CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
ON APPEAL
AND
IN ITS ORIGINAL JURISDICTION

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[TRIANTAFYLLIDES, P., A. LOIZOU, AND MALACHTOS, JJ]

OSMAN MENTESH AND ANOTHER,
Appellants-Defendants,

v.

EVRIPIDES HADJIDEMETRIOU,
Respondent-Plaintiff.

(Civil Appeal No. 5173).

Findings of fact made by trial Court—Based on credibility of witnesses—Appeal—Principles on which Court of Appeal acts.

Damages—General damages—Personal injuries—Approach of Court of Appeal—Loss of sense of hearing in the right ear—Permanent numbness of the right 4th and 5th fingers—Sublaxation of the right acromioclavicular joint with slight weakness of the grip of the hand—A mild post concussional syndrome—Award of £2,000 sustained.

The respondent-plaintiff was injured in a traffic accident for which the appellants-defendants were held liable and suffered:

"(a) complete and permanent deafness of the right ear;

(b) sublaxation of the right acromioclavicular joint with slight weakness of the grip of the hand;

(c) permanent numbness of the right 4th and 5th fingers, which exposed him to danger emanating from loss of sense of touch, such as dangers from fire, rubbing, etc. incidental to his every day work; and

(d) a mild post concussional syndrome".

Upon appeal against an award of £2,000 general damages Counsel for the appellants-defendants mainly contended that the finding of the trial Court that the loss of sense of hearing in the right ear of the respondent was due to the injuries he received as a result of the accident inspite of the evidence of D.W.1 Dr. Stephanopoulos, who stated that on admission to the hospital, the plaintiff did not complain to him of any head injury but only that he was feeling pain in his right shoulder was wrong and that the amount of general damages awarded was manifestly excessive even if it were to be accepted that the loss of sense of hearing was due to the injuries received in the accident.

In making its finding about the loss of hearing the trial Court heard medical evidence and this finding was based on the Court's view of the credibility of the witnesses.

Held, that the findings of the trial Court will not be disturbed on appeal, unless the appellant can satisfy this Court that the reasoning behind such findings is unsatisfactory, or that they are not warranted by the evidence when considered as a whole; that counsel for the appellant did not discharge the onus which rests on him to persuade this Court that the reasoning behind the findings of the trial Court was unsatisfactory or that such findings are not warranted by the evidence; that it was reasonably open to the trial Court to accept the evidence adduced on behalf of the plaintiff as true and correct and to arrive at the conclusions it did.

(2) That taking into consideration the injuries of the respondent in this appeal as found by the trial Court, the amount of £2,000.- general damages awarded is within the brackets which would be applicable to injuries such as these and this Court will not interfere with the judgment of the trial Court on this ground of appeal either.

Appeal dismissed.

Cases referred to.

Charalambous v. *Demetriou*, 1961 C.L.R. 19,

Mamas v. *The Firm "Arma" Tyres* (1966) 1 C.L.R. 158 at p. 160;

Thomaides & Co. Ltd. v. *Lefkaritis Bros.* (1965) 1 C.L.R. 20:

Patsalides v. *Afsharian* (1965) 1 C.L.R. 134;

Clarke v. *Edinbourgh Tramways Co.* [1919] S.C. 35 at p. 36 (H.L.);

Watt or Thomas v. *Thomas* [1947] A.C. 484;

Baxter case [1961] 2 Lloyd's Rep. 95;

Nedas v. *Godfrey Brooke* (July 24, 1962);

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 Cyders 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;

Saveriades and Others v. *Georghiades and Others* (1982) 1 C.L.R. 574.

Appeal.

Appeal by defendants against the judgment of the District Court of Limassol (Loris, P.D.C. and Hadjitsangaris, S.D.J.) dated the 22nd February, 1973 (Action No. 3020/71) whereby they were ordered to pay to plaintiff the sum of £2,087.- as special and general damages for injuries sustained by him as a result of a traffic accident.

M. Aziz, for the appellants.

B. Vassiliades, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. The judgment of the Court will be delivered by Mr. Justice Malachtos.

MALACHTOS J.: This case arose out of a motor car accident that occurred on the Limassol Paphos main road between the 63rd and 64th milestone on the night of the 14th December, 1970. The first defendant was the driver and the second defendant the owner of the bus under Registration No. TET 596

which, at the time of the accident, was driven from the direction of Paramali towards Limassol town. Just outside Episkopi village and while defendant 1 was negotiating a left hand bend he was confronted with another motor vehicle which was driven in the opposite direction and in an effort to avoid the collision swerved suddenly to his left in order to take his extreme left hand side and due to his overspeeding, he collided on a culvert and subsequently on a nearby carob tree. The bus then overturned on its offside and stopped.

The plaintiff, who was a passenger in the bus returning to Limassol town from Episkopi cantonment, where he worked as a cook, sustained bodily injuries and instituted legal proceedings against the two defendants claiming special and general damages for negligence.

The Full District Court of Limassol found, on the evidence adduced, that defendant 1 was entirely to blame for the accident and awarded to the plaintiff £2,087.—damages, i.e. £2,000.- as general damages and £87.- special, against both defendants jointly and severally. In awarding the sum of £2,000.- as general damages the trial Court found that as a result of the accident the plaintiff respondent in this appeal, a 56-year old cook, and a healthy man, due to his injuries he sustained, suffered:-

(a) complete and permanent deafness of the right ear;

(b) sublaxation of the right acromioclavicular joint with slight weakness of the grip of the hand;

(c) permanent numbness of the right 4th and 5th fingers, which exposed him to danger emanating from loss of sense of touch, such as dangers from fire, rubbing, etc. incidental to his every day work; and

(d) a mild post concussional syndrome.

We are not concerned in this appeal with the findings of the trial Court on the question of liability as to the cause of the accident or the amount of special damages. The complaint of the appellants is, firstly, against the finding of the trial Court that the loss of sense of hearing in the right ear of the respondent was due to the injuries he received as a result of the accident inspite of the evidence of D.W.1 Dr. Stephanopoulos, who

stated that on admission to the hospital, the plaintiff did not complain to him of any head injury but only that he was feeling pain in his right shoulder and, secondly, that the amount of £2,000.– general damages awarded is manifestly excessive even if we accept that the loss of sense of hearing in the right ear of the plaintiff was due to the injuries he received as a result of the accident.

It was the case for the defendants before the trial Court that the loss of sense of hearing in the right ear of the plaintiff pre-existed the accident and in support of this allegation called besides Dr. Stephanopoulos, two more witnesses, namely, Houlousi Hamsa and Osman Mentesh, both drivers in the service of defendant 2 company who gave evidence as D.W.2 and D.W.3 respectively, and testified that they knew the plaintiff before the accident and he was hard to hear when they were talking to him.

The plaintiff, on the other hand in giving evidence stated that as a result of the accident he was injured behind the ear and further down on the neck and shoulder on his right side. At the hospital he was first examined by Dr. Stephanopoulos and later by Dr. Xeros. Since the accident his right ear buzzes continuously and the sense of hearing in this ear has been completely lost. Dr. Xeros, a specialist surgeon, gave evidence before the trial Court as P.W.11, and repeated his findings which were included in the relevant certificate.

The relevant part of the judgment of the trial Court appears at page 58 of the record and reads as follows:

> "This accident occurred at about 11.10 p.m. on 14.12.1970. Later on that night, or at some time in the early hours of the next day, the plaintiff was examined by the Medical Officer on duty at the Limassol Hospital, Dr. Stephanopoullos (D.W.1). This doctor stated to us, refreshing his memory from exh. 6, that the plaintiff only complained to him of pain on the right shoulder. We are convinced that this doctor, considering the hour of the examination and the circumstances, did not give a thorough examination to the plaintiff. This is clear from the fact that later on the same day, i.e. 15.12.1970, according to exh. 4, sick leave was granted to the plaintiff by Dr. Xeros who gave

evidence before us as P.W.11. Dr. Xeros stated orally before us his findings, treatment and opinion, which also appear in his report which was produced and it is exh. 5. before us.

His findings in question were:

1. Sublaxation of the right acromioclavicular joint.
2. Mild concussion.
3. Weakness of the grip of the right hand.
4. Deafness.

the doctor presumed that the ulnar nerve was pulled and showed paresis.

The witness examined the plaintiff on several occasions and the latter was complaining to him as late as 15.5.1971 of deafness, weakness of the grip of the right hand, and diminished sensation of the 4th and 5th fingers with unexplained loss of sensation on the 2nd and 3rd fingers of the right hand.

This witness was subjected to vigorous and prolonged cross-examination; we did not want to interrupt the cross-examination as we wanted to allow the Defence every possible opportunity in establishing their defence. We were expecting though that the Defence would adduce evidence to substantiate wild allegations, to say the least, against the doctor, to the effect that the doctor never examined the plaintiff as alleged. To our astonishment no evidence was adduced to substantiate these allegations and it transpired from the evidence adduced by the Defence that they were relying mostly on the report of Dr. Stephanopoullos (D.W.1) in order to rebut the evidence of Dr. Xeros. It was suggested to Dr. Xeros that he did not examine the plaintiff after the accident.

We have had the opportunity of hearing the testimony of Dr. Xeros, we watched his demeanour in the witness box and we are satisfied that Dr. Xeros told the truth. On the same day of examination Dr. Xeros signed a sick leave certificate for the plaintiff which is exh. 4 before us, which affords a strong corroboration of the testimony

of this doctor, to the effect that he had examined the plaintiff on 15.12.1970, when the latter was in the Limassol Hospital. It is most unfortunate that a written report of Dr. Stephanopoulos, exh. 6, who examined the plaintiff on admission, superficially, was relied upon in an unsuccessful attempt to attack the credibility of Dr. Xeros who has thoroughly examined the plaintiff. The evidence of Dr. Xeros is in line with the evidence of P.W.3, Dr. Tornaritis, whose evidence we also accept.

P.W.6, Dr. Christodoulos Messis, examined the plaintiff on three occasions, in March 1971, on the 20.3.1971, and the last time on the 11.5.1971. He also performed an E.E.G. on the 25.3.1971. The doctor found no objective neurological abnormalities except for the decrease of hearing on the right side, and the E.E.G. showed a mild iffuse abnormality.

The plaintiff also complained about numbness in the 4th and 5th fingers and headaches, dizzines and buzzing of the ear.

The opinion of Dr. Messis was that due to the injuries of the accident plaintiff sustained a craneo-cerebral trauma, and he subsequently developed a post traumatic brain syndrome of mild degree.

P.W.1, Dr. Demetrios Kontides, an E.N.T. specialist, examined the plaintiff on the 8.3.1971. He found that plaintiff was suffering from anomalies in the right ear, he had buzzing of the ear and could not hear. On examination the doctor found pressure of the tymbanic membrane inwards, but no perforation. He measured the hearing with an audiogram and his right ear was found to have no hearing. The buzzing was continuous, i.e. tinitus was continuous. This was attributed to damage of the acoustic nerve. On the 12.5.1971 when the plaintiff was lastly examined by P.W.1, his condition was the same. The loss of hearing of the right ear of plaintiff was over 80 units and this means, according to the doctor, that he is completely deaf from the said ear. This doctor said that the deafness of the plaintiff was due to damage of

the acoustic nerve and was compatible with the injuries he sustained due to the present accident.

P.W.2 Dr. Ioannis Kourris, another E.N.T. specialist, also examined the plaintiff but he does not recall with certainty the date he did so. P.W.2 found that the plaintiff had complete deafness of the right ear with no possibility of any future improvement.

We have considered carefully the medical evidence adduced by the plaintiff and we accept it in toto. We also satisfied that the plaintiff himself told the truth".

The principles on which an appellate Court can interfere with findings of fact by the trial Court which depend on credibility of witnesses, are well known and have been stated in a line of cases both here and in England. In the case of *Philippos Charalambous* v. *Sotiris Demetriou*, 1961 C.L.R. 14, Zekia J., as he then was, said at page 19:

"While I am far from being satisfied of the way some judgments are given by trial courts where without stating adequate reasons dispose of an issue in the case by merely saying 'I believe or disbelieve so and so', I will hesitate a lot on the other hand to introduce a principle the application of which might have the effect of amending the Evidence Law which would constitute a transgression on our part of the rights of the legislature".

The special interest of this case lies in the fact that it closes the cycle of judicial pronouncements in Cyprus under the law as it stood prior to the enactment of the Courts of Justice Law, 1960, section 25(3), on the powers of a Court of Appeal of reviewing findings of fact of trial Courts based on the credibility of witnesses.

In *Sofocles Mamas* v. *The Firm "Arma" Tyres* (1966) 1 C.L.R. 158 at page 160, Vassiliades J., as he then was, referred to the case of *Thomaides & Co. Ltd.* v. *Lefkaritis Bros* (1965) 1 C.L.R. 20 and to the subsequent case of *Patsalides* v. *Afsharian* (1965) 1 C.L.R. 134 and said:

"The findings of the trial court will not be disturbed on appeal, unless the appellant can satisfy this court that

the reasoning behind such findings is unsatisfactory, or that they are not warranted by the evidence when considered as a whole".

In *Clarke* v. *Edinbourgh Tramways Co.* [1919] S.C. (H.L.) 35, at page 36, Lord Shaw had this to say:

"When a judge hears and sees witnesses and make a conclusion or inference with regard to what is the weight on balance of their evidence that judgment is entitled to great respect, and that quite irrespective of whether the Judge makes any observation with regard to credibility or not".

In *Watt or Thomas* v. *Thomas* [1947] A.C. 484, House of Lords case, it was decided that:

"When a question of fact has been tried by a judge without a jury and it is not suggested that he has misdirected himself in law, an appellate court in reviewing the record of the evidence should attach the greatest weight to his opinion, because he saw and heard the witnesses, and should not disturb his judgment unless it is plainly unsound. The appellate court is, however, free to reverse his conclusions if the grounds given by him therefor are unsatisfactory by reason of material inconsistencies or inaccuracies, or if it appears unmistakably from the evidence that in reaching them he has not taken proper advantage of having seen and heard the witnesses or has failed to appreciate the weight and bearing of circumstances admitted or proved".

In the case in hand, we must say that counsel for the appellant did not discharge the onus which rests on him to persuade us that the reasoning behind the findings of the trial Court was unsatisfactory or that such findings are not warranted by the evidence. It was reasonably open to the trial Court to accept the evidence adduced on behalf of the plaintiff as true and correct and to arrive at the conclusions it did.

We now turn to the other ground of appeal i.e. that the amount of £2,000.– general damages awarded by the trial Court is manifestly high.

The relevant part of the judgment of the trial Court appears at page 61 of the record and is as follows:

"The plaintiff returned to his previous employment 4 days after the accident and he is now performing the same duties as previously, earning the same pre-accident wages.

In assessing plaintiff's general damages we took into consideration various authorities, including *Baxter* v. *Admiralty*, [1961] 2 Lloyds Report, p. 89, found in Kemp & Kemp 3rd edition, p. 372 and *Nedas* v. *Godfrey Brooke* found at p. 437 of the same book.

In the light of the above we do hereby assess general damages at £2000.-"

At page 95 of the [1961] 2 Lloyd's Reports in the Baxter case, to which the trial Court referred, McNair J., said:

"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 an 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 were 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. I assess the general damages at £1,800."

Also in the case of *Nedas* v. *Godfrey Brooke* (July 24, 1962), Widgery J., as he then was, awarded £700.- general damages to a housewife aged 44 for sublaxation of the left acromioclavicular joint, resulting in permanent deformity of the left shoulder, which deformity was not visible and was relatively minor,

who also suffered concussion, double vision, giddiness and headaches for a period and was in hospital for three weeks.

The principles on which this Court can interfere with the judgment of the trial Court on an award of damages, have been enunciated in many 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, *Hassan and Others* v. *Neophytou* (1973) 1 C.L.R. 147 and the recent case of *Saveriades and Others* v. *Georghiades and* 9 *Others* (1982) 1 C.L.R. 574.

In the present case, taking into consideration the injuries of the respondent in this appeal as found by the trial Court, we are of the view that the amount of £2,000.- general damages

awarded is within the brackets, which would be applicable to injuries such as these and we have decided not to interfere with the judgment of the trial Court on this ground of appeal either.

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

Appeal dismissed with costs.