1988 December 19

(MALACHTOS STYLIANIDES PIKIS JJ)

1 PENELOPE A POLYCARPOU
2 ANDREAS POLYCARPOU

Appellants-Defendants,

v

PANIKOS ADAMOU,

Respondent-Plaintiff

(Civil Appeal No 7463)

Negligence — Contributory negligence — Road traffic collision — Apportionment of liability — Principles applicable — Blameworthiness and causative potency of one s actions — Ultimately, a matter of impression

Negligence — Road traffic — The duty of care of a driver — Breach of such duty

Appeal — Apportionment of liability — Interference with, on appeal — Principles applicable

Negligence — Contributory negligence — Road traffic collision — Driver moving his car towards centre of a busy road turning suddenly without prior warning diagonally to the right to enter a side street, blocking thereby the way of a motorcyclist, who, notwithstanding the movement of the car to the centre, tried to overtake it — Driver 60% and motorcyclist 40% to blame — Court of Appeal declined to interfere

Damages — General damages for personal injuries — Tetraplegia — £25,000 for general damages in addition to damages for other items — Manifestly low — Increased to £55,000

Damages — General damages for personal injuries — Tetraplegia — One multiplier used in respect of nursing expenses and another in respect of future loss of earnings — Justified, because the span of life does not coincide with the span of working life

Damages — General damages for personal injuries — Tetraplegia — Claim for the value of a new house more suitable to plaintiffs needs — Rejected for lack of evidence, such as evidence that the value of the new house would exceed the value of plaintiff' s present house

Damages — General damages for personal injuries — Tetraplegia — Claim for the value of a car — Rejected for lack of evidence as to such particular need

Damages — General damages for personal injuries — Tetraplegia — Future nursing expenses — Benevolence of plaintiff s family — Should not be taken into consideration in reducing damages

Damages — Interest — The Civil Wrongs Law, Cap 148, as amended by Law 156/85, section 58A

Appellant 1 and the respondent were driving their motor vehicle and motorcycle respectively, along Gropius Street within the town of Limassol The respondent was following the appellant As the appellant approached the junction with Robert Kennedy Street, a side road to her right, she moved nearer to the centre of the road Meantime the respondent embarked on a process of overtaking her As the appellant approached the side road, she turned sharply to her right, crossing virtually diagonally into the side street

As a result a collision ensued The trial Court found that the appellant did not signify her intention to turn to the right Moreover, the appellant admitted that until the moment of collision, she did not realize the presence of the respondent on the road On the other hand, the trial Court found that in view of the movement of appellant's car towards the centre of the road, the respondent ought to realize the possibility of her turning to the right and, therefore, he ought to avoid overtaking

Liability was apportioned 60% on appellant 1 and 40% on respondent

By reason of the said collision the respondent a healthy man of 25, was paralysed in all four limbs and became incontinent of urine and faeces He can only contemplate life on a wheel — chair to which he has been confined and the experience and agonies of total dependence on others

In addition to £6,685 for special damages, the trial Court made provision for the following items, i e (a) Losses of earnings, (b) Future nursing and care expenses, (c) Medical expenses, (d) Laundry expenses, (e) Provision of bedsheets and mattresses, (f) Provision for extra heating of his residence, heating expenses, (g) Drugs and

medicines, and (h) Value of a wheel-chair. In addition the Court awarded the respondent C£25,000 general damages.

The appeal and cross-appeal put in issue the apportionment of liability, the award of general damages, the award for loss of future earnings, which had been calculated on the basis of £100 per week, the award for nursing expenses and two claims of the respondent, for which the trial Court, did not make any provision on the ground of absence of evidence, namely an amount for the purchase of a new house suitable for the needs of the appellant and an amount for the purchase of a car, which would make it possible for his family to move him about and thereby lessen the emotional and mental hazards of confinement to a wheel-chair.

Held, *dismissing the appeal and allowing the cross-appeal:*

(A) (1) There is no reason to interfere with the findings of fact made by the trial Court.

(2) Motorist must give fair warning of his intentions and must desist from implementing them unless his intended course is not reasonably likely to endanger approaching traffic. The duty of care is fixed impersonally and universally in relation to other users of the road devolving into specific duties depending on the particular circumstances of the case. It is the circumstances and the facts of the case that define a motorist's duty in a particular situation and provide the basis for the establishment of a breach of the duty of care or the absence of it.

(3) In this case the appellant had no proper regard for the rights of other users of the road and herself made use of the road in disregard of those rights. The failure to notice the presence of the motorcyclist on the road was her principal folly. Her action to turn right in the abrupt manner she did is further evidence of the use made by her of the road regardless of the rights of others.

On the other hand, having regard to the change made in the course followed by the car of the appellant, it was folly on his part to attempt to overtake the vehicle of the appellant given the existence of a side road a short way ahead. As often said, contributory negligence consists of failure to take foreseeable precautions for one's safety. The risks inherent in the course followed by the respondent should have been obvious to him.

(4) The apportionment of liability involves due appraisal of the blameworthiness of the conduct of the parties involed in an accident and the impact of their actions, the causative potency, on the damage

occasioned thereby The discernment of the respective blameworthiness is not capable of precise calculation The standard is yet again that of the reasonable man Causative potency depends, inter alia, on the capacity of a vehicle to cause damage

Ultimately apportionment is a matter of impression Bearing in mind the disinclination of this Court to interfere with such apportionment, the appeal and cross-appeal as regards apportionment would be dismissed

(B) (1) Previous awards do not give rise to binding precedent in the sense of stare decisis but they offer guidance Foreign awards must be seen subject to the realities in this country

In this case the award of £25,000 for general damages is manifestly low It is increased to £55,000

(2) The plaintiff had been earning £80 per week as unskilled worker, but, at the time of the accident, he had abandoned his work and was engaged in business of his own, namely production of charcoal He alleged that he was earning £600-£700 per month The duration of the business of the respondent was not such as to provide a firm indication of his future earnings, whereas his weekly wages before then ceased to provide direct evidence of his earnings The basis of £100 per week was in the circumstances reasonable

(3) Future nursing expenses were calculated on the basis of £100 per month The evidence showed that the respondent needed more than one nurse daily The basis should have been £200 per month Benevolence of those close to the injured party does not go to mitigation

(4) A house designed to meet the needs of the respondent would no doubt provide great comfort For this loss to be recoverable, it would have to be demonstrated that the value of the new house would be greater than that of the existing house of the respondent Such evidence was wholly missing

(5) The need for the acquisition of a car may in an appropriate case be sustained as a legitimate item of compensation designed to remedy deprivation of outdoor mobility Nonetheless, the need must be established as a positive fact and pondered in relation to alternative means of securing outdoor mobility such as renting a car

(6) The award of interest on £4,161 of the special damages will be left intact The amount of general damages awarded by this Court will

carry interest at 6% as from the institution of the action.

Appeal dismissed with costs for two advocates. Cross-appeal allowed to the above extent.

Cases referred to:

Constantinou v. Katsouris (1975) 1 C.L.R. 188;

Charalambous and Another v. Kassapis and Another (1988) 1 C.L.R. 25;

Housecroft v. Burnett [1986] 1 All E.R. 332;

Paraskevaides (Overseas) Ltd. v. Christofi (1982) 1 C.L.R. 789

Wright v. British Railways Board [1983] 2 All E.R. 698;

Tziellas v. The ship Natalena'H (1982) 1 C.L.R. 807.

Appeal and cross-appeal.

Appeal and cross-appeal against the judgment of the District Court of Limassol (Chrysostomis, P.D.C.) dated the 8th July, 1987 (Action No. 7082/84) whereby the defendants were ordered to pay to the plaintiff the sum of £72,606.- as damages for injuries sustained by him as a result of a traffic accident.

G. Pelaghias, for the appellants.

B. Vassiliades with G. Georghiou and C. Petrou for the respondent.

Cur. adv. vult.

MALACHTOS J.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: This appeal turns on the liability of a motorist, the appellant, for the consequences of an accident that rendered the motorcyclist, with whom she collided, a tetraplegic, and its repercussions measured in money terms; subject always to the inherently difficult task of putting a money value on the loss of human joy, mobility and the pursuits of a healthy life. As a result of of the accident (it occurred in 1983) the respondent, a healthy man of 25, was paralysed in all four limbs and became incontinent of urine and faeces. He can only contemplate life on a wheel-chair to which he has been confined and the experience and agonies of total dependence on others. Mere reflection on the vicissitudes of

such a life would make anyone reconcile with unhappiness. The daily experience of total incapacitation cannot but be heart rending.

The trial Court found appellant 1, the driver, liable in negligence and her husband, owner of the vehicle, vicariously liable for the damage occasioned to the respondent; a liability reduced in proportion to the contribution of the respondent to his own injuries. Respondent was found to be part author of his injuries for failure to take appropriate precautions for his safety. Liability was apportioned between the appellants and respondent at the ratio of 60% to 40%. Subsequently the Court addressed the questions concerning the injuries of the respondent and their after-effects with a view to quantifying his loss and compensating him for his sufferings. Guided by the principles establishing the legitimate items of special damage, the assessment and qualification of future loss and monetary compensation for pain and suffering, the Court arrived at the overall figure of C£121,010.- damage and finally award to the respondent C£72,606.- damages.

By the notices of appeal and cross-appeal, the findings of the Court on liability and sequential apportionment were put in issue. Furthermore, the appellant disputed certain items of damage as excessive or unwarranted by the evidence. The disagreement of the respondent with the award, far reaching as it is, extends to nearly all the significant items of compensation. Equally so in relation to items that the Court found to be unproven or unacceptable items for compensation in the particular case.

The Appeal and Cross-Appeal affecting Liability

In order to examine the appeal and cross-appeal on the subject of liability in perspective, we must first record the circumstances of the accident and notice the findings of the Court. The appellant (hereafter we shall refer to appellant 1 as «the appellant») and the respondent were driving their motor vehicle and motorcycle respectively, along Gropius Street within the town of Limassol. The respondent was following the appellant. As the appellant approached the junction with Robert Kennedy Street, a side road to her right, she moved nearer to the centre of the road. Meantime the respondent embarked on a process of overtaking her. As the appellant approached the side road, she turned sharply to her right, crossing virtually diagonally into the side street. In his endeavour to avoid a collision, the respondent swerved his

motorcycle-to-the-right, albeit without success in avoiding the accident. At the entry of the side road, a frontal collision occurred, a fact in itself indicative of the diagonal direction followed by the appellant in negotiating the right-hand turn.

The Court found the appellant guilty of negligence, in that she turned right without regard to the state of traffic on the road, in breach of her duty of care to the respondent. The appellant noticed the presence of the motorcyclist on the road for the first time at the moment of the collision, as indeed she acknowledged, a fact indicative of the magnitude of lack of care on her part. Reference was made to the decision of the Supreme Court in *Omiros Constantinou v. Stelios Katsouris* (1975) 1 C.L.R. 188, definitive of the duty of care of a motorist intending to cross into a side road, to other users of the road. The motorist must give fair warning of her intentions and must desist from implementing them unless her intented course is not reasonably likely to endanger approaching traffic. The duty of care is fixed impersonally and universally in relation to other users of the road devolving into specific duties depending on the particular circumstances of the case. It is the circumstances and the facts of the case that define a motorist' s duty in a particular situation and provide the basis for the establishment of a breach of the duty of care or the absence of it.

The Court reject the evidence of the defendant and the witness for the defence suggesting that she signalled with her trafficator her intention to turn right. In so holding the Court relied on the evidence of other eye-witnesses shedding light on the state of the trafficator immediately after the collision and the position claimed to have been occupied by the defence witness that had allegedly enabled him to eye-witness the state of the trafficator of the car of the appellant before the accident. The failure of the appellant to notice the presence of the motor cyclist on the road established, as the Court found, lack of care on her part, a conclusion reinforced by the absence of a definite warning of her intention to turn right. Moreover, the manner in which she crossed to her right was also blameworthy, at variance with the duties of a prudent driver. The motor cyclist too was found liable for contributory negligence stemming from failure on his part to foresee the likelihood of the car ahead swerving into the side road. The motorist should have taken stock of this possibility in view of the direction of the car ahead, especially the movement of the car nearer to the centre of

the road, a fact that ordinarily betrays inclination to get in position to turn right His attempt to overtake the car ahead in those circumstances constituted failure on his part to take necessary precautions for his safety and guard against a foreseeable risk And as it turned out, failure to take those precautions exposed his safety to grave consequences that will be discussed later in this judgment

The appellant challenged the findings of the Court respecting the signification or absence of it of her intention to turn right In the submission of counsel for the appellant the version of the defendant and that of her eye-witness was in conformity with the physical movement of her car to the middle of the road For his part counsel for the respondent supported the finding as reasonably open to the Court reinforced by the evidence of an expert witness who testified that having regard to the position of the trafficator after the accident and its mechanics, the trafficator could not have been in action prior to the accident Furthermore, counsel for the appellant disputed the apportionment of liability made by the trial Court as unsustainable on due ponderation of the respective blameworthiness of the parties be it as found by the trial Court In his submission a fair apportionment would have been one third (appellant), two thirds (respondent)

Counsel for the respondent was also critical of the apportionment of liability The exercise, in his submission, should not have resulted in the attribution of liability to the respondent for no more than 10% First, with regard to the findings of the Court there is absolutely no room for interference In a careful judgment the Court noted conflicting testimony associated with the exhibition of the trafficator and concluded largely by reference to the credibility of the witnesses that no such signal had been given - a view strengthened by the expert testimony before the Court On the other hand, the inferences drawn by the trial Court concerning the circumstances of the accident, were not only warranted but inevitable The appellant had no proper regard for the rights of other users of the road and herself made use of the road in disregard of those rights The failure to notice the presence of the motorcyclist on the road was her principal folly Her action to turn right in the abrupt manner she did is further evidence of the use made by her of the road regardless of the rights of others The findings of the Court affecting the circumstances of the accident cannot but be sustained

Equally sustainable is the finding that respondent drove his motorcycle in a manner exposing his safety to foreseeable risks. Having regard to the change made in the course followed by the car of the appellant, it was folly on his part to attempt to overtake the vehicle of the appellant given the existence of a side road a short way ahead. As often said, contributory negligence consists of failure to take foresecable precautions for one's safety. The risks inherent in the course followed by the respondent should have been obvious to a motorist properly concerned with his safety. A little patience on his part would have avoided the risk.

The apportionment of liability involves due appraisal of the blameworthiness of the conduct of the parties involved in an accident and the impact of their actions, the causative potency, on the damage occasioned thereby. The discernment of the respective blameworthiness is not amenable to precise calculation. The standards are again those of the reasonable man credited with the knowledge deriving from ordinary experience and the reflections of the logical faculties. The evaluation of the causative potency is susceptible to a nicer calculation. In *Charalambous and Another v. Kassapis and Another* (Decided on 8th January, 1988, to be published in (1988) 1 C.L.R.)*, we noticed that the causative potency of one's negligence is, inter alia, dependent on the capacity of the vehicle under his control to cause damage. The bigger and the heavier a vehicle is, the more damage it is likely to cause. Ultimately apportionment of liability is a matter of impression and no doubt in this, as in other areas of conflict, the impessions of the trial Court are more vivid. This coupled with our disinclination to interfere with the findings of the Court, makes us reluctant to interfere with the apportionment made by the trial Court; though we must record that had we been concerned to apportion liability, we would be inclined to attribute a greater percentage of liability to the appellant.

DAMAGES

In the judgment of the trial Court detailed reference is made to the injuries of the plaintiff and sequential needs in order to keep body and soul together and maintain the degree of comfort necessary to enable him to function as an organic entity. The condition of the respondent requires constant care and attention

* *Reported in (1988) 1 C.L.R. 25.*

by others for every function other than merely contemplative ones including medical care periodically and the supply of medicine. The principle is that provision must be made by way of compensation for the supply of every comfort and facility that will lessen the loss of natural faculties and restore a quality of life as proximate as possible to the life the injured party could be expected to enjoy but for his incapacitation.

The Court awarded an amount of C£6,685.- by way of special damages for losses of earnings and other items of damage that accrued and could be quantified by the date of trial. By way of future loss and necessary expense, the Court made provision for the following items:-

(a) Losses of earnings
(b) Future nursing and care expenses.
(c) Medical expenses.
(d) Laundry expenses.
(e) Provision of bedsheets and mattresses.
(f) Provision for extra heating of his residence, heating expenses.
(g) Drugs and medicines, and
(h) Value of a wheel-chair.

In addition the Court awarded the respondent C£25,000.- as general damages. As can be gathered from the findings of the Court, the condition of the appellant accords with the classic situation of a tetraplegic involving loss of movement in all four limbs, associated with awareness of his condition, but fortunately unaccompanied by pain, except occasionally.

The appellant challenged the sum awarded by way of general damages as unjustifiably high. In his submission, an award of C£15,000.- was the proper figure under this head of damage. Also he contested the finding of the Court respecting the earnings of the respondent. C£100.- per week and sequentially thereto the forecast of future loss. Counsel for the respondent also challenged the award of general damages on the ground that it was inordinately low. The case of *Housecroft v. Burnett* [1986] 1 All E.R. 332, establishes a conventional award for quadriplegia at 75,000.- pound sterling. The award for the respondent in this case should have been for no lesser amount considering that he forfeited virtually all his faculties at the prime of his life. The provision made by way of nursing expenses was criticized as wholly inadequate. More than one nurse, very possibly three

nurses a day, must be employed to look after the respondent. The evidence established, in the submission of counsel, that the monthly salary of a nurse was in the region of C£140 to C£160.- and possibly C£180.-

An important aspect of the appeal is that concerning the refusal of the Court to make:

(a) Provision for the acquisition of a new house for the family of the respondent such as would facilitate his movement about, and,

(b) Provision for the purchase of a car, an asset that would make it possible for his family to move him about and thereby lessen the emotional and mental hazards of confinement to a wheel-chair.

The trial Court rejected the claim for the acquisition of a car in the absence of evidence revealing the cost of renting a car from time to time for outdoor movement. No separate provision was made for this item of damage, save that the Court indicated that lack of amenity to move outside the house would be taken into consideration in the assessment of general damages; acknowledging that lack of such amenity cannot but exacerbate the melancholy state of the respondent, the Court remained unpersuaded of the need for a new house and, in the absence of satisfactory evidence respecting the cost necessary for the adaptation of the family house to meet the needs of the respondent, made no provision by way of damages on this score either.

We have carefully considered the arguments raised by both counsel with keen awareness of the sense of deprivation experienced by the respondent on the one hand and the need to ensure that the award is intrinsically fair, free from any element of overlapping. The multipliers chosen by the Court are not in issue. A multiplier of 12 was adopted for the assessment of future loss of earnings and a multiplier of 15 for the assessment of future nursing and care expenses. The choice of different multipliers for the assessment of future losses of different kinds accords with the realities of working life examined in conjunction with those concerning the duration of life. The two rarely coincide; the span of life ordinarily extends beyond that of working life. Damage that crystallized and could be quantified was awarded as special damage. Future losses and expense, as well as compensation for pain, suffering and loss of amenity, formed part of the award of general damages.

First we shall deal with general damages. In *Paraskevaides (Overseas) Ltd. v. Christofi* (1982) 1 C.L.R. 789, we noted the tendency discernible over the years to make more generous awards as compensation for pain and suffering and loss of amenities of life. A higher premium, it was observed, is placed on human pain and the agonies of disability. A similar tendency is noticeable elsewhere, especially in England wherefrom we often derive guidance in the assessment of damage. In the case of *Housecroft v. Burnett* (supra), the Court debated at length the form a proper award should take by way of general damages in cases of tetraplegia. They indicated that a conventional award should be in the region of UKL.75,000.- A conventional award, it was observed, provides for a degree of uniformity and should be favoured, subject always, to the presence of aggravating or extenuating circumstances that may militate for a higher or a lower award, as the case may be. Earlier we stressed, it is well nigh impossible to put a precise value on loss of human faculties and happiness. The inflationary spiral is another consideration to which the Court should pay heed, though not necessarily in direct sequence to the movement of the curve of inflation, as Lord Diplock noticed in *Wright v. British Railways Board* [1983] 2 All E.R. 698, 699, 700.

Previous awards do not give rise to binding precedent in the sense of stare decisis as pointed out in *Tziellas v. The ship «Natalena H»* (1982) 1 C.L.R. 807, 820. They offer guidance, especially awards made by Courts of the Republic that reflect the realities of the country and the purchasing power of the Cyprus pound. Foreign awards must be seen and evaluated subject to this reality. The purchasing power of the currency is relevant as the instrument of satisfying needs that may mend the ruptured comfort and provide for amenities otherwise denied by the condition of the injured party.

An Appellate Court can interfere with an award if it is manifestly low or manifestly high or when the direction affecting damages is fraught with an error of principle. An award is manifestly high or low, as the case may be, if the element of excess or shortfall is so glaring as to provide an objective basis for its assessment. Where conventional awards have been established they provide, no doubt, a solid basis for comparison. In assessing the sufficiency of the award in this case, we must not overlook that it was meant,

inter alia, to provide comfort for loss of outdoor mobility, albeit not precisely articulated for lack of evidence proving the annual cost of renting a car for satisfying this need. The need for the acquisition of a car may in an appropriate case be sustained as a legimate item of compensation designed to remedy deprivation of outdoor mobility. Nonetheless, the need must be established as a positive fact and pondered in relation to alternative means of securing outdoor mobility such as renting a car. We fell disinclined to interfere with the finding of the Court be it reluctantly on this issue. However, in defining the magnitude of loss of amenities, deprivation of outdoor mobility will be duly taken into consideration. The award of C£25,000.- is wholly inadequate to compensate the respondent for the wreckage of his life. Visualization of life on a wheel-chair, coupled with dependence on others and occasional complications of his condition, plus awareness of his condition, paint a picture of pain, gloom and loss of virtually every comfort and amenity in life. The amount awarded by the trial Court by way of general damages is set aside. It is wholly inadequate to compensate the injured party for his sufferings and deprivation of the faculties for self-reliance leading to confinement to a wheel-chair. Of course, no amount of money is a substitute for a healthy life of which he has been deprived. On the other hand, the amount must be such as to be sufficiently commensurate as far as money can do with his grave and irreversible condition. The award of C£25,000.- is set aside as manifestly low. In our judgment an award of C£55,000.- is fair compensation for this aspect of general damages and we so approve.

EARNINGS

The respondent was an unskilled labourer who was for a period of a year prior to his accident engaged in the business of production of charcoal. He maintained that his earnings were in the region of C£600.- to C£700.- a month, evidence that went virtually uncontradicted in the submission of the respondent. Counsel for the appellant maintained that his monthly earnings should be estimated at no more than C£80.- per month which reflected the value of the labour of an unskilled worker in the open market and coincided with his his earnings before embarking on a venture of his own. The duration of the business of the respondent was not such as to provide a firm indication of his future earnings, whereas his weekly wages before then ceased to provide direct evidence of his earnings. The eventual assessment of the Court at

CY£100.- per week was fair and in any event not such as to leave room for this Court to interfere. Hence both the appeal and counter appeal, so far as directed against the pertinent finding of the Court, are dismissed.

Next the claim for a new house. The Court refused to make an award for this item for an estimated amount in the region of C£23,000.- on the ground that its necessity had not been established; and no award was made for repairs that may be necessary to make adjustments to his house to conform to his needs, for lack of evidence. Had such evidence been forthcoming, the Court indicated, it would be prepared to make appropriate provision. But as its assessment was a matter of guess work, the Court refused it. A house designed to meet the needs of the respondent would no doubt provide great comfort. For this loss to be recoverable, it would have to be demonstrated that the value of the new house would be greater than that of the existing house of the respondent. Such evidence was wholly missing. Thus we are driven to sustain the judgment of the trial Court on this point as well. And as the cost of adjustment of the existing premises was not duly substantiated and not proven, we feel unjustified to interfere with that part of judgment.

Lastly, nursing expenses. In the case of *Housecroft* it was pointed out that the benevolence of those close to the injured party cannot go to mitigation. The incapacitated person is entitled to be compensated for loss of the amenity to look after himself taking the form of the cost necessary to be properly looked after. The evidence established that more than one nurse should be in attendance on a daily basis. The sum awarded by way of monthly provision, C£100.- was, in the light of the evidence wholly inadequate although the sum suggested by counsel for the respondent was grossly excessive. A fair provision for this item of damage should be C£200.- per month. We shall, therefore, double the award for future nursing expenses increasing it from C£18,000.- to C£36,000.-

INTEREST

Section 58A of the Civil Wrongs Law - Cap. 148 - (added by s.5 of Law 156/85) confers discretion on the Court of trial to award interest for the whole or part of the judgment for damages from a date prior to the date of its pronouncement. By the terms of this enactment discretion is vested in the Court to award interest on

the whole or part of the award of damages from any date following the genesis of the cause of action The primary object of the law is to afford power to the Court to do justice to the injured party as the intrinsic merits of his claim may warrant and secondly, minimize the effects of delay on an award of damages In exercise of this power, the trial Court

(a) Awarded interest on part of the amount of special damages, namely, an amount of C£4,161 - for a period of 23 months, and

(b) Coupled the award of general damages with the interest from the date of the accrual of the cause of action, that is, from 4th August, 1983

We shall leave intact the award of interest made in relation to special damage On the other hand, the award of general damages for pain, suffering and loss of amenities has to be set aside. The sum awarded on this account by this Court, notably, C£33,000 - (after deduction of the contribution of the respondent) shall carry interest at the rate of 6% p a from the date of institution of the action, that is, 19 10 1984

In the result the appeal is dismissed with costs The cross-appeal is allowed in part, as indicated in this judgment, with costs In the interest of certainty and subject to the correctness of our arithmetic, judgment shall be entered for the respondent for the following amounts -

(a) C£4,161 - (special damages) with 6% interest accruing from 8 6 1985

(b) C£33,000 - (general damages, for pain, suffering and loss of amenities), plus interest accruing at the rate of 6% p a from 19 10 1984

(c) The remaining part of the award of general damages of C£61,515 - (60% of C£102,525 -)* shall carry legal interest at the rate of 6% p a from the date of judgment of the trial Court, that is, from 8 7 1987

---

* *C£62 400 future loss of earnings*
C£36 000 future nursing and care expenses
C£900 - future urologist's fees
C£1800 laundry expenses
C£ 1 425 bedsheets and mattresses

Like the trial Court we approve costs for two advocates, subject to the following directions: One set of costs will be recovered for appearances for the hearing of the appeal and cross appeal.

Order accordingly.

Appeal dismissed. Cross-appeal allowed in part. Order for costs as above.