1981 April 14

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

GENERAL PRESS AGENCY "POULIAS & CONIARIS LTD.",
Appellants-Defendants,

v.

CHRISTOFOROS CHRISTOFIDES,
Respondent-Plaintiff.

(*Civil Appeal No.* 5544).

Damages—Libel—Matters relevant to assessment—Principles on which Court of Appeal interferes with awards of damages made by trial Courts—Libel published in a newspaper—Joint publication—Innocent parties thereto ought not to be affected by malice of malicious party—Punitive or exemplary damages ought not to creep back into the assessment in some other guise—Though trial Court took view that appellants liable to pay compensatory damages award of £2,500 in effect punitive or exemplary damages, and so extremely high as to make it an entirely erroneous estimate of the damages—Assessed on a wrong principle of Law—Reduced.

On January 22, 1975 there was published in "ETHNIKI" newspaper a defamatory publication* concerning the respondent, a member of the House of Representatives. In an action by the respondent for damages against, *inter alia*, the publishing company, and the appellants, who were the distributors of the newspaper in question, the trial Court found that the said publication was a gravely defamatory one; that the conduct of the appellants was much better than that of the other defendants; that such conduct has not contributed in any way in making the injury suffered by the respondent as a result of the publication greater; that, on the contrary, appellants took every possible and proper step in order to minimize it; and that the appellants were liable only to ordinary compensatory damages which were assessed at £2,500. The appellants offered to make amends and apologise after receiving the writ.

* The publication is quoted at pp. 192-94 *post*.

Upon appeal against the award of £2,500 *damages*:

Held, (1) that in assessing damages the Court may take into consideration the conduct of the defendant before action, after action and at the trial and should, also, take into consideration the evidence led in aggravation or mitigation of damages; that the innocent party to a joint publication ought not to be affected by the malice of the malicious one; that the object of the award of damages is not to punish the wrong-doer but to compensate the person to whom the wrong was done; that it would not be right to allow punitive or exemplary damages to creep back into the assessment in some other guise; that in spite of the fact that the trial Court took the view that the appellants were liable only to pay compensatory damages, nevertheless, in awarding the sum of £2,500 it erred in law because that sum is in effect punitive or exemplary damages that crept back into the assessment in some other guise.

(2) That though this Court will not readily interfere with an award of damages unless the trial Court has miapprehended the facts or has taken into account irrelevant factors or applied a wrong principle of law, in the present case the trial Court acted on a wrong principle of law and that the amount of £2,500 awarded was also so extremely high as to make it an entirely erroneous estimate of the damages requiring the interference of this Court; that having regard to the facts and circumstances of this case, including the conduct of the appellant and of the other defendants the proper amount of damages to be awarded to the respondent, having regard to the nature of the libel in question, is the amount of £1,500; accordingly the appeal must be partly allowed.

Appeal partly allowed.

Cases referred to:

McCarey v. *The Associated Newspapers Limited and Others* [1964] 3 All E.R. 947 at p. 957;

Egger v. *Viscount Chelmford and Others* [1964] 3 All E.R. 406 at p. 411;

Cassell and Co. Ltd. v. *Broome and Another* [1972] 2 W.L.R. 645 at p. 662;

Davies v. *Powell Duffryn* [1942] A.C. 616;

Constantinides v. *Koureas* (1978) 1 C.L.R. 139 at p. 147.

Appeal.

Appeal by defendant 3 against the judgment of the District Court of Larnaca (Artemis and Constantinides, D.JJ.) dated the 12th December, 1975 (Action No. 166/75) whereby the sum of £2,500.–was awarded to the plaintiff as damages against the defendants for a libel contained and published in the newspaper "ETHNIKI".

C. Indianos, for the appellants.

G. Nicolaou with *A. Andreou*, for the respondent.

Cur. adv. vult.

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

HADJIANASTASSIOU J.: This is an appeal against the judgment of the Full District Court of Larnaca by which the sum of £2,500 was awarded to the respondent as damages against the appellants for a libel contained and published in the newspaper "ETHNIKI" on 22nd January, 1975.

The facts

On 19th January, 1975, the respondent, a member of the House of Representatives, delivered a speech at St. George Contos Church at Larnaca during the memorial service for all those who died during the coup d' etat of 15th July, 1974, and the Turkish invasion. After the memorial service on 22nd January, 1975, the following publication appeared at page 2 of the daily newspaper "ETHNIKI":

"ΤΟ ΚΑΚΟΝ ΠΑΡΑΔΕΙΓΜΑ ΕΚΕΙΝΟΥ

ΜΕΤΑ τὸ κακὸν παράδειγμα, τὸ ὁποῖον ἔδωσεν εἰς τοὺς ἀμετανοήτους φασίστας ὀπαδοὺς του ὁ πρόεδρος Μακάριος, διὰ τῆς τελέσεως ὑπ' αὐτοῦ μνημοσύνου ὑπὲρ τῶν πεσόντων κατὰ τὸ πραξικόπημα τῆς 15ης Ἰουλίου, διὰ νὰ ἀναζέση πληγὰς παρὰ τὰς διακηρύξεις του περὶ δῆθεν πολιτικῆς του λήθης καὶ ἐθνικῆς ἑνότητος, παρόμοιον, διασπαστικὸν τοῦ λαοῦ, μνημόσυνον ἐτελέσθη προχθὲς καὶ εἰς Λάρνακα. Καὶ εἰς τὸ τελευταῖον τοῦτο ὠμίλησεν ὁ καμουφλαρισμένος ὡς ἀνεξάρτητος βουλευτὴς πρώην ὀπαδὸς τῆς σοσιαλφασιστικῆς 'ΕΔΕΚ' κ. Χρ. Χριστοφίδης, διὰ νὰ χύση τὸ ἀνθελληνικὸν του δηλητήριον καὶ νὰ προαγάγη αἰσθήματα μίσους μεταξὺ τοῦ λαοῦ.

'Ωμίλησε περὶ ' ἐφιαλτῶν τοῦ 'Ελληνικοῦ "Εθνους ' ὁ ἐν λόγω ψευδοαποστάτης τοῦ σοσιαλφασιστικοῦ κόμματος, χωρὶς νὰ ὑπολογίζη ὅτι ἡ ἀδέκαστος 'Ιστορία θὰ ἐκδώση μίαν ἡμέραν τὴν ἐτυμηγορίαν της, διὰ τῆς ὁποίας οἱ σημερινοὶ κατήγοροι θὰ λάβουν τὴν πραγματικὴν των θέσιν ὡς κατηγορούμενοι εἰς τὴν συνείδησιν ὁλοκλήρου τοῦ 'Ελληνισμοῦ.

Τὰ σημερινὰ γεγονότα, τὰ ὁποῖα ἀποδεικνύουν ποῖοι διὰ τῆς πολιτικῆς των προάγουν τὰ διαμελιστικὰ σχέδια τῶν Τούρκων καὶ εἰς ἀντιπερισπασμὸν ἐργάζονται νὰ διασπάσουν τὸν 'Ελληνικὸν Κυπριακὸν λαὸν διὰ νὰ μὴ δυνηθῆ οὗτος νὰ ἀντιδράση εἰς τὴν προδοτικὴν των πολιτικὴν, εἶναι ἱκανὰ διὰ νὰ ἐξαναγκάσουν ὅλους τοὺς ἐχθροὺς τοῦ λαοῦ νὰ ' βουλλώσουν ' πλέον τὸ βρωμερὸν στόμα των".

("HIS BAD EXAMPLE

After the bad example which President Makarios gave to his unrepentant fascist followers by officiating at a memorial service for 'those who fell during the coup d' etat of the 15th July', to rake wounds, in spite of his declaration for his so-called policy of oblivion and national unity, a similar memorial service, promotive of the division of the people, was held the day before yesterday at Larnaca. And in the latter, Mr. Christofides, a member of the House of Representatives disguised as 'independent', former supporter of the socialfascist 'EDEK', spoke to pour his anti-Hellenic poison and to promote feelings of hatred among the people.

The said pseudoapostate of the socialfascist party spoke of 'traitors of the Greek Nation' without appreciating that objective history will one day give its verdict, by which today's accusers will take their true place as accused in the conscience of all Hellenes.

Today's events which prove who are those who promote by their policy the Turkish plans for partition and work, in diversion, to divide the Greek-Cypriot people so that they will not be able to react to their treasonable policy,

are sufficient to force all the enemies of the people to shut their dirty mouth").

As a result of that publication, the plaintiff instituted an action alleging that the publication as a whole was defamatory of himself and claimed damages.

The respondent has been practising as a dentist at Larnaca since 1950, and during the 1955–59 struggle, was a detained person for a period of two years. On the establishment of the Republic, he was elected as a member of the Greek Communal Chamber in August, 1960. He served only till March, 1964 when the Chamber was dissolved. In July, 1970, he was elected as a member of the House of Representatives and continued to hold that post till the present day. In the meantime, at the time of the coup after the ceasefire, he was arrested once more this time by the gunmen of EOKA B. He was taken to the police station and he was released after a period of 5–6 hours.

There is no doubt that the newspaper Ethniki was the mouthpiece at the relevant time of those opposed to the late President of the Republic and who approved the coup.

During the hearing of the present case, counsel for General Press Agency, the defendants, quite rightly in our view, made this statement:

"My clients do not question the plaintiff's good character and patriotism, and when they realized the existence of the publication when they received the writ by a letter, they offered to make amends and apologise".

It appears that the publication in question was published in the commentary which reflected the policy of the newspaper Ethniki, in the first column of page 2, and it was written by the person responsible for the column. There is no doubt that the said publication was a libellous one, and indeed, the appellants had an obligation to check its contents before circulation.

It appears also that the defendants, the General Press Agency

"Poulias & Coniaris Ltd." of Nicosia, are the distributors of a number of local and foreign newspapers, as well as magazines and other periodicals. Andreas Kakoullis, who was in charge of checking both the local and foreign press including several other foreign publications, told the Court that he had no previous knowledge of libels published in "Ethniki". He further explained that because he had to check a variety of newspapers it was impossible to do so within the time which he had at his disposal before the newspapers were distributed. He also admitted that in all the cases in which it came to his knowledge that a part was containing a libel, it was cut by him. However, he fairly conceded that on that date he did not check or read the contents of Ethniki, alleging that he had no time to do so. The first time that it came to his knowledge, he added, was on the date when the writ of summons was served on the company. He finally said that he used to check the commentaries and articles in all pages of all newspapers and when he needed legal advice he asked for it.

With respect, we have no doubt in our minds that Mr. Kakoullis, once he had instructions to check the newspapers, it was his duty to check first and more carefully those newspapers which were most likely to certain offensive publications because of their political beliefs and orientations. His failure to do so shows that he was guilty of negligence, and we cannot accept that his explanation that he was too busy and that he had no time to check the newspaper which was likely to publish libels is a good excuse.

The defendants made an apology and an offer of amends which the plaintiff rejected in writing, because he rightly felt hurt in being called a fascist.

Findings of the Court

The trial Court, having examined the publication in question, reached the conclusion that it was a gravely defamatory one, because the combined effect of the statements was to portray the plaintiff as being politically unscrupulous afflicted by the malaise of fascism and a person with no loyalty to his fatherland and in fact an enemy of it and a traitor of its national cause. Dealing

also with the conduct of the defendants regarding the publication of the libel, the Court said defendants 3 failed to persuade them that the libel was published without any negligence on their part. On the contrary, it was added that they were convinced that if the defendants were not so grossly negligent the libel would probably have never been published. The publication was prima facie defamatory. Any reasonable man would understand it as such. The defendants adopted a completely inadequate and ineffective system of checking the material to be circulated. It is apparent that they were rather interested to put into circulation as many newspapers and other material as they could at the lowest possible cost than to fulfil their most serious and even elementary obligations towards the public. Indeed, the trial Court accepted that appellant 3 acted correctly after they had an opportunity of so doing and the Court made it clear that they intended to take that part of their conduct into consideration in their favour. In addition the Court said that defendants put forward defences which were in line with their stand and showed that they separated their position from that of the other defendants who had withdrawn from the case.

Finally, the Court said at p. 70:-

"Even a simple comparison between the respective conduct of each of the defendants shows that the conduct of defendants 3 was much better than that of defendants 1 and 4. We do not intend though, in view of what follows below, to expand in determining whether an award of exemplary damages against defendants 1 and 4 is justified or even can be made because we do not think that an award of exemplary or even aggravated damages is justified against defendants 3. We reached this conclusion although we have strong views regarding the degree of negligence of defendants 3. Nevertheless, we do not think that the conduct of defendants 3 contributed in any way in making the injury suffered by the plaintiff as a result of the publication greater. On the contrary, they took every possible and proper step in order to minimize it as we have already indicated.

It is well settled that in actions as the present one where there are several defendants who have all committed the

same tort there can be only one award of damages against all of them. This principle has been enunciated since 1613, in Heydon's case (1613) 11 Co. Rep. 56 and described as the necessary and logical result of the legal principles applicable to this kind of action. The problem which has arisen in view of the necessity that a single award should be made was whether the damages should be fixed at a high sum which the more blameworthy ought to pay or a low sum for the least blameworthy".

Finally, the Court having given the matter of the compensation further consideration, said:-

" since defendants 3 are liable only to ordinary compensatory damages this is the award we intend to make.

In the result, having carefully examined all the material before us and having taken into consideration every relevant factor, we give judgment for the plaintiff for £2,500".

There is no doubt that according to s. 23 of our Civil Wrongs Law, Cap. 148, an apology or an offer of an apology to the plaintiff before the commencement of the action or as soon as the defendant had an opportunity, if the action was commenced before he had an opportunity of so doing, in our view, constitutes a ground of mitigation of any compensation that may be awarded, and the Court may, having regard to the circumstances of the case, take all or any of such matters into consideration in assessing compensation.

3. *Appeal*

Counsel in support of his appeal put forward a number of grounds but we think it is necessary to deal only with the grounds which deal with the question of damages and nothing else, as we find no merit in them. Counsel in a strong and forceful argument, invited the Court to interfere with the award of damages made by the trial Court (a) because it erred in law in that though it accepted the legal principles that from the facts and circumstances of the present case, and that the liability of appellant-defendant 3 does not warrant the award of exemplary or aggravated damages, nevertheless, it finally decided that the proper amount of damages to the plaintiff was the sum of £2,500; and which in effect tantamount to exemplary

or aggravated damages and/or that the amount of the said damages is far too excessive;

(b) that the Court erred in law once it reached the conclusion that there was no malice by the appellant regarding the publication and proceeded to award such a large amount of damages, which in effect, amounts to a miscarriage of justice; and

(c) that because the Court had accepted that Ethniki at the material time had the smallest circulation in Cyprus, wrongly reached the conclusion that because of the position of the plaintiff—being a member of Parliament—it was of no consequence.

We think we would reiterate that defamation is an infringement of the reputation of a person and the law recognizes in every man a right to have the estimation in which he stands, in the opinion of others, unaffected by false statements to his discredit. This right, as it has been said in a number of cases, is protected by law and no man may try or disparage or destroy the reputation of another. Indeed, the Court in assessing the damages, is entitled to take into consideration the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent of the publication, the absence or refusal of any retraction or apology, and the whole conduct of the defendant from the time when the libel was published until the very moment of judgment. The Court may also take into consideration the conduct of the defendant before action, after action, and indeed at the trial of the action and should also take into consideration the evidence led in aggravation or mitigation of damages.

The first question is whether the damages awarded by the trial Court against the appellants are in the nature of exemplary or punitive damages. Dealing with this question in *McCarey* v. *the Associated Newspapers Limited and Others*, [1964] 3 All E.R. 947, Pearson, L.J., in reviewing a number of cases regarding the distinction between compensatory damages and punitive had this to say at p. 957:-

> "If I may summarise shortly in my own words what I think is to be derived from that case, it is this, that from henceforth a clear distinction should be drawn between compensatory damages and punitive damages. Compensatory damages in a case in which they are at large may

include several different kinds of compensation to the injured plaintiff. They may include not only actual pecuniary loss and anticipated pecuniary loss or any social disadvantages which result, or may be thought likely to result, from the wrong which has been done. They may also include natural injury to his feelings; the natural grief and distress which he may feel in being spoken of in defamatory terms; and, if there has been any kind of high-handed, oppressive, insulting or contumelious behaviour by the defendant which increases the mental pain and suffering which is caused by the defamation and which may constitute injury to the plaintiff's pride and self-confidence, those are proper elements to be taken into account in a case where the damages are at large. There is, however, a sharp distinction between damages of that kind and truly punitive or exemplary damages. To put it in another way, when you have computed and taken into account all the elements of compensatory damages which may be awarded to the plaintiff and arrived at a total of £X, then it is quite wrong to add the sum of £Y by way of punishment of the defendant for his wrong-doing. The object of the award of damages in tort nowadays is not to punish the wrongdoer, but to compensate the person to whom the wrong has been done. Moreover, it would not be right to allow punitive or exemplary damages to creep back into the assessment in some other guise. For instance, it might be said: 'You must consider not only what the plaintiff ought to receive, but what the defendant ought to pay'. There are many other phrases which could be used, such as those used in the extracts which I have cited from some of the decided cases. In my view, that distinction between compensatory and punitive damages has now been laid down quite clearly by the House of Lords in *Rookes* v. *Barnard* [1964] 1 All E.R. 367, and ought to be permitted to have its full effect in the sphere of libel actions as well as in other branches of tort".

We think that we ought to have stated that the present action was instituted against the publishing company "Parthenon" Ltd. of Nicosia; (2) Printing Offices "Parthenon" Ltd. of Nicosia; (3) General Press Agency "Poulias & Koniaris Ltd." of Nicosia, (4) Lefteris Papadopoulos of Nicosia-Defendants,

but the action against defendant 2 was withdrawn and dismissed with no order as to costs. With that in mind, and fully aware that the extent of the publication of the libel against the appellant was limited in view of the smaller circulation of Ethniki, which finally had ceased being published, we turn once again to consider whether in this particular case the trial Court did try in some way to protect the more innocent party to a joint publication.

In *Egger* v. *Viscount Chelmford and Others*, [1964] 3 All E.R. 406, Lord Denning M.R. had this to say at p. 411:-

> "It would be very unjust to make the malignant motive of one party a ground of aggravation of damages against the other party, who was altogether free of any improper motive. In such case the plaintiff ought to select the party against whom he means to get aggravated damages. If the plaintiff sues them all three jointly, then by a settled rule of law dating back to 1611, there can be only one judgment and one assessment of damages, even though one of them is malicious and the others are not (see Heydon's Case, (1584) 3 Co. Rep. 7a). But I think that the jury should be directed not to give anything in the nature of aggravated damages in a verdict which will affect the one who was innocent of malice. In short, the innocent parties to a joint publication ought not to be affected by the malice of the malicious one".

Later on the Master of the Rolls continued as follows:-

> "Each defendant is answerable severally, as well as jointly, for the joint publication: and each is entitled to his several defence, whether he be sued jointly or separately from the others. If the plaintiff seeks to rely on malice to aggravate damages, or to rebut a defence of qualified privilege, or to cause a comment, otherwise fair, to become unfair, then he must prove malice against each person whom he charges with it. A defendant is only affected by express malice if he himself was actuated by it: or if his servant or agent concerned in the publication was actuated by malice in the course of his employment".

In a recent case, *Cassell and Co. Ltd.* v. *Broome and Another*,

[1972] 2 W.L.R., 645, Lord Hailsham of St. Marylebone, L.C. delivering the first speech had this to say at p. 662:-

> "I think that the inescapable conclusion to be drawn from these authorities it that only one sum can be awarded by way of exemplary damages where the plaintiff elects to sue more than one defendant in the same action in respect of the same publication, and that this sum must represent the highest common factor, that is, the lowest sum for which any of the defendants can be held liable on this score. Although we were concerned with exemplary damages I would think that the same principle applies generally and in particular to aggravated damages, and that dicta or apparent dicta to the contrary can be disregarded. As counsel conceded, however, plaintiffs who wish to differentiate between the defendants can do so in various ways, for example, by electing to sue the more guilty only, by commencing separate proceedings against each and then consolidating, or, in the case of a book or newspaper article, by suing separately in the same proceedings for the publication of the manuscript to the publisher by the author. Defendants, of course, have their ordinary contractual or statutory remedies for contribution or indemnity so far as they may be applicable to the facts of a particular case. But these may be inapplicable to exemplary damages".

Having reviewed the authorities and having listened to the eloquent address of both counsel, it appears to us that the object of the award of damages in tort nowadays is not to punish the wrong-doer but to compensate the person to whom the wrong was done. Indeed it would not be right to allow punitive or exemplary damages to creep back into the assessment in some other guise. In our view and in spite of the fact that the trial Court took the view that defendants 3 were liable only to pay compensatory damages, nevertheless, in awarding the sum of £2,500 the Court erred in law because that sum awarded is in effect punitive or exemplary damages and crept back into the assessment in some other guise.

We are aware of course that awards by a judge sitting alone may more easily be upset than those made by juries, but as the damages are essentially a matter of impression and or common

sense, see Lord Wright in *Davies* v. *Powell Duffryn* [1942] A.C. p. 616, this Court of Appeal will not readily interfere, unless the judge has misapprehended the facts or has taken into account irrelevant factors or applied a wrong principle of law. In the present case and having in mind the facts and circumstances of the present case in our view the trial Court acted on a wrong principle of law—as we have said earlier, and that the amount of £2,500 awarded was also so extremely high as to make it an entirely erroneous estimate as to require our interference. In our opinion for the reasons we have given at length and having gone into the facts and circumstances of this case including the conduct of the appellant and of the other defendants we have reached the conclusion that we must interfere with the award made by the trial Court. In our view, therefore, the proper amount of damages to be awarded to the respondent, having regard to the nature of the libel in question, is the amount of £1,500. See *Constantinides* v. *Koureas* (1978) 1 C.L.R. 134 at p. 147.

For the reasons we have given, the appeal is partly allowed, but in the particular circumstances of this case, we make no order as to costs.

Appeal partly allowed. No order as to costs.