

[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

ELENI COSTI TSANGARI AND ANOTHER

Appellants (Defendants),

v.

FOTIS SAVVAS

Respondent (Plaintiff).

(Civil Appeal No. 4370)

1962

Oct. 25

ELENI COSTI
TSANGARI
AND ANOTHER
v.
FOTIS SAVVAS

Civil Procedure—Duty of trial Judges to deal fully with disputed facts and conflicting evidence—Attention drawn to the Court's observation in the case of Economides v. Zodhiatis 1961 C.L.R. 306.

Observations by the High Court :

Finally, we would like to observe that the Judge ought to have dealt more fully with the facts of the case and the witnesses generally, and that he should have given a fuller judgment though not necessarily a long one. In this connection we would invite attention to the observations of this Court in the case of Economides v. Zodhiatis, (supra).

The respondent-plaintiff on the instructions of the second appellant acting as a servant and/or personally, on different dates authorised the respondent-plaintiff to repair motor car No. 4818 and supply spare parts to the sum of £56.050 mils and he actually did so.

This was denied by the appellant-defendant and judgment was given in favour of plaintiff-respondent for £56.050 mils with interest and costs.

The appellant-defendant appealed against this judgment and the High Court found that the second appellant was acting as agent for the first appellant and therefore varied the judgment by directing that judgment should be entered against appellant No. 1.

Held : (1) As the second appellant was acting as agent for the 1st appellant his wife and considering the whole of the evidence judgment should be entered only against appellant No. 1.

(2) In the circumstance of this case each party should pay its own costs of appeal.

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Per curiam : The trial Judge ought to have dealt more fully with the facts of the case and the witnesses generally and he should have given a fuller judgment though not necessarily long one.

Judgment of trial Judge varied. Judgment entered against appellant No. 1 only.

Cases referred to :—

Economides v. Zodhiatis 1961 C.L.R. 306.

Appeal.

Appeal against the judgment of the District Court of Nicosia, sitting at Lefka, (P.E. Papaioannou, D.J.), dated the 20th February, 1962 (Action No. 107/61) whereby the defendants were adjudged to pay to the plaintiff the sum of £56.050 plus £20.650 costs, being balance representing his remuneration for services rendered to the defendants as a motor mechanic and the value of motor car spare parts supplied to them.

Lefkos N. Clerides for the appellant.

C. M. Melissas for the respondent.

The judgment of the court was delivered by :—

JOSEPHIDES, J. : This is an appeal against the judgment of the District Court of Nicosia, sitting at Lefka, given in favour of the plaintiff-respondent against the defendants in the sum of £56.050 mils with interest and costs.

The respondent's claim was for £56.050 mils balance representing his remuneration for services rendered to the defendants as a motor-mechanic and the value of motor-car spare parts supplied to them.

In the statement of claim it was averred that the respondent, on the instructions of the second appellant, acting as a servant and/or agent of the first appellant, and/or personally, on different dates authorised respondent to repair motor car No. 4818 and supply spare parts, and that the respondent rendered the services and supplied the spare parts described in detail in the lists attached to the statement of claim.

The defendants, in their statement of defence, denied

that, after the signing of a bond by the first appellant on the 21st May, 1959, any repairs were carried out by respondent and/or if any such repairs were carried out, then they had been paid off.

At the hearing respondent gave evidence in support of his case, and in the course of his evidence he produced five invoices of the work done and spare parts supplied, which are exhibits Nos. 1, 2, 3, 4 and 5 in this case. In the course of his evidence he stated that he rendered the services which are enumerated in the invoices and that he supplied the spare parts stated therein.

The second appellant, who is the husband of the first appellant, gave evidence denying the respondent's claim, and another four witnesses were called in support of the appellant's case. At the conclusion of the evidence counsel addressed the Court and the learned trial Judge then gave a brief judgment. The opening words of that judgment are: "I find exhibits 1, 2, 3, 4 and 5 conclusive".

Now, there is no doubt that that wording was unfortunate. The invoices produced in support of the plaintiff's claim cannot be conclusive. Furthermore, Mr. Clerides submitted that those invoices were not admissible in evidence, but we are not prepared to accept that submission. The invoices were produced to show the particulars of the services rendered and the materials supplied to the appellants, and nothing more.

The trial Judge went on to say that "the claim of plaintiff was proved by overwhelming evidence. I do not believe the defendant in his evidence. His demeanour when giving evidence impressed me unfavourably".

On reading the whole record of the evidence in this case, we have no doubt that what the Judge meant was that having heard the evidence adduced on both sides, and having had the opportunity of observing the demeanour of the witnesses while giving evidence, he preferred the version of the respondent to that of the appellants; and on the respondent's evidence he gave judgment in his (respondent's) favour.

As to the form of judgment, the husband, second appellant, was acting as agent for his wife, the first appellant, and on the evidence, we consider that the judgment should be

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given against the wife only, *i.e.* the first appellant. To that extent the appeal is allowed and the judgment varied.

In the circumstances of this case, we direct that each party should bear its own costs of appeal.

Finally, we would like to observe that the Judge ought to have dealt more fully with the facts of the case and the witnesses generally, and that he should have given a fuller judgment though not necessarily a long one. In this connection we would invite attention to the observations of this Court in the case of *Economides v. Zodiatis*, Civil Appeal No. 4347, reported in 1961 C.L.R. p. 306.

Appeal allowed in part.