a relatively small extent more than the pedestrian—Apportionment altered by reducing driver's share to 60% and increasing that of the pedestrian to 40%.

The appellants have been adjudged to pay to the respondent the sum of C£ 687 as damages on the basis that they were to blame to the extent of 75% for a collision in which appellant 2 knocked down the respondent. They have appealed as regards the issue of liability and the respondent has cross-appealed as regards the quantum of both the special and general damages.

As a result of the accident the respondent suffered cerebral concussion, a fracture of his right ankle and a lacerated wound on the left lower jaw. Medical evidence, called by his side was to the effect that six months after the accident he should have been in a position to do work involving standing up all day. At the time of the accident he was sixty-two years old and he was employed as a kitchen assistant, earning about C£46 a month.

Regarding the issue of liability the trial Court in making its finding concerning apportionment based itself almost exclusively on the evidence of appellant 2. Appellants contended in this respect, that as it had not been proved by evidence adduced by the respondent's side that there was negligence on the part of appellant 2, the Court below could not have proceeded to find her guilty on the basis only of her own evidence.

Held, (I) with regard to the appeal:

(1) The trial Court had to decide the issue of liability on the totality of the evidence adduced, irrespective of whether it was evidence called by the plaintiff or by the defendants.

(2) In the light of the factual situation in this case (vide p. 5 of the judgment *post*) we cannot accept as correct the apportionment of liability made by the trial Court. This is a case in which appellant 2 was to blame to only a relatively small extent more than the plaintiff, and we have, therefore, decided to alter the apportionment of liability so that the share of this appellant is to be reduced to 60% and that of the respondent increased to 40%.

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

(1) In view, in particular, of the evidence of Dr. Papasavvas,

who was called by the plaintiff's side and who testified that within six months, after the accident, the plaintiff should have been able to do work involving standing up all day, we see no adequate reason for interfering with the assessment by the trial Court of the special damages regarding the loss of earnings of the plaintiff.

(2) The amount of C£500 general damages awarded is within the normal brackets of awards made in circumstances such as those of this case and, thus, we cannot treat it as being so very low and inadequate as to make us intervene in order to increase it on appeal.

Appeal partly allowed.
Cross-appeal dismissed.

Appeal and cross-appeal.

Appeal by defendants 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 31st March, 1975, (Action No. 4833/71) whereby the defendants were adjudged to to pay to the plaintiff the sum of C£687 as damages for injuries he sustained in a traffic accident.

D. Liveras, for the appellants.

A. Eftychiou, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The appellants appeal from a judgment given against them, as defendants, in an action for damages for negligence. They were ordered to pay to the plaintiff—(who has, unfortunately, died in the meantime from another cause, and so the respondent in this appeal is his estate)—the amount of C£687 as damages, on the basis that appellant 2, for the negligence of whom appellant 1 is admittedly vicariously liable, was to blame to the extent of 75% for a collision in which she knocked down with her car the plaintiff, who was walking across a road in Nicosia, and who was found by the trial Court to be responsible for the accident to the extent of 25%.

The accident occurred on January 5, 1971, at Metochiou Street, in Nicosia, and, as a result, the plaintiff suffered cerebral concussion, a fracture of his right ankle and a lacerated wound on the left lower jaw.

According to medical evidence called by the plaintiff's side, which the Court accepted, he should have been in a position, six months after the accident, to do work involving standing up all day; at the time of the accident he was sixty-two years old and he was employed as a kitchen assistant at a restaurant in Nicosia, earning about C£46 a month.

The trial Court awarded C£416 special damages, including C£276 special damages for loss of earnings (the rest of the special damages were agreed); the Court awarded, also, C£500 general damages for pain and suffering and for the resulting incapacity to lead a full life and enjoy its amenities.

The appellants have appealed as regards the issue of liability and the respondent estate of the deceased plaintiff has cross-appealed as regards the quantum of both the special and the general damages.

The respondent complains that the special damages in respect of loss of earnings ought to have been assessed on the basis of nine, instead of six, months' incapacity to work, and, also, that the amount of general damages (C£500) is, in the circumstances, inadequate.

We shall deal, first, with the cross-appeal:

In view, in particular, of the evidence of Dr. Papasavvas, who was called by the plaintiff's side and who testified that within six months, after the accident, the plaintiff should have been able to do work involving standing up all day, we see no adequate reason for interfering with the assessment by the trial Court of the special damages regarding the loss of earnings of the plaintiff.

Furthermore, the amount of C£500 general damages is, in our opinion, within the normal brackets of awards made in circumstances such as those of this case and, thus, we cannot treat it as being so very low and inadequate as to make us intervene in order to increase it on appeal.

Consequently, the cross-appeal has to be dismissed in toto.

In making its finding concerning the apportionment of the liability the trial Court based itself, almost exclusively, on the evidence of appellant 2 herself. In this connection we cannot accept the submission of counsel for the appellants that as it had not been proved by evidence adduced by the plaintiff's

side that there was negligence on the part of defendant 2 (now appellant 2) we should hold that the Court below could not have proceeded to find her guilty of negligence on the basis only of her own evidence. The trial Court had to decide the issue of liability on the totality of the evidence adduced, irrespective of whether it was evidence called by the plaintiff or by the defendants.

According to the evidence of appellant 2 she had noticed the plaintiff from about a distance of twenty metres, in front of her, as he was about to cross the road; when she saw that he had proceeded up to a point about seven feet from the edge of the asphalted part of the road, on his own side, she blew her horn and he stopped; then, while she was reducing the speed of her car, he resumed walking across the road. Apparently the plaintiff and appellant 2 misunderstood each other's intentions; he thought that appellant 2 was going to stop in order to allow him to pass in front of her, while appellant 2 thought that the plaintiff was going to await for her car to pass first; as a result appellant 2 knocked him down at a point which was about the middle of the asphalted part of the road.

In the light of the above factual situation we have reached the conclusion that we cannot accept as correct the apportionment of liability made by the trial Court: This is a case, in our opinion, in which, obviously, appellant 2 was to blame to only a relatively small extent more than the plaintiff; and we have, therefore, decided to alter the apportionment of liability so that the share of appellant 2 is to be reduced to 60% and that of the plaintiff increased to 40%; accordingly, the total amount of C£916 damages, special and general, payable to the respondent, should be reduced to C£550.

In the result the appeal is allowed as above, the cross-appeal is dismissed, but as counsel for the appellants has not pressed (in view of the subsequent, due to other causes, death of the plaintiff) a claim for costs, we have decided that there should be no order as to the costs of the appeal or the cross-appeal.

Appeal allowed. Cross-appeal dismissed. No order as to costs.