

1979 May 22

[TRIANAFYLLIDES, P., STAVRINIDES AND L. LOIZOU, JJ.]

SOCRATES ELIADES,

Appellant-Defendant,

v.

VASSOS LYSSARIDES,

Respondent-Plaintiff.

(Civil Appeal No. 5060).

Damages—General damages—Assault—“Aggravated damages”—“Exemplary damages”—Distinction—Whether Court has power to award “exemplary damages”—What matters is not the description of damages as “exemplary” but what they were awarded for.

This was an appeal by the defendant from an award of £750.— 5
“general and exemplary damages” for assault.

On the question whether the trial Court had power to award “exemplary damages”:

*Held, (1) that “aggravated damages” are truly compensatory, 10
being given for the injury to the plaintiff’s proper feelings of
dignity and pride; that exemplary damages are not compensatory
but are awarded to punish the defendant and to deter him
from similar behaviour in the future (see Winfield and Jolowicz
on Tort 10th edn. pp. 555–556).*

(2) That, though the trial Court described the damages as 15
“exemplary”, what matters is not the description but what they
were awarded for, as to which the Court said:

“ Having regard to the circumstances under which and the 20
place where the incident took place, the position in life of
the plaintiff as already described, the social standing of the
persons present at the ball, the fact that the defendant provo-
ked the plaintiff, the defendant’s conduct immediately after
the incident, that is to say, his vulgar language and bullying

attitude in the exhibition hall of the hotel as this was described by P.W. 4 Andreas Vlachos, the evidence of whom we accept as true, the injuries the plaintiff sustained, his discomfort and pain and suffering, we find that the plaintiff
5 is entitled to the sum of £ 700.— as general and exemplary damages”.

(3) That it is clear that all matters referred to in the passage other than the respondent’s behaviour “in the exhibition hall” go solely to general damages; that what passed in the “exhibition hall” also is relevant to damages, because that, too, was injurious
10 to the respondent’s “proper feelings of dignity and pride”; that it is clear that the Court was not influenced by a desire “to punish or deter” the appellant, but was concerned solely to award an amount commensurate with the respondent’s injury; and that,
15 accordingly, the appeal must be dismissed.

Appeal dismissed.

Cases referred to:

- Paraskevopoulos v. Georghiou* (1970) 1 C.L.R. 116;
Gregoriades v. Kyriakides (1970) 1 C.L.R. 120;
 20 *Paraskevas v. Mouzoura* (1973) 1 C.L.R. 88;
Rookes v. Barnard [1964] 1 All E.R. 367;
Broome v. Cassell & Co. Ltd. [1971] 2 All E.R. C.A. 187.

Appeal.

Appeal by defendant against the judgment of the District
25 Court of Nicosia (Demetriades, Ag. P.D.C. and Papadopoulos, D.J.) dated the 25th January, 1972, (Action No. 2193/70) whereby the amount of £ 700.— was awarded to the plaintiff as general and exemplary damages for assault.

K. Saveriades and C. Adamides, for the appellant.
 30 *G. Cacoyiannis and A. Paikkos* for the respondent.

Cur. adv. vult.

TRIANAFYLLIDES P.: The judgment of the Court will be delivered by Stavrinides, J.

STAVRINIDES J.: This is an appeal by the defendant from an
35 award of £ 700 “general and exemplary damages” for assault. The incident that gave rise to the action is thus described in the judgment of the trial Court:

“ On the night of the 4th April, 1970, the Nicosia Medical

Association was holding a ball at the Hilton Hotel here which was attended by approximately 300 doctors, their wives and guests. The plaintiff, as chairman of the said Association, was acting as the host of the function. The defendant attended the ball as the guest of Dr. A. Daphnios, a Nicosia surgeon. Whilst the plaintiff was dancing, the defendant, by gestures, invited the plaintiff to join him at his table and the latter did so.

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It is an undisputed fact that after the plaintiff joined the defendant, the latter reminded him of an unpleasant incident which took place between them at Athens airport in 1965, and which incident, according to the defendant, provoked the plaintiff to such an extent that he nearly assaulted the defendant. What exactly followed is in dispute but the conversation at the Hilton ball-room ended by defendant assaulting the plaintiff."

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The notice of appeal contains eight grounds. The first four dispute certain findings of fact; but these were not pursued before us and therefore we need say nothing more about them. The fifth ground is to the effect that the Court was not entitled to award "exemplary" damages "and/or misled itself as to the relevant principles of law". The sixth, seventh and eighth grounds in substance are to the effect that the Court erroneously disregarded provocation on the part of the respondent.

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The following quotation from the judgment of the trial Court completely disproves the last three grounds:

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"Comparing now the evidence of the defendant with the allegations in the statement of defence set out hereinabove, one cannot but reach the conclusion that the defence put forward in the statement of defence cannot stand and that the assault committed by the defendant was not the result of any provocation, insulting words or phrases uttered by the plaintiff, as alleged in the statement of defence. Having regard to the evidence of the defendant that as soon as the plaintiff joined him, on his invitation at his table, he, the defendant, reminded the plaintiff of a most unpleasant incident that occurred between them some years before, we find, to say the least, that provocation, if any, came from the defendant himself and not from the plaintiff."

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Coming now to the fifth ground, three Cyprus cases, viz. *Paraskevopoulos v. Georghiou*, (1970) 1 C.L.R. 116; *Gregoriades v. Kyriakides*, (1970) 1 C.L.R. 120; *Paraskévas v. Mouzoura*, (1973) 1 C.L.R. 88, and two English cases, viz. *Rookes v. Barnard*, [1964] 1 All E.R. 367, *Broome v. Cassell & Co. Ltd.*, [1971] 2 All E.R. C.A., 187, were cited by counsel for the appellant in argument. The award in the *Paraskevopoulos* case was not one of exemplary damages and therefore is of no assistance here. In the *Gregoriades* case Vassiliades, P., giving the judgment of the Court, said at p. 123:

“ We find it unnecessary to go into detail regarding the origin of the personal feelings of the parties; and the circumstances in which the assault was committed. We share the view expressed in the judgment of the trial Court that this was an aggravated assault calling for exemplary damages.”

“ Exemplary damages” were awarded in that case because the assault had been committed in the District Court building, without provocation. The third case also is of no assistance, because there what the Court was concerned with was damages for breach of promise to marry.

Now as to the English cases, we think their result may be adequately shown by quoting from Winfield and Jolowicz on Tort (10th Edn.) where, at pp. 555-556, it is stated that:

“ In any case in which damages are at large, that is, where they cannot be precisely calculated in money terms, the Court may take into account the motives and conduct of the defendant, and where these aggravate the plaintiff's injury the damages will be correspondingly increased. These “aggravated damages” are truly compensatory, being given for the injury to the plaintiff's proper feelings of dignity and pride. Exemplary damages, on the other hand, are not compensatory but are awarded to punish the defendant and to deter him from similar behaviour in the future. This distinction, though clear in theory, is difficult to apply in practice; it was also, until recently, relatively insignificant, for it was thought that exemplary damages, like aggravated damages, could be awarded in any case of tort. Now, however, in *Rookes v. Barnard*, the House

of Lords, through Lord Devlin, has restated the law regarding exemplary damages and has severely limited their scope, and this restriction has again been affirmed by the House in *Cassell & Co. Ltd. v. Broome*. It is true that Lord Devlin thought that this would not make a great difference to the substance of the law, for aggravated damages can do most of the work of exemplary damages, but, subject to what is said below, it is now clear that, except in the rare cases where exemplary damages are still allowed, any award must be strictly justifiable as compensation for the injury sustained.”

It may be observed that in that passage damages for injury to the respondent's “proper feelings of dignity” are described as “aggravated damages”, whereas the damages awarded by the trial Court in this case were described by it as “exemplary”. The learned authors go on to state (pp. 556, 557) that according to the view expressed by Lord Devlin in *Rookes v. Barnard* “exemplary damages” may now be awarded only in two classes of case: “(i) oppressive, arbitrary or unconstitutional action by servants of the Government” and (ii) cases where the defendant's conduct has been calculated by him to make a profit for himself which may exceed the compensation payable to the plaintiff”. According to that view the trial Court in this case had no power to award exemplary damages in the true sense of the expression as used in the above quotation. But is that what it did? It so described them. But what matters is not the description, but what they were awarded for, as to which the Court said:

“ Having regard to the circumstances under which and the place where the incident took place, the position in life of the plaintiff as already described, the social standing of the persons present at the ball, the fact that the defendant provoked the plaintiff, the defendant's conduct immediately after the incident, that is to say, his vulgar language and bullying attitude in the exhibition hall of the hotel as this was described by p. w. 4. Andreas Vlachos, the evidence of whom we accept as true, the injuries the plaintiff sustained, his discomfort and pain and suffering, we find that the plaintiff is entitled to the sum of £ 700.— as general and exemplary damages.”

It is clear that all the matters referred to in the passage other than the respondent's behaviour "in the exhibition hall" go solely to general damages. But what passed in the "exhibition hall" also is relevant to damages, because that, too, was injurious to the respondent's "proper feelings of dignity and pride".

With regard to the complaint that the trial Court disregarded provocation by the respondent, we must point out that that Court rejected the appellant's evidence on that topic and on the contrary found that provocation had been offered by the appellant to the respondent. It is clear that the Court was not influenced by a desire "to punish or deter" the appellant, but was concerned solely to award an amount commensurate with the respondent's injury.

For these reasons the appeal must fail and is dismissed with costs.

Appeal dismissed with costs.