1984 July 11

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

CHARALAMBOS COSTA ALOUPOU AND ANOTHER,
Appellants-Defendants 1,2.

v.

KYRIACOS DEMOU HJIGEORGHIOU AND ANOTHER,
Respondents-Plaintiffs,

AND

THE ATTORNEY-GENERAL OF THE REPUBLIC,
Respondent-Defendant 3.

(*Civil Appeal No.* 6482).

Master and servant—Vicarious liability—Act done by servant not expressly authorised by master but closely connected with what the servant had been authorised to do—Servant acting in the course of his employment—Master vicariously liable for his negligent acts.

Damages—General damages—Assessment—By reference to comparable awards in comparable cases—Loss of vision in one eye by 90%*—Award of* £9,000 *reduced to* £7,000.

Civil Procedure—Pleadings—Trial in civil cases—Allegations in the statement of claim which are denied in the defence cannot be considered as proved by the mere fact of non-cross examination of witnesses who have not deposed on such allegations and without the party making these allegations adducing positive evidence.

The respondent-plaintiff 1 sustained bodily injuries and respondent-plaintiff 2 damages to his motor-car, as a result of an accident in the course of which a car driven by respondent 2 collided with a tractor driven by appellant-defendant 1. Appellant-defendant 2 was the owner of the tractor and the father of appellant 1. The accident occurred on the main Nicosia-Philia road. Off the road and very near to it the Water Development Department was executing some works and a pumping station was under construction. On the berm of the road there was a heap of gravel and at the time of the accident appellant 1, who

was 16 years of age, was loading the shovel of the tractor with gravel and was carrying it at the site of the pumping station. The accident occurred when the tractor blocked the road at a distance of about 20 feet from the car. On the day in question the tractor was engaged in removing soil from a private plot some 150 metres away from the pumping station and was driven by the brother of appellant 2; and when the latter left appellant 1 switched on the tractor by the use of a coin and started bringing gravel near to the pumping station works, allegedly on the instructions of the foreman of the works.

Respondent 1 who was aged 16 at the time of the accident and 26 at the time of judgment sustained multiple injuries on his forehead and nose and a serious injury to his right eye which lost its vision by 90%.

The trial Court found that at the material time appellant 1 was the servant of appellant 2; that on the day in question he was driving the tractor assisting the brother of appellant 2 in his work and that such act was authorised by his father; and that though accepting to remove the gravel might not have been expressly authorised by appellant 2 nevertheless it was an act so closely connected in the circumstances of the particular case, with what appellant No. 1 had been authorised to do, that is driving the tractor, that it cannot be regarded as an act outside the course of his employment; and upon these findings the trial Court held that appellant 2 was vicariously liable for the negligence of appellant 1 and awarded to respondent 1 £9,000 by way of general damages and to respondent 2 £646 for the damages to his car (£496 for the repairs and £150 for loss of use). Regarding the amount of £150 for loss of use the trial Court said that although plaintiff 2 failed to give any exact figures, considering that he was not cross-examined on this item his claim pleaded for £2.500 per day was reasonable.

Upon appeal by the defendants.

Held, (1) that there is no reason to interfere with the findings of the trial Court based as they are on the credibility of witnesses, and the conclusions drawn thereon as well as with the application of the relevant legal principle, which led them to the conclusion that appellant 2 was vicariously liable for the wrongful act of appellant 1, namely that though accepting to remove the

gravel might not have been expressly authorised by appellant nevertheless, it was an act so closely connected in the circumsta ces of the particular case, with what appellant 1 had been auth rised to do, that is, driving the tractor, that it cannot be regard as an act outside the course of his employment.

(2) That having considered the totality of the circumstan and having adapted the comparable awards to the facts of t case and to local conditions the amount of C£7,000.- would b reasonable compensation for the injuries suffered by respond 1 which in effect consisted of the loss of an eye, and some fac injuries (*Pavlides v. Andreou* (1984) 1 C.L.R. 385 whereby it w held that Courts have to proceed to assess general damages reference to comparable awards in comparable cases adopte

(3) That allegations in the pleadings in general and in resp of special damages as it is the present case regarding the item l loss of use of the car, claimed to have been suffered and whi are denied in the defence cannot be considered as proved by t mere fact of the non-cross examination of witnesses on su issues who have not deposed an iota as regards such allegatio without the party making these allegations in his pleadi adducing positive evidence; that the omission to cross-exami a witness may amount as such to an admission of the mat deposed by a witness and in respect of which he has not be cross-examined but not in respect of matters for which he l not deposed and are merely averred in the pleadings; accordir ly the amount of £150 awarded to respondent 2 for loss of use his car must be set aside.

Appeal partly allow

Cases referred to:

Sadler v. Henlock [1855] 4 E & B 570 at p. 578;

Hewitt v. Bonvin [1940] 1 K.B. 188;

Performing Right Society v. Mitchell and Booker (Palais de Dans Ltd.) [1924] 1 K.B. 762;

Ferguson v. John Dawson & Partners (Contractors) [1976] W.L.R. 1213;

Tsiopanis v. Avraam (1978) 1 C.L.R. 27 at p. 35;

Hancke v. Hooper [1835] 7 C. & P. 81;

Clelland v. Edward Lloyd Ltd. [1938] 1 K.B. 272;

Ilkiw v. Samnels [1963] 2 All E.R. 839 at p. 884; [1963] 1 W.L.R. 991;

Marsh v. Moores [1949] 2 K.B. 208 at p. 215;

Staton v. National Coal Board [1957] 2 All E.R. 667;

Costa and Another v. Municipal Corporation of Limassol (1975) 1 C.L.R. 84;

County Plant Hire v. Jackson and Lane Bros. (Builders) Third Parties [1970] 8 K.I. R. 989 (C.A.);

Century Insurance Co. v. Northern Ireland Road Transport [1942] 1 All E.R. 491 at p. 497;

Attorney-General v. Hartley [1964] N.Z.L.R. 785;

London County Council v. Cuttermoles Garages [1953] 2 All E.R. 582;

Canadian Pacific Railway Company v. Lockhart [1942] 2 All E.R. 464;

Harvey v. R.G. O' Dell Ltd. & Another (Galway Third Party) [1958] 1 All E.R. 657;

Rose v. Plenty [1976] 1 W.L.R. 131;

Launchbury v. Morgans [1973] A.C. 127;

Hilton v. Thomas Burdon (Rhodes) Ltd. [1961] 1 W.L.R. 705;

Laycock v. Grayson [1939] 55 T.L.R. 698;

Joel v. Morison [1834] 6 Car. & P. 501;

A. & W. Hemphill v. Williams [1966] 110 S.J. 549;

Limpus v. London General Omnibus Co. [1862] 1 H. & C. 526;

Whatman v. Pearson [1868] L.R.3 C.P. 422;

Pavlides v. Andreou (1984) 1 C.L.R. 385.

Appeal.

Appeal by defendants 1 and 2 against the judgment of the District Court of Nicosia (Nikitas, P.D.C. and Fr. Nicolaides, Ag. S.D.J.) dated the 25th September, 1982 (Action No. 2628/73) whereby they were adjudged to pay jointly and severally to plaintiff No. 1 £9,002.- for personal injuries suffered as a result of an accident and the sum of £646.935 mils for damage to property resulting from the same accident.

L. Papaphilippou, for the appellants 1 and 2.

St. Charalambous, for the respondents 1 and 2.

G. Constantinou (Miss), Counsel of the Republic, for respondent 3.

A. LOIZOU J. gave the following judgment of the Court. This is an appeal from the judgment of the Full District Court of Nicosia by which the appellants (defendants 1 and 2 at the trial) were adjudged to pay jointly and severally to respondent 1 (plaintiff 1), the sum of £9,002.- for the personal injuries he suffered as a result of a motor-car accident, and the sum of £646.935 mils to plaintiff No. 2 for damage to property resulting from the same accident with costs, and against the dismissal of the action against the Attorney-General of the Republic who was joined as defendant 3 on the allegation of being vicariously liable for the aforesaid injuries and damage to property.

The cause of action arose out of a road accident which occurred on the 17th March, 1973, at about 1:30 p.m. near Philia village, when a tractor admittedly driven at the time by appellant 1, came into collision with motor-car under registration No. G.N. 330 driven by respondent 2, with respondent 1, as its passenger.

The grounds of appeal and the reasons therefor are the following:

"1. The trial Court was erroneous in its finding that the 2nd defendant was vicariously liable for the negligence of the 1st defendant, in that:

(a) the Trial Court was wrong to find or infer that a relationship of master and servant existed in the circumstances;

(b) even on the assumption that a relationship of master and servant between them existed, the Trial Court was wrong to find or infer that the 1st defendant was driving the vehicle in question in the course of his employment or incidentally thereto or in connection therewith;

(c) the Trial Court was wrong to find or infer that the 1st defendant was authorised to drive the vehicle in question by the 2nd defendant, and/or driving of the vehicle was within the duties of his employment; such finding or inferences are against the weight of the evidence.

2. The finding made by the Trial Court which is quoted verbatim hereafter, was not open to it:-

> 'It may be added that Defendant 2 is liable in another aspect. His servant, Athanassis Charalambous, left the tractor unattended and left in order to bring Defendant 2 to the plot they were working in. Whilst doing so, he was still in the employment of Defendant 2. Athanassios Charalambous had a duty to look after the tractor and the lorry during the day and he ought to have taken all precautions in order to prevent the tractor from being driven by an unauthorised person. (See, *Engelhardt v. Farrant & Co.*, [1897] 1 Q.B. 240 removal of the switch was not enough as the tractor could be put in motion very easily, even without the proper switch. He ought to have taken other steps such as removing the battery of the tractor so as to make sure that it would not be switched on during his absence.'

3. The Trial Court was erroneous in its finding that defendant No. 3 was not vicariously liable for the negligence of the 1st defendant in that such finding is against the weight of evidence and was based on erroneous inferences.

4. The award of general damages is excessively high and totally unjustified. Furthermore the Trial Court acted on evidence which was inadmissible and which in fact was objected and such objection sustained by the Court.

5. The award to plaintiff No. 2 for loss of use of his car is unwarranted by the evidence adduced and/or it had been abandoned by the plaintiff No. 2 during trial."

Before proceeding any further the picture may be completed by adding that appellant 1, is the son of appellant 2. He was at the time of the accident sixteen years of age and the question of his liability for the negligent driving of the tractor which belonged to appellant 2, has not been disputed in this Court.

The other facts relevant to the issues before us will in due course come up in relation to the particular points, we shall be dealing with.

The trial Court in dealing with the liability of appellant 2 referred at length to the evidence adduced by both sides and to the legal principles regarding vicarious liability. We must say that they have made an excellent condensation of a very wide subject and we see no reason why their effort should not be reproduced here as it is adopted by us fully. It reads:

> "Defendant 2 is sued vicariously. What vicarious liability means? It means that one person takes the place of another so far as liability is concerned (Per Lord Denning M.R. in *Launchburry v. Morgans*, [1971] 2 Q.B. 243 at 253). The relationship of master and servant is the most important of the various cases in which vicarious liability is recognised by the law, although is not confined merely to it."

By section 13(2) of Cap. 148 it is laid down that:-

> "An act shall be deemed to have been done in the course of a servant's employment if it was done by him in his capacity as a servant and whilst performing the usual duties of and incidental to his employment notwithstanding that the act was an improper mode of performing an act authorised by the master; but an act shall not be deemed to have been so done if it was done by a servant for his own ends and not on behalf of the master."

It is well settled that Cap. 148 is not exhaustive and that it embodies to a certain extent the common law of England. Section 13(2) appears to have been based on relevant common law principles and therefore the English cases on the matter may prove very useful.

A servant is one who is bound to obey any lawful orders given by the master as to the manner in which his work shall be carried out. The master retains the power of controlling him in his work, and may direct not only what he shall do but how he shall do it. (Per Crompton J. in *Sadler v. Henlock*, (1855) 4 E & B 570 at 578; see also *Hewitt v. Bonvin*, [1940] 1 K.B. 188).

The test to be generally applied in determining the existence of a contract of service, lies in the nature and degree of detailed control over the person alleged to be a servant (Per McCardie J. in *Performing Right Society Ltd. v. Mitchell and Booker* (*Palais de Danse Ltd.*, [1924] 1 K.B. 762).

In *Ferguson v. John Dawson & Partners (Contractors)*, [1976] 1 W.L.R. 1213, it was held that the Plaintiff was a servant and not a subcontractor, since he had no power to delegate his work to someone else to do for him.

A labourer or other person carrying on an unskilled occupation if employed to do work himself will usually be a servant (see, *Ferguson v. Dawson*, (supra)). For the purposes of the law relating to vicarious liability it appears never to have been doubted that an apprentice is a servant (see, *Tsiopanis v. Avraam*, (1978) 1 C.L.R. 27 at 35; *Hancke v. Hooper*, (1835) 7C & P. 81; *Clelland v. Edward Lloyd Ltd.*, [1938] 1 K.B. 272).

However, the mere fact that the wrong doer is the servant of a person does not render that person automatically liable for the acts of his servant. A master is liable for the negligence of the servant if committed in the course of his employment, but is not liable for negligence committed outside the scope of his employment. In *Tsiopanis v. Avraam*, (supra), A. Loizou, J. adopted at p. 33 a passage from Clerk & Lindsell on Torts, 13th Edn. para. 218:-

> "The question of vicarious liability to third persons for the negligence of one's servants came up for consideration by this Court on a number of occasions and useful reference may be made to the case of *Municipal Corporation of Limassol v. Agathangelos Constantinou*, (1972) 1 C.L.R. p. 119, where at p. 128 the Court cited with approval a passage from Clerk and Lindsell on Torts, 13th Edn. para. 218, regarding the test as to whether a wrongful act is deemed to be done in the course of one's employment. The test formulated by Salmond in his Law of Torts and adopted in in the above passage is:
>
> 'If it is either (1) a wrongful act authorised by the master, or (2) a wrongful and unauthorised mode of doing some act authorised by the master. It is clear that the master is responsible for acts actually authorised by him: for liability would exist in this case, even if the relation between the parties was merely one of agency, and not one of service at all. But a master, as opposed to the employer of an independent contractor, is liable even for acts which he has not authorised, provided they are so connected with acts which

he has authorised that they may rightly be regarded as modes - although improper modes - of doing them'.

Of course the time and place at which an act is committed are important factors and in a proper case may show clearly if the servant has been acting in the course of his employment."

(See also Salmond on Torts, (13th Edn.) art. 36 at p. 122; *Ilkiw v. Samuels*, [1963] 2 All E.R. 839 at p. 884).

In *Marsh v. Moores*, [1949] 2 K.B. 208, Lynskey J. stated at p. 215:-

"It is well settled law that a master is liable even for acts which he has not authorized provided that they are so connected with the acts which he has authorized that they may rightly be regarded as modes, of doing them. On the other hand, if the unauthorized and wrongful act of the servant is not so connected with the authorized act as to be a mode of doing it but is an independent act, the master is not responsible for, in such a case the servant is not acting in the course of his employment but has gone outside it."

An act is done in the course of the employment not only when the servant is actually doing the work, which he is employed to do, but also when the act is an incident in performing something he is employed to do and when it is about business which concerns the master and the servant; (See *Staton v. National Coal Board*, [1957] 2 All E.R. 667; see also *Stavrinou Costa & Another v. Municipal Corporation of Limassol*, (1975) 1 C.L.R. 84.)

The servant does not cease to act in the course of his employment unless he has plainly gone beyond the bounds. (See, *County Plant Hire v. Jackson and Lane Bros. (Builders) (Third Party)*, (1970) 8 K.I.R. 989 (C.A.).

In determining whether or not a servant's wrongful act is done in the course of his employment it is necessary that a broad view of all the surrounding circumstances should be taken as a whole and not restricted to the particular act which causes the damage.

In *Century Insurance Co. v. Northern Ireland Road Transport Board*, [1942] 1 All E.R. 491, Lord Wright said at p. 497:-

"The duty of the workman to his employer is so to conduct

himself in doing his work as not negligently to cause damage either to the employer himself or his property or to third persons or their property, and thus to impose the same liability on the employer as if he had been doing the work himself and committed the negligent act. This may seem too obvious as a matter of common sense to require either argument or authority."

There is no simple test which can be applied to cover every set of circumstances and so essential it always remains a question of fact for decision in each case (per Finnemore J. in *Staton* v. *N.C.B.*, (supra) at p. 895.)

What happens if a servant disobeys the orders of his master?

The fact that a servant disobeys the orders of his master does not necessarily mean that he is acting outside the course of his employment. In *Att.-Gen. v. Hartley,* (1964) N.Z. L.R. 785, the New Zealand Court of Appeal held that it is not enough to decide whether what was done was a prohibited act since prohibition may either limit the scope of the employment or merely regulate the conduct of the employee within its sphere. The distinction is between an order which limits the scope of the employment, the disobedience which means that the servant is not in the course of his employment, and an order which limits the method in which the duties of the servant shall be performed, the disobedience to which it does not mean that the servant is outside his employment.

As we said earlier, it is essential to avoid the approach of isolating the wrongful act of the servant from its surrounding facts in order to determine whether or not it was done in the course of his employment. (See, also *London County Council v. Cattermoles Garages Ltd.*, [1953] 2 All E.R. 582; *Canadian Pacific Railway Company v. Lockhart,* [1942] 2 All E.R. 464; *Harvey v. R.G. O'Dell, Ltd. & Another* (*Galway Third Party*), [1958] 1 All E.R. 657.)

In *Rose v. Plenty,* [1976] 1 W.L.R. 131, Scarman L.J. stated that:-

"The employer is made vicariously liable for the tort of his employee not because the plaintiff is an invitee nor because of the authority possessed by the servant, but because it is a

case in which the employer, having put matters into motion, should be liable if the motion that he has originated leads to damage to another."

Apart from the above general principles in a number of cases the question of the liability of the master for the negligent driving of motor vehicles and operation of other machinery by a servant was examined.

In *Launchbury v. Morgans*, [1973] A.C. 127, it was held that when a vehicle belonging to the master is entrusted to the servant to be driven or used in any other way, the master is liable if the servant is negligent while using it for any other purposes, even though the servant has the master's permission to use it for those purposes. (See also *Hilton v. Thomas Burdon (Rhodes) Ltd.*, [1961] 1 W.L.R. 705). It is presumed that the vehicle is being used for the master's purposes if the servant has authority to use it at all. (See, *Laycock v. Grayson*, [1939] 55 T.L.R. 698). Deviation from the master's orders does not necessarily prevent the user from being for the master's purposes; it is a question of degree. (See, *Joel v. Morison*, (1834) 6 Car. & P. 501; *A. & W. Hemphill v. Williams*, (1966) 110 S.J. 549).

In *Ilkiw v. Samuels*, [1963] 1 W.L.R. 991, it was held that the the master was liable in that his driver had been negligent in allowing an incompetent workman to drive the lorry, which act had taken place in the course of his employment, he was employed not only to drive but also to take charge and control of it in all circumstances during the times when he was on duty, and he remained in charge of it even when he was not sitting at the controls. This was so even though he was forbidden to allow anyone to drive his lorry.

In *Limpus v. London General Omnibus Co.*, (1862) 1 H. & C. 526, where an omnibus driver drove his omnibus across the road in front of a rival omnibus, thereby causing it to overturn, despite the written instructions by the employers that their drivers were not to race or obstruct other omnibuses, the employers were held liable because the injury resulted from an act done by the driver in the course of his employment and for his master's purposes. The decisive point was that it was not done by the servant for his own purposes but was done for his master's purposes. Willes J. said at p. 539:-

"It may be said that it was no part of the duty of the defendants' servant to obstruct the plaintiff's omnibus, and moreover the servant had distinct instructions not to obstruct any omnibus whatever. In my opinion those instructions are immaterial. If disobeyed, the law casts upon the master a liability for the act of his servant in the course of his employment; and the law is not so futile as to allow a master, by giving secret instructions to his servant, to discharge himself from liability".

A carter, in charge of his master's horse and cart for the day, is acting in the course of his employment if he leaves his horse and cart unattended during the dinner hour, so that the horse runs away and an accident occurs. (See, *Whatman* v. *Pearson*, (1868) L.R. 3 C.P. 422). If an employee leaves his horse and cart with a boy who goes with him to deliver parcels and the boy, contrary to his master's orders, drives the cart and has an accident, he is in the course of his employment to look after the horse and cart during the day, and his master will be liable for the damage. (See, *Engelhardt* v. *Farrant & Co.* [1897] 1 Q.B. 240)"

Guided by the aforesaid exposition of the Law the trial Court made the following findings which have been contested by learned counsel for the appellants. The gist of the arguments advanced by him are to be found in grounds of Law 1(a)(b) and (c) in the notice of appeal hereinabove set out. The said findings and conclusions are as follows:

"That Defendant 1 was the servant of Defendant 2 at the material time is an undeniable fact. Although there is no definite evidence about the terms of his employment the fact remains that for the time being he was working for Defendant 2. Whether the employment is by the day or not or whether the amount of wages paid is great or large is of little assistance in determining the existence of a contract of service (*Sadler* v. *Henlock* (supra)). Equally established is the fact that D.W.3, Athanassis Charalambous, the brother of Defendant 2 was at the time his servant. He was working for the owner of the tractor, he was getting his instructions from his employer who retained a detailed control over him. The next question which must be answered is whether the driving of Defen-

dant 1 of the tractor was done in the course of his employment. In other words, was his act authorised by Defendant 2 or was it a wrongful and unauthorised mode of doing some act authorised by the master. Certainly Defendant 2 could not authorise Defendant 1 to remove the gravel because obviously he was not aware that such a situation would arise. Therefore, we must examine whether Defendant 1 was authorised to drive the tractor for the purposes of his master. Defendant 2 and all his witnesses denied emphatically that Defendant 1 was driving the tractor and furthermore, they tried to convince the Court that Defendant 2 never permitted his son to drive the tractor. Having watched the witnesses in the witness box we are not prepared to accept their allegations. We do not believe that Defendant's 1 job was merely to keep an account of the work done. This could easily be done by the driver of the lorry, Athanassis Charalambous, with no repercussions on his work. There was not even a question of trust involved because the person who would possibly be interested in the number of loads carried, would be the owner of the plot and he was not present. We do infer on the balance of probabilities and in the light of the totality of the evidence that Defendant 1 was driving the tractor on the day in question assisting Athanassis Charalambous in his work and that such act was authorised by his father. Accepting to remove the gravel might not have been expressly authorised by Defendant 2, but nevertheless, it was an act so closely connected, in the circumstances of the particular case, with what Defendant 1 had been authorised to do, that is, driving the tractor, that it cannot be regarded as an act outside the course of his employment".

Having considered the totality of the circumstances of the case and the evidence adduced, we find no reason to interfere with the findings of the trial Court based as they are on the credibility of witnesses, and the conclusions drawn thereon as well as with the application of the relevant legal principles which led them to the conclusion that appellant 2 was vicariously liable for the wrongful act of appellant 1. The first ground of appeal therefore fails.

Consequently we need not examine the alternative ground

upon which appellant 2 was found by the trial Court vicariously liable, namely that through his employee Athanassios Charalambous he failed in the discharge of his duty to look after the tractor and the lorry during the day as he ought to have taken all precautions in order to prevent the tractor from being driven by an unauthorised person.

As regards the third ground of appeal the trial Court dealt with the relevant issues by reference to the evidence adduced and the law governing the liability of the Republic for any wrongful act or omission causing damage, committed in the exercise or purported exercise of the duties of officers or authorities of the Republic, as provided by Article 172 of the Constitution.

On the evidence before it the trial Court concluded that appellant 1, by no stretch of imagination could be found to be in the employment of defendant No. 3. Appellant 2, had at the time the said tractor engaged in removing soil from a private plot some 150 meters away from a pumping station under construction by the Water Development Department. The allegation of appellant 1, that he was approached by the foreman of the said department and asked to bring some gravel near the site was rejected by the trial Court as the accident occurred at about 1:30 p.m. whereas the foreman had left the site at 11:00 a.m. when the work came to an end, being a Saturday. The version of the foreman is duly supported by the rest of the evidence and we see no reason to interfere with these findings of the trial Court based on the credibility of witnesses. The third ground of appeal therefore fails.

Finally we come to the last two grounds of appeal that turn on the question of general and special damages. We have no difficulty in allowing the appeal as regards the amount of £150.- loss of use of the motor-car. The trial Court said that "although to its judgment the plaintiff 2 failed to give any exact figures, considering that again he was not cross-examined on this item either, we find his claim pleaded for £2.500 per day as reasonable."

Allegations in the pleadings in general and in respect of special damages as it is the present case, claimed to have been suffered and which are denied in the defence cannot be considered as

proved by the mere fact of the non-cross-examination of witnesses on such issues who have not deposed an iota as regards such allegations, without the party making these allegations in his pleadings adducing positive evidence. The omission to cross-examine a witness may amount as such to an admission of the matter deposed by a witness and in respect of which he has not been cross-examined but not in respect of matters for which he has not deposed and are merely averred in the pleadings.

The ground of appeal, however, that has given us some anxiety, is that of general damages regarding the personal injuries of respondent 1, which as the trial Court summed it up "concerns the loss of an eye, although his injured eye lost its vision by 90%, but for practical purposes he must be considered one-eye man."

Respondent 1, sustained face injuries, the most serious one being the injury to his right eye which was a penetrated trauma of the cornea with prolapse of the iris and haemophthalmes. He was taken to the Nicosia General Hospital where he was seen by Dr. Pierides, a surgeon Ophthalmologist in charge of the Ophthalmological Department of the Nicosia General Hospital, where an operation was performed and the trauma was satured.

He had also multiple injuries on his forehead and nose. He stayed in the hospital until March 21, 1973 and then he was taken to London. Dr. Pierides saw him again in January 1974, after his return from London and later on January 3, 1980.

His condition had by the time of the trial of the case settled and is described in the judgment of the trial Court as follows:

> "The vision of his right eye is not more than 10% of a normal eye and cannot be corrected with glasses or contact lenses. At this stage the cataract cannot be operated upon. Glaucoma and detachment of the retina with consequent deterioration of the vision or the complete loss of the vision of the eye is a usual complication of injuries like the ones the Plaintiff sustained. An operation for the removal of cataract is very difficult due to the nature of the injury and the young age of the patient. There is no possibility, however, for the left eye to be affected adversely. The colour of the eye is determined by the colour of the iris and

due to the absence of the iris the injured eye looks black whereas the left eye is blue-green. The post-operative treatment for a month was very painful. The Plaintiff suffered discomfort for two months after the accident. Later on the Plaintiff had only minor discomfort with tears in his eye, due to wind, light, smoke etc. This discomfort is not painful but is permanent. The Plaintiff could not tolerate the application of a contact lens which would improve his vision by 10% and which would add an artificial iris."

It may be noted that according to the medical evidence there is no possibility for the left eye to be affected adversely and that the chances of his condition to deteriorate are limited. In dealing with the general damages the trial Court referred to the significance of the age of respondent 1, who was at the time a young man of sixteen or twenty-six at the time of the judgment. It also referred to the psychological problems which his condition undoubtedly causes and will continue to cause. In assesing the general damages the trial Court stated that it had to consider the nature of the injuries, the length of the treatment, the pain and suffering, the discomfort and loss of amenities of life and the possibility of future loss of earnings and that the sum to be awarded should be such as to put the plaintiff in the same position as he would have been had he not sustained the injury.

This is no doubt a correct direction regarding the law governing the issue. The trial Court in the relevant passage of its judgment referred to comparable awards in comparable cases and stated that general damages for the loss of an eye are in the region of C£8,000.- and referred to four cases from Kemp and Kemp The Quantum of Damages, Volume 2, Personal Injury Reports in pp. 5121-5144, namely *Dent v. Levi Strauss,* (U.K.); *Hewitt v. Braff Engineering; Condon v. Condon; Jones v. Nidum Precision Tooling; Dermody v. Mottram; Singh v. Darlington.* The trial Court then felt that they should follow the trend emanating from the aforesaid awards taking into consideration the current rate of exchange and the rate of inflation and it awarded C£9,000.- by way of general damages, having pointed out that as regards the loss of earnings or the loss of future earnings, no evidence which might have helped them was adduced.

These awards of general damages by English Courts cul-

minated as far as the reported cases in the aforesaid textbook are concerned in *Vickerman v. Parker*, of the 16th July, 1982, (paragraphs 5 - 132) in which it was stated per curiam that the current conventional award for loss of an eye was £10,000.- (U.K. sterling).

Having considered the totality of the circumstances and having adapted the comparable awards referred to earlier in this judgment to the facts of this case and to local conditions we have come to the conclusion that the amount of C£7,000.- would be a reasonable compensation for the injuries suffered by respondent 1 which in effect consisted of the loss of an eye, and some facial injuries.

As regards awards of general damages we would like to reiterate what this Court said in *Androulla Chr. Pavlides v. Anthimos Andreou* (Civil Appeal No. 6658, not yet reported).*

> "Whilst on this point we would like to say that some parts making up the award of general damages other than loss of future earnings are not capable of being estimated in terms of money and therefore Courts have to proceed in assessing them by reference to comparable awards in comparable cases and follow the trend emanating from such comparable awards. Such comparable cases do not, however, constitute as in other categories of judicial pronouncements precedents, as the necessary adjustments with regard to changes through the ever decreasing worth of monetary units and all reasonable adaptations to the circumstances of the case, have to be made."

In the result the appeal is allowed in so far as the amount of general damages awarded to respondent 1, for the personal injuries suffered by him by reducing same by C£2,000.- and in so far as the amount awarded to respondent 2 for the damage to his vehicle by reducing same by £150.-. The judgment of the trial Court is varied accordingly.

As regards costs we have come to the conclusion that in the circumstances we should not interfere with the order made in the Court below and as regards those in this Court, there will be no order as to costs.

Appeal partly allowed. No order as to costs.

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* Now reported in (1984) 1 C.L.R. 385.