[L. LOIZOU, A. LOIZOU AND MALACHTOS, JJ.]

SOCRATIS CHARALAMBOUS,

Appellant-Plaintiff.

v.

CYBARCO KYPRIACI ETERIA ECODOMON & ODOPIIAS LTD.,

Respondents-Defendants.

(*Civil Appeal No.* 5438).

Negligence—Contributory negligence—Apportionment of liability—Appeal—Principles on which Court of Appeal will intervene—Labourer injured by scoop of tractor whilst unloading sacks therefrom—System of work—The evidence before the Court afforded valid ground for it to infer the system of work followed—No error of law or fact in the judgment of the trial Court—No intervention by Court of Appeal with apportionment of liability made by trial Court.

Damages—General damages—Personal injuries—Appeal against award of general damages—Principles on which Court of Appeal will intervene—Labourer sustaining haemarthrosis of the joint and crack fracture of the patella and fracture of the tibia plateau—His leg in plaster for almost two months—Fair amount of pain and suffering for ten to fifteen days—Subsequent inconvenience and discomfort over a period of four to five months—Pre-injury walking capacity over rough or hilly ground and ability to carry out jobs calling for repetitive knee and ankle flexion moderately affected—No satisfactory efforts by appellant to find employment—Award of £1,200—*Is within the bracket applicable to injuries such as those sustained by appellant—Not interfered with.*

The appellant-plaintiff, who was employed as a labourer by the respondents-defendants, was injured whilst he was trying to unload a sack of cement from the scoop of a tractor operated by another employee of the respondents.

The trial Court found, on the evidence adduced, that there was a system of unloading which the appellant knew or ought to have known which was done in two stages. At the first stage the scoop was lowered down at some height from the ground and then by a tilting movement the lips of the scoop

were made to touch the ground so as to facilitate the unloading of the contents. This is what the operator did but the appellant rushed towards the scoop before it was tilted forward. In fact, in order to reach the contents of the scoop the appellant kneeled on it. The appellant, therefore, contributed to the accident by his own careless and rushing act in trying to unload the scoop at a time when he ought to have known that there would be a further movement. In apportioning liability the trial Court found that the operator who had the control of the machine, was more to blame in failing to ascertain whether it was safe for him to cause the second movement of the scoop at the time when the appellant was kneeling on it trying to unload the sack, and could, with reasonable diligence and foresight, notice him in time and so the accident could have been avoided. The trial Court apportioned liability at 70% on the respondents and 30% on the appellant and awarded the amount of £1200 general damages to the appellant.

Appellant appealed both against the apportionment of liability and against award of general damages as being manifestly low

The factual position regarding general damages was as follows:–

On admission to hospital appellant was found suffering from a crushing injury to the left knee leading to (a) haemarthrosis of the joint and (b) crack fracture of the patella and fracture of the tibia plateau. His leg remained in plaster for approximately two months; after the removal of the plaster he was given physiotherapy treatment as an out-patient which lasted for just over five months. The injuries received by the appellant entailed a fair amount of pain and suffering for ten to fifteen days followed by inconvenience and discomfort tailing off subsequently over a period of four to five months. The pre-injury walking capacity of the appellant over rough or hilly ground and his ability to carry out jobs that call for repetitive knee and ankle flexion have been moderately affected. The trial Court in considering the evidence on the issue of damages found that the appellant made no satisfactory efforts to find employment.

Held, (I) with regard to the apportionment of liability:

(1) This Court ought not to interfere with an apportionment unless there is some error of law or fact in the judgment of the trial Court (see *Kyriacou* v. *Aristotelous* (1970) 1 C.L.R. 172).

(2) There is no error of law or fact in the judgment of the trial Court and so we are not going to interfere with their judgment as regards the question of apportionment of liability.

Held, (II) with regard to the damages:

(1) In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled (see *Aristodemou* v. *Angelides & Philippou Ltd.* (reported in this Part at p. 93)).

(2) The amount of £1,200 by way of general damages is within the bracket which would be applicable to injuries such as those sustained by the appellant, and so we have decided not to interfere on this issue with the judgment of the trial Court.

Appeal dismissed with costs.

Cases referred to:

Kyriacou v. *Aristotelous* (1970) 1 C.L.R. 172;

Rousou v. *Theodoulou* (1972) 1 C.L.R. 22;

Kleovoulou v. *Andrea* (1974) 1 C.L.R. 120;

Aristodemou v. *Angelides & Philippou Ltd.* (reported in this Part at p. 93 *ante*).

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C. and Papadopoulos, S.D.J.) dated the 30th April, 1975, (Action No. 3991/73) whereby he was awarded the amount of £1,200 as special and general damages for personal injuries he sustained in an accident in the course of his employment with the respondents.

R. Stavrinidou (*Miss*) with *D. Savvidou* (*Mrs.*), for the appellant.

G. Pelaghias, for the respondents.

Cur. adv. vult.

L. LOIZOU, J.: The judgment of the Court will be delivered by Mr. Justice Malachtos.

MALACHTOS, J.: This is an appeal by the plaintiff in Action

No. 3991/73 against the judgment of the Full District Court of Nicosia where he was awarded special and general damages for personal injuries he sustained in an accident in the course of his employment with the respondents.

5 He complains (a) as regards the apportionment of liability having been held 30% to blame for the accident and (b) as to the quantum of general damages assessed at £1,200.– on a full liability basis. As regards special damages these were agreed on the date of the hearing at £508.– again on a full 10 liability basis.

The accident occurred on the 28th day of November, 1972, at the sewage works carried out in Nicosia by the respondent company and whilst the appellant, who was employed as a labourer, was trying to unload a sack of cement from the scoop 15 of a tractor operated by another employee of the company.

As to how this accident occurred the appellant in giving evidence before the trial Court, alleged that the operator lowered without warning the scoop causing thereby injuries to him whereas the version of the respondents, as stated by the operator 20 of the tractor, D.W.1, was that the appellant rushed towards the tractor without waiting for the scoop to come to rest in its normal unloading position. In addition to the above two versions there was the evidence of P.W.2, who witnessed the accident as a by-stander. This witness stated in evidence that 25 the scoop was lowered up to a certain height from the ground and whilst the appellant was kneeling on it trying to unload a sack of cement the operator caused the scoop to tilt forward and as a result the appellant was thrown off. The trial Court found on the evidence of this witness, which was not seriously 30 challenged by the defence, that the appellant was thrown on the ground by the tilting movement of the scoop whilst kneeling on it trying to unload it and then he was hit by the lowering of the scoop which compressed his lower limbs.

The trial Court also found on the evidence adduced, parti- 35 cularly on the evidence of P.W.2, that there was a system of unloading which the appellant knew or ought to have known which was done in two stages. At the first stage the scoop was lowered down at some height from the ground and then by a tilting movement the lips of the scoop were made to touch 40 the ground so as to facilitate the unloading of the contents thereof. This is what the operator did on that day but the

appellant rushed towards the scoop before it was tilted forward. In fact, in order to reach the contents of the scoop the appellant kneeled on it and this is what P.W.2 noticed at the time the appellant was thrown on the ground. The appellant, therefore, contributed to the accident by his own careless and rushing act in trying to unload the scoop at a time when he ought to have known that there would be a further movement. In apportioning the liability the trial Court found that the operator who had the control of the machine, was more to blame in failing to ascertain whether it was safe for him to cause the second movement of the scoop at the time when the appellant was kneeling on it trying to unload the sack, and could, with reasonable diligence and foresight, notice him in time and so the accident could have been avoided.

For these reasons the liability was apportioned by the trial Court to 70% on the respondents and 30% on the appellant.

On this question, *i.e.* the question of apportionment of liability which is the first ground of appeal, counsel for the appellant submitted that the Court could not have drawn from the evidence that there was a system of work as to the unloading of the sacks from the scoop of the tractor. She argued that there is nothing in the evidence which relates to the system of work or what was the normal method of unloading. The trial Court, she said, had, therefore, to find the tractor driver entirely to blame for the accident.

We must say, straightaway, that we do not agree with this submission of counsel. The evidence of the plaintiff himself who stated that he was doing this work for six to seven weeks prior to the accident and that the method in unloading the sacks was always the same, coupled with the evidence of P.W.2 afforded valid ground for the Court to infer the system of work followed.

The principle governing the intervention of this Court in order to disturb the apportionment of liability made by the trial Court has been referred to in a series of judgments of this Court. The principle is that this Court ought not to interfere with the apportionment of liability unless there is some error of law or fact in the judgment of the trial Court. See, *inter alia*, in this respect *Kyriacou* v. *Aristotelous* (1970) 1 C.L.R. 172, *Rousou* v. *Theodoulou* (1972) 1 C.L.R. 22 and *Kleovoulou* v. *Andrea* (1974) 1 C.L.R. 120.

In the present case we are of the view that there is error no of law or fact in the judgment of the trial Court and so we are not going to interfere with their judgment as regards the question of apportionment of liability.

5 The other complaint of the appellant, as we have already said, is that the award of £1,200.- general damages on a full liability basis is inadequate as being manifestly low taking into consideration the evidence as accepted by the trial Court. On this issue the trial Court had before it two medical certificates 10 of Dr. Pelides, a specialist orthopaedic surgeon of the Nicosia General Hospital, which were produced as *exhibits* 1 and 2, and the evidence of the appellant himself. According to the medical certificates the appellant on admission to the hospital was found suffering from a crushing injury to the left knee 15 leading to (a) haemarthrosis of the joint and (b) crack fracture of the patella and fracture of the tibia plateau. The appellant was given appropriate treatment which included the splintage of his left knee and leg in plaster for approximately two months. After the removal of the plaster he was given physiotherapy 20 treatment as an out-patient. The whole treatment lasted for just over five months. The injuries received by the appellant entailed a fair amount of pain and suffering for ten to fifteen days followed by inconvenience and discomfort tailing off subsequently over a period of four to five months. Dr.Pelides 25 goes on to say that although the left knee is sufficiently toned up and in a position to stand up a fair amount of ordinary loading yet the wasting of his left thigh and mild luxity of the joint plus the mild restriction of flexion range imply moderate depreciation of his left knee joint reserve muscle power. This 30 will affect moderately his pre-injury walking capacity over rough or hilly ground and his ability to carry out jobs that call for repetitive knee and ankle flexion like digging, lifting weights and the like. Dr. Pelides could not rule out the onset of osteo-arthritic changes although he considered such eventuality as 35 rather remote.

On the 13th January, 1975, Dr. Pelides last examined the appellant with a view to reassessing his condition and in his medical certificate, *exhibit* 2, he noted some change in the muscle rebuilding and soft tissue retoning. The appellant 40 himself in his evidence said that he is a labourer and if he has to work over hilly areas, he will find it more troublesome than on flat areas. He alleged that after the accident he did not

resume his old job and did not do any work at all, apart from a short period of two to three months when he was working as a night watchman. He also alleged that the reason he has not been working was because of the injuries he received. He made efforts to find employment but he could not be accepted 5 for work due to his injuries.

The trial Court in considering the evidence on the issue of damages found that as regards the efforts the appellant made to find employment were not satisfactory. He made inquiries only with one construction company about a year before the 10 hearing of the case and he was turned down, as he said, because of his condition. He did not approach anybody else for employment.

"The general picture", as the trial Court put it, in their judgment, "is that the nature of the injuries the plaintiff received 15 is not such as to justify a permanent abstention from any work whatsoever and his failure to look for work is indicative of his attempt to aggravate the damages by creating the impression that he is incapable of any work as a totally incapacitated person. His earnings, being in the region of £12 per week, were not so 20 high as to be difficult to find an alternative employment, even if less tiring than the one he had before the accident. However, if a less hard job would involve less wages, we do not think that the difference would be so great as to justify an unnecessarily high figure by way of compensation". 25

The trial Court then taking into consideration the pain and suffering the plaintiff initially suffered, the inconvenience and discomfort that followed, the difficulties he may encounter in future in performing duties entailing repetitive knee and ankle flexion and the probable diminution of his earnings on account 30 of the aforesaid limitations assessed the general damages on a full liability basis at £1,200.–

The principles on which this Court can interfere with the judgment of the trial Court on an award of damages have been stated in a line of cases decided by the Courts in England as 35 well as by this Court. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to 40 make it, in the judgment of this Court, an entirely erroneous

estimate of the damage to which the plaintiff is entitled. (See, *inter alia*, Civil Appeal No. 5292 *Kleanthis Aristodemou* v. *Angelides and Philippou Ltd.* (reported in this Part at p. 93, *ante*).

5 In our view the amount of £1,200.– by way of general damages awarded by the trial Court is within the bracket which would be applicable to injuries such as those sustained by the appellant, and so we have also decided not to interfere on this issue with the judgment of the trial Court.

10 For the reasons stated above this appeal is dismissed with costs.

Appeal dismissed with costs.