[STAVRINIDES, A. LOIZOU, MALACHTOS, JJ.]

KLEANTHIS ARISTODEMOU,

Appellant–Plaintiff,

v.

ANGELIDES & PHILIPPOU LTD.,

Respondents–Defendants.

(*Civil Appeal No.* 5292).

Damages—General damages—Personal injuries—Appeal against award of general damages—Principles on which Court of Appeal intervenes—Thirty-five years old Police Sergeant sustaining, inter alia, *a bruise on the right shoulder, haematoma of right buttock and severe pain in right ear—Loss of hearing in right ear—Mild post concussional syndrome—Award of* £850.- *by taking into account mainly the said loss of hearing—Amount awarded even for this injury alone is below the lower end of the bracket which would be applicable to-day to such injuries—Increased to* £1100.-

The appellant, a police sergeant aged 35, sustained personal injuries in a traffic accident. At the time of the accident he was found suffering from the following injuries:-

"1. Bruise on the right shoulder
2. Haematoma of right buttock
3. Wound on left femur one inch in length and half inch in depth.
4. Wound and bruise on right side of forehead
5. Severe pain in right ear."

The after-effects of the injuries consisted of complete loss of hearing in the right ear. The appellant was also complaining of getting attacks of headaches and dizziness; he was apparently suffering from a mild post concussional syndrome; and according to the medical evidence these attacks were expected to subside completely in six months' time.

The trial Court awarded £850 general damages after stating that "with the exception of the loss of hearing in the right ear, the other bodily injuries including complaints of headaches and dizziness, do not justify a high award because the bodily injuries

on the one hand healed satisfactorily within 10 days and on the other hand, the headaches and dizziness do not interfere severely either with his normal life and capacity to work or for a long time".

Held, (1) in the present case the trial Judge in awarding the amount of £850 as general damages took into account mainly the loss of hearing of the appellant but even for this injury alone the amount awarded is below the lower end of the bracket, which would be applicable today to injuries such as this one. The award of general damages is, therefore, increased to £1100. (See *Baxter* v. *The Admiralty* [1961] 2 Lloyd's Rep. 89).

Appeal allowed.

Cases referred to:

Baxter v. *The Admiralty* [1961] 2 Lloyd's Rep. 89 at p. 95;

Flint v. *Lovell* [1935] 1 K.B. 354 at p. 360;

Davies v. *Powell Duffryn Associated Collieries Ltd.* [1942] 1 All E.R. 657 at pp. 664, 665;

Yorkshire Electricity Board v. *Naylor* [1967] 2 All E.R. 1;

Davies and Others v. *Whiteways Cyder Co. Ltd. and Another* [1974] 3 All E.R. 168;

Mesimeris v. *Kakoullis* (1973) 1 C.L.R. 138;

Hassan and Others v. *Neophytou* (1973) 1 C.L.R. 147

Appeal.

Appeal by plaintiff against that part of the judgment of the District Court of Nicosia (Stavrinakis, P.D.C.) dated the 31st January, 1974, (Action No. 1218/71) whereby the plaintiff was awarded the amount of £850.– as general damages for injuries sustained as a result of a traffic collision.

A. Adamides, for the appellant.

E. Ioannidou (Mrs.), for *Messrs. Chrysafinis* and *Polyviou*, for the respondents.

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

MALACHTOS, J.: The present case arose out of a motor car accident that occurred on the 18th April, 1969 on the main Nicosia Limassol road. The appellant on tha day was a passenger in motor bus TBA 345 which collided with motor car under registration No. BY645, the property of the defendants.

which was driven at the time by one of their employees from the opposite direction. As a result he sustained personal injuries and instituted legal proceedings against the defendants claiming special and general damages for negligence.

At the commencement of the hearing before the trial Court the liability was admitted, the special damages were agreed at £70.- and the only issue that remained for the Court to determine was the question of general damages.

No oral evidence was adduced on either side and the Court was asked to assess the general damages on the basis of eight medical certificates which were produced by consent.

The appellant, a police sergeant aged 35 at the time of the accident, was examined by Dr. Frangides on the 21st April. 1969 and was found, according to the relevant medical certificates, *exhibit* 4, suffering of the following:

1. Bruise on the right shoulder.
2. Haematoma of right buttock.
3. Wound on left femur one inch in length and half inch in depth.
4. Wound and bruise on right side of forehead.
5. Severe pain in right ear.

Dr. Frangides examined the appellant again on the 29th April, 1969, and on this occasion the appellant was complaining of loss of hearing in the right ear. He was advised to see an E.N.T. specialist, who, in his certificate, *exhibit* 2, states that the left ear was within normal limits, but there was complete loss of hearing in the right ear. These findings were confirmed by an audiogram, *exhibit* 3, taken by Dr. A. Pieri. On the 27th January, 1973, Dr. Pieri examined the appellant again and there was no change in his condition.

Dr. Kyriakides, a neuropsychiatrist, examined the appellant neurologically and in his certificates *exhibits* 6, 7 and 8, states that since the accident he was complaining of getting attacks of headaches and dizziness, apparently suffering from a mild post concussional syndrome. Dr. Kyriakides expected these attacks to subside completely in six months' time.

The findings of the trial Judge, after considering the evidence adduced, appear at page 13 of the record and are as follows:

"With the exception of the loss of hearing in the right ear, the other bodily injuries including complaints of headaches and dizziness, do not justify a high award because the bodily injuries on the one hand healed satisfactorily within 10 days (see report of Dr. Hadjikakou, *exhibit* 1) and on the other hand, the headaches and dizziness do not interfere severely either with his normal life and capacity to work or for a long time".

And concluded his judgment by awarding £850.– general damages taking into consideration the injuries sustained by the appellant, mainly the loss of his hearing in the right ear.

Counsel for the appellant to-day argued before us that this amount of general damages, taking into consideration the injuries received by the appellant as a result of this accident, are manifestly low and inadequate. He referred to the case of *Baxter* v. *The Admiralty* [1961] 2 Lloyd's Rep. 89. In that case McNair, J. said at page 95:–

"As to damages, I am not satisfied that by reason of the accident the plaintiff lost any pension rights. These pension rights he voluntarily abandoned after adequate warning when he resigned from the post he held in order to take over the management of a hotel in Portland. Nor do I consider that the accident itself seriously interfered with his prospects of promotion, which on the evidence before me were not good. On the other hand, his physical injuries are such as to merit a substantial award. He has lost all sense of hearing in his right ear and the sensitivity of his left ear is substantially reduced, though I did not notice that he had much difficulty in answering questions or in following the course of the hearing. He still suffers from some dizziness after stooping and some loss of memory. He still carries the scars of the peppering he received. There is present some degree of unemployability if he has to give up his present occupation. Special damages being agreed at £25 I would assess the general damages at £1800. There will be judgment for the plaintiff for £1825, with costs".

The principles on which this Court can interfere with the judgment of the trial Court on an award of damages, have been enunciated in a line of cases decided by the Courts in England as well as by this Court.

In the case of *Flint* v. *Lovell* [1935] 1 K.B. 354 at page 360, Greer L.J. had this to say:

"I think it right to say that this Court will be disinclined to reverse the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. 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."

In the case of *Davies* v. *Powell Duffryn Associated Collieries Ltd.* [1942] 1 All E.R. 657, at pages 664, 665 Lord Wright said:

"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."

The dicta of Greer, L.J. and Lord Wright, quoted above, were applied in subsequent cases such as *The Yorkshire Electricity Board* v. *Naylor*[1967] 2 All E.R. p. 1 and *Davies and Others* v. *Whiteways Cyders Co. Ltd. and Another* [1974] 3 All E.R. 168.

The above principles were reiterated by this Court in the case of *Mesimeris* v. *Kakoullis* (1973) 1 C.L.R. 138 and *Hassan and Others* v. *Neophytou* (1973) 1 C.L.R. 147.

In the present case the trial Judge, as it appears from his judgment, in awarding the amount of £850.– as general damages took into account mainly the loss of hearing in the right ear of the appellant but, in our view, even for this injury alone the amount awarded is below the lower end of the bracket, which would be applicable to-day to injuries such as this one. We have, therefore, decided to increase the award of general damages to £1100.– with an order for costs, both here and in the lower Court, in favour of the appellant to the new scale applicable. This figure, is, in our view, in line with the figure awarded in the case of *Baxter* v. *The Admiralty*, *supra*, after, of course, making all the necessary adjustments.

The appeal is, therefore, allowed with costs and the judgment of the lower Court is varied accordingly.

Appeal allowed with costs.