

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

HALIL KEMAL,

Appellant (Defendant),

v.

GEORGHIOS M. KASTI,

Respondent (Plaintiff).

(Civil Appeal No. 4382).

1962
Dec. 13

HALIL KEMAL
v.
GEORGHIOS
M. KASTI

Civil Wrongs—Negligence—Personal Injuries—General Damages—Quantum—Special damages—Cannot be claimed or awarded for a period after conclusion of the hearing of the action.

Practice—Special damages—Procedure to be followed.

Practice—Amendment of pleadings—Civil Procedure Rules, Order 25, r.1—Duty to file with the Registrar amended pleading.

The respondent sustained personal injuries on a road accident due to the negligence of the appellant. He was awarded £1500 general damages, plus £1806 special damages covering the period between the date of the accident (*i.e.* 12/9/59) and the delivery of the judgment (*i.e.*, 16/6/62). Judgment was delivered many months after the conclusion of the hearing of the action (*i.e.*, 22/12/61). On appeal by the Defendant both on the issue of negligence and the quantum of damages, the High Court, upholding the judgment of the trial Court on the issue of negligence and the quantum of general damages, and, partly reversing it, on the issue of special damages.

Held : (1) As regards the period from 12/9/59 to 12/9/60 (52 weeks) loss of wages at £12 per week : This is the period from the date of the accident and the delivery of the statement of claim ; it is clear that the plaintiff is entitled to recover judgment on the amount now claimed by the statement of claim.

(2) As regards the period from 22/12/61 to 16/6/62 at £12 per week : This is the period between the conclusion of the hearing and the delivery of the judgment. It is well-settled that no special damages in respect of a period after the date of the hearing of the action can be recovered. Consequently, the sum representing this period will have to be deducted from the judgment of the trial Court.

(3) As regards the period from 12/9/60 to 22/12/61 at £12

1962
Dec. 13
HALI KUMAR
V.
GEORGHOS
M. KASLI

per week : This is the period from the date of the filing of the statement of claim to the date of the conclusion of the hearing and is not included in the statement of claim, and no objection was taken to the admission of evidence on this point. The trial Court awarded the sum claimed in respect of this period (in addition to the other two periods) after allowing the amendment of the statement of claim on the application of plaintiff's counsel. The Court had power, under Order 25, rule 1 of the Civil Procedure Rules, to allow the amendment of the statement of claim ; and such an amendment was necessary as otherwise the plaintiff would not be entitled to judgment in respect of the aforesaid period and his judgment would be bad to that extent.

(4) The plaintiff, however, failed to have his statement of claim actually amended and filed in Court. For this reason we now direct that an amended statement of claim with a formal order shall be filed in Court and that until such amended pleading and order are filed the execution of the judgment is suspended.

(5) Whenever a Court amends a pleading it is the duty of a party in whose favour the amendment is made to file with the Registrar an amended statement of claim or defence, as the case may be, so that the record is in order. This has been stated over and over again by this Court, and if any authority need be quoted that is the case of *London Passenger Transport Board v. Moscrop* (1942) A.C. 332.

Appeal against negligence and general damages fails but as regards special damages appeal succeeds for the period 22.12.61 - 16.6.62 to be deducted from judgment. No alteration of District Court costs but each party to bear own costs in the appeal

Cases referred to :—

Chattell v. Daily Mail (1901) 18 T.L.R. 165 ;

Wyatt v. The Rosherville Gardens Co. (1886) 2 T.L.R. 282 ;

Modera v. Modera and Barclay (1893) 10 T.L.R. 69 ;

London Passenger Transport Board v. Moscrop (1942) A.C. 332 ;

The Dictator (1892) 9 T.L.R. 64.

1962

Dec. 13

HALIL KEMAL

v.

GEORGHIOS

M. KASII

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (V.R. Dervish, P.D.C. and L. Savvides, D.J.) dated the 13th April, 1962 (Action No. 2343/60) whereby judgment was given for plaintiff in the sum of £3,306.— plus £27,350 mils costs in an action for damages for negligence, arising from a road collision.

A. Berberoglou for the appellant.

A. Triantafyllides for the respondent.

The facts sufficiently appear in the judgments delivered by VASSILIADES, J. and JOSEPHIDES, J.

WILSON, P. : Mr. Justice Vassiliades and Mr. Justice Josephides will give the reasons for judgment in this case. I agree with them.

VASSILIADES, J. : This is an appeal against the judgment of the District Court of Nicosia in an action for damages for negligence, arising from a road collision.

While the defendant-appellant was driving his private motor-car N. 8537, on the 12th of September, 1959, on a wide public road outside the walls of Nicosia old town, his (appellant's) vehicle knocked down the respondent-plaintiff as he was about to mount his stationary motor-cycle at the side of the road, and caused him severe injuries on the right leg.

The respondent-plaintiff was immediately removed to Nicosia General Hospital where he was admitted on the same day and was treated by the Hospital specialist. The main injury consisted of a complicated fracture of both bones of the lower leg, part of which were protruding from the wound.

The patient was subjected to the indicated treatment and was eventually put in a long leg plaster. He continued under treatment for the next eight months, at the end of which the fracture was still not united and an operation was advised.

1962
Dec 13
HAILI KEMAL
v
GEORGHIOS
M KASTI
Vassiliades 1

The respondent consulted another specialist and eventually on the 16th October, 1961, more than two years after the injury, he had to undergo, another major operation on his leg. The surgeon who performed it, (Dr Thalīs Michaelides, P W 2) states at p 15 of the record

“ I opened up the fracture, I freshened the edges, I cut a graft from the same tibia which I locked into the lower fragments and fixed the two grafts and I got also grafts from the iliac crest to the fractured part”.

In December, 1961, when this Doctor was giving evidence in the case, he stated that the respondent-plaintiff would have to be under treatment for a few more months. And the District Court in connection with damages say this in their judgment, at p.37 of the record —

“In any case both he (Dr Michaelides) and Dr. Pelides gave it as their opinion that besides the usual physiotherapy and occasional pains which the plaintiff would have to suffer later, he would have at least a 20% permanent incapacity. Though the accident occurred on the 12th September, 1959, the plaintiff is still unable to use his leg, and according to Dr Pelides, if the bone does not unite, there is danger of the leg being amputated”.

This was the position when the District Court gave judgment for the plaintiff-respondent, on the 13th April, 1962, for £3,306 — damages, made up of two main items viz £1806.— special damages, and £1,500.— general damages. Against this judgment the appellant-defendant appeals both on the facts connected with the issue of negligence, and on the amount of the damages awarded. The notice of appeal contains several grounds which, however, can be grouped under these two headings :— (a) negligence, and (b) damages.

Learned counsel for the appellant dealt exhaustively with all his grounds, but as far as the issue of negligence is concerned, it is sufficient for us to say that we are unanimously of the opinion that no reason has been shown, on the record, why the trial-court could not reach their conclusions ; nor that their findings should be in any way disturbed. They, therefore, stand as made.

As regards damages, we see no reason for interfering with the amount awarded as general damages ; but as re-

gards special damages we have here a case where the amount awarded is bigger than the amount claimed. And in order to do this, the District Court, acceding to the request made by counsel for the respondent-plaintiff in his final address on the 22.12.61, treated the statement of claim as amended, so as to include in the item of special damages by way of loss of wages, the period from the conclusion of the trial (22.12.61) to the 16.6.62 viz. a period of about six months after the closing of the whole case and about three months after judgment which was reserved until the 13th April, 1962.

The District Court were invited on behalf of the plaintiff, to do this under or. 33, r. 14 of our Rules, and the corresponding or. 28 r.1 of the English Rules. In their judgment, however, the trial-court say that having considered this point they decided that they "should grant the plaintiff leave to amend his claim of special damages", so as to cover the period in question. (Record p.37, G). It is not clear whether the District Court in doing so purported to act under or. 33, r.14; or under order 25, pertaining to amendment of the pleadings. But it is clear, in our opinion, that the amendment in question, could not be effected in the circumstances. It was not done as required by the Rules ; it was never made effective by the required formal order ; and it could not be treated in the judgment, as part of the statement of claim. Counsel for the respondent rightly conceded, in our opinion, that appellant's attack on this part of the judgment must succeed.

The result is that the appeal against the findings of the District Court on the issue of negligence fails ; it also fails as regards the amount of general damages ; but as regards special damages, the appeal succeeds to the extent of a sum equal to £12 per week for the period 22.12.61 to 16.6.62 which shall be deducted from the judgment. Execution to stay until the required amendment to the statement of claim be properly effected. As regards costs, we do not propose altering the order for the costs in the District Court ; but we think that in the circumstances, each party should bear own costs in the appeal.

Judgment varied accordingly. Order for costs in the District Court to stand as made. Each party to bear own costs in the appeal.

JOSEPHIDES, J. : On the question of special damages I

1962
Dec. 13
—
HALIL KEMAL
v.
GEORGHIOS
M. KASTI
—
Vassiliades, J.

1962
Dec. 13
HALL, KEMAL
v.
GEORGIOS
M. KASLI
Josephides, J.

would like to say this. With regard to loss of wages plaintiff claimed, in paragraph 5(A) of his statement of claim, special damages, inter alia, as follows :

“(c) daily wages for 52 weeks at £12 per week £624”.

The accident occurred on the 12th September, 1959 and the statement of claim was filed exactly one year later i.e. on the 12th September, 1960.

In their judgment the trial Court said “We have decided that we should grant the plaintiff leave to amend his claim of special damages and, particularly, item 5(c) of the statement of claim so that it should read as follows : ‘(c) daily wages for 138 1/2 weeks from 12.9.59 to 16.6.62 at £12 per week £1,664; (d) fees of Dr. Michaelides £142’ consequently, our judgment is that the defendant pay to the plaintiff the sum of £1,806 as special damages plus £1,500 general damages, a total of £3,306”.

The period from 12.9.59 to 16.6.62, for which the trial Court awarded special damages for loss of wages, may conveniently be sub-divided into three periods for the purposes of this case.

Period “A”: From 12.9.59 to 12.9.60 (52 weeks) at £12 per week. This is the period claimed in the statement of claim ;

Period “B”: From 12.9.60 to 22.12.61 at £12 per week. This is the period from the date of the filing of the statement of claim to the date of the conclusion of the hearing and is not covered by the statement of claim ;

Period “C”: From 22.12.61 to 16.6.62 at £12 per week. This is the period after the conclusion of the hearing.

As regards period “A” it is clear that the plaintiff is entitled to recover judgment and no question arises. As regards period “C” this period, as already stated, refers to special damages, i.e. loss of wages, in respect of a period after the conclusion of the hearing. It is well-settled that no special damages for loss of wages in respect of a period after the date of the hearing of the action can be recovered. Consequently, the sum representing this period will have to be deducted from the judgment of the trial Court.

Period "B" i.e. from the date of the filing of the statement of claim to the conclusion of the hearing of the action (12 9 60 to 22 12 61) was not included in the statement of claim, but no objection was taken to the admission of evidence on this point. The trial Court awarded the sum claimed in respect of this period (in addition to the other two periods) after allowing the amendment of the statement of claim on the application of plaintiff's counsel. The Court had power, under order 25, rule 1 of the Civil Procedure Rules, to allow the amendment of the statement of claim; and such an amendment was necessary as otherwise the plaintiff would not be entitled to judgment in respect of the aforesaid period and his judgment would be bad to that extent. *Chattell v Daily Mail* (1901) 18 T L R 165. See also *Wyatt v The Rosherville Gardens Co* (1886) 2 T L R 282. *The Dictator* (1892) 9 T L R p 64, *Moderer v Moderer and Barclay* (1893) 10 T L R 69.

The plaintiff, however, failed to have his statement of claim actually amended and filed in Court. For this reason we now direct that an amended statement of claim with a formal order shall be filed in Court and that until such amended pleading and order are filed the execution of the judgment is suspended.

Whenever a Court amends a pleading it is the duty of a party in whose favour the amendment is made to file with the Registrar an amended statement of claim or defence, as the case may be, so that the record is in order. This has been stated over and over again by this Court, and if any authority need be quoted that is the case of *London Passenger Transport Board v Moscrop* (1942) A.C. 332 at page 347, where it is stated: "Any departure from the cause of action alleged, or the relief claimed in the pleadings should be preceded or, at all events, accompanied, by the relevant amendments, so that the exact cause of action alleged and relief claimed shall form part of the court's record, and be capable of being referred to thereafter should necessity arise. Pleadings should not be 'deemed to be amended' or 'treated as amended'. They should be amended in fact."

ZEKIA J. I agree with the judgment as amplified by my brother Judge Josephides.

Appeal as to negligence and general

1962
Dec. 13
—
HALIL KEMAL
v.
GEORGHIOS
M. KASTI

damages fails. But it succeeds as regards special damages for the period 22.12.61 – 16.6.62, the relative amount to be deducted accordingly. No alteration of the order as to the District Court costs but each party to bear own costs in the appeal.