1983 February 1

[TRIANTAFYLLIDES, P., DEMETRIADES, SAVVIDES, JJ.]

GALANOS BROS. LTD.,

Appellants-Defendants,

v.

LEONIDAS HADJICHRISTODOULOU,

Respondent-Plaintiff.

(*Civil Appeal No.* 6335).

Damages—General damages—Personal injuries—Partial amputation of the distal phalanx of left index finger—Manual labourer aged 52—His employability not affected but he will be permanently handicapped whenever he has to lift big or heavy articles or to grip small or delicate objects with the left index and thumb—Permanent stiffness and loss of mobility of left index and loss of sensation of pulp of the index—Considerable pain and suffering from the injury and left with a deformed index—Repeated lifting of heavy articles or climatic changes will cause him pain and capacity for work diminished—Award of £1000 *reduced to* £800.-.

The respondent met with an accident at work, whilst in the employment of the appellants and sustained injuries. The trial Court found that he suffered partial amputation of the distal phalanx of the left index finger. The whole volar aspect of this phalanx was missing, more than half of the nail and of the nail bed were also missing and there was a comminuted fracture of the distal bone phalanx. He was 52 years of age at the time of the accident and a manual labourer. The trial Court further found that although his employability did not seem to be affected and had not been affected so far he would permanently be handicapped in his work as a porter of goods and in his private life whenever he had to lift big or heavy articles or to grip small or delicate objects with the left index and thumb. Repeated lifting of heavy articles or climatic changes would cause him pain and his capacity of work was diminished. He had permanent stiffness and loss of mobility of the left index and loss of sensation of

the pulp of the index. He had considerable pain and suffering from his injury and he was left with a deformed index.

He was awarded a sum of £1000 as general damages and upon appeal by the employers it was contended on their behalf:

(a) That the findings of the trial Court that the appellants were solely to blame for the accident were wrong and that in any event on the evidence adduced the Court ought to have found the respondent partly to blame for the accident.

(b) That in view of the findings of the trial Court as regards the injuries that the respondent suffered and their after-effects, the amount of £1,000.- awarded to him as general damages was excessive.

Held, (I) that the findings of the trial Court were fully warranted by the evidence before it; accordingly contention (a) must fail.

(2) That considering the findings of the trial Court on the issue of general damages the amount of such damages should be reduced from £1,000 to £800.

Appeal partly allowed.

Appeal.

Appeal by defendants against the judgment of the District Court of Limassol (Pitsillides, S.D.J.) dated the 8th October, 1981 (Action No. 76/79) whereby they were adjudged to pay £1,350.- as special and general damages to the plaintiff for injuries he suffered in an accident whilst in the employment of the defendants.

A. Adamides, for the appellants.

A. Lemis, for the respondent.

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

DEMETRIADES J.: The appellants in this appeal were the defendants in Action No. 76/79 of the District Court of Limassol and they were adjudged to pay £1,350.- special and general damages having been found totally to blame for the accident in which the respondent was involved whilst in their employ-

ment. Their complaint before us, as this can be summarised from the grounds of appeal filed, is that the trial Court—

(a) assessed wrongly the evidence as to how the accident with which the respondent met occurred (as, in the light of the evidence, the danger to which the respondent was exposed was well known to him);

(b) accepted wrongly that the respondent could not foresee and/or assess the consequences of the work and avoid the accident or reduce its consequences;

(c) on the evidence adduced ought to have found that the respondent was solely to blame and/or contributed to the accident; and

(d) assessed wrongly the medical evidence and, in particular, the evidence regarding the injuries and the degree of incapacity of the respondent and thus awarded to him excessive general damages.

The facts of the case as found by the trial Judge were the following:-

"On 12.12.1978 the plaintiff was taken from Limassol to Nicosia with a lorry of the defendants, the driver of which was Photis Kyriakou (D.W.2), also in the regular employment of the defendants. The lorry was loaded at Limassol with bundles of paper sheets which were intended to be unloaded at the storehouse of the defendants at Nicosia by means of a fork-lift. The paper sheets in these bundles were flat and each bundle was fastened on both sides with wooden planks. They were large and heavy and could not be handled by one person alone. On arrival at the storehouse, some of the bundles were placed on the fork-lift which was driven by Nicolas Pashias Mavros (D.W.3), who was also in the employment of the defendants. The fork-lift was intended to be driven into the storehouse for unloading; but when its driver reached the door of the storehouse it was found that the door was not wide enough for the fork-lift to enter and all the three men decided to lift each bundle with their hands, to place it upright on the ground and to tip it through the door into the storehouse. When, however, they lifted the first bundle

they found that the side of the bundle which was facing the door was wider than the door and they decided to let it drop back on the fork-lift and to turn it by pushing sideways so as the narrower side would face the door. Upon this, the driver of the lorry Photis Kyriakou gave the order to let it drop and when dropped, the left index finger of the plaintiff was caught between the bundle and a projecting piece of iron of the fork-lift. This caused partial amputation of the distal phalanx of this finger.

According to the plaintiff, only Photis and himself lifted the bundle, whereas, according to Photis and also according to the driver of the fork-lift Nicolas Mavros, all three of them lifted it. According also to the plaintiff, as soon as Photis gave the order to let the bundle drop, Photis let it drop and he (i.e. the plaintiff), felt extra weight which he could not bear and which forced his hands downwards.

That the bundle was dropped as soon as Photis gave the order, is also stated by Nicolas Mavros whose evidence on this point is that as soon as Photis gave the order, himself and Photis automatically let it drop; but the plaintiff did not manage to do so at the same time with them".

The trial Court, after giving the above summary of the circumstances under which the accident took place, reached the conclusion that the respondent "was not allowed sufficient opportunity to let the bundle drop simultaneously with the others so as to move his hands out of the danger of being caught under the bundle".

Regarding the allegation of the appellants that the respondent knew or should have known that there was a dangerous projection on the fork-lift and that he was negligent in not keeping his hands away from it, the Court had this to say:-

"About this, Photis Kyriakou stated that he and the plaintiff worked many times with this fork-lift and the plaintiff should have known about the projecting iron piece. However, I bear in mind that when the plaintiff took hold of the bundle for lifting it with the other two men, they all intended to remove it from the fork-lift for storing into the

storehouse and the possibility of placing it back on the fork-lift could not have crossed their minds. Therefore, it made no difference for the plaintiff, at that time, where his left hand would grip the bundle so as to mind for the projecting iron piece of the fork-lift. Further, as the sudden extra weight on his hands was beyond his power to continue keeping the bundle lifted up, it was, no doubt, equally beyond his power to keep his left hand away from the iron piece".

With regard to the system of work, the trial Court found that the respondent was at the time engaged in one of his normal and regular duties; that there was nothing wrong or unusual either with the system or with the place of work; that the way in which the system was at the time carried out by the other two employees of the appellants was negligent and that it was in direct consequence of this negligent way that the respondent was injured. The trial Court further found that the iron piece which projected from the fork-lift which was used for the loading was a danger to the hands of the employees of the appellants who were engaged in loading and unloading goods, and that the appellants ought to have reasonably foreseen this danger.

Learned counsel for the appellants submitted that the above findings of the trial Court were wrong and that in any event or the evidence adduced the Court ought to have found the respondent partly to blame for the accident.

Having heard the submissions of counsel for the appellants on this issue and having carefully gone through the record of the evidence before us, we have come to the conclusion that the findings of the trial Court were fully warranted by the evidence before it. The appeal, therefore, on this issue fails.

We now propose to deal with the ground of appeal regarding the medical evidence and its assessment by the trial Court, which, in the submission of the appellants, led it to award an excessive amount of general damages.

Counsel for the appellants did not dispute the injuries suffered by the respondent and their after-effects, which the trial Court, on the basis of the evidence of the doctor who treated him, described as follows:-

"Partial amputation of the distal phalanx of the left index finger, the whole volar aspect of this phalanx was missing, more than half of the nail and of the nail bed were also missing and there was a comminuted fracture of the distal bone phalanx. On the next day Dr. Ioannou performed on the plaintiff a plastic skin graft operation, he immobilised the index in a plaster of Paris and discharged him home on 18.12.1978. Dr. Ioannou assessed his condition for the last time on 6.1.1981 when the plaintiff complained of stiffness of the left index, of loss of sensation in the distal part of the index, of pain when trying to make a strong grip and of pain in climatic changes. The objective findings of Dr. Ioannou are: slight deformity of the distal part of the left index and of the corresponding nail, loss of flexion of the proximal phalanx, loss of mobility of the distal phalanx, the sensation to the pin prick and to light touch is seriously impaired and when gripping the left index stands off full flexion. According further to Dr. Ioannou, initially the plaintiff suffered great deal of pain and inconvenience, there is permanent residual stiffness of the interphalangeal joint of the index, loss of sensation of the pulp of the index, weakness of the gripping power and complete inability for light and delicate use of the end of the index, such as taking small objects or fine articles, there is 30% to 40% loss of the normal mobility of both the two joints of the index finger, his capacity for work is diminished, weather conditions will affect his capaicity of work and he has difficulty in lifting big or heavy articles and in gripping small or delicate articles with the index and thumb. Dr. Ioannou further stated that all his objective findings will remain permanent".

The trial Judge in his judgment made reference, also, to an examination of the respondent carried out by another orthopaedic surgeon Dr. Elias Georghiou, whose evidence apparently the Judge did not accept. Having rejected the evidence of this doctor, the Court, in dealing with the issue of general damages, had this to say:-

"I shall now proceed to assess the general damages. On the day of the accident the plaintiff was 52 years of age. He is a manual labourer. Although his employability

does not seem to be affected and has not been affected so far, he will permanently be handicapped in his work as a porter of goods and in his private life whenever he has to lift big or heavy articles or to grip small or delicate objects with the left index and thumb. Repeated lifting of heavy articles or climatic changes will cause him pain and his capacity of work is diminished. He has permanent stiffness and loss of mobility of the left index and loss of sensation of the pulp of the index. He had considerable pain and suffering from his injury and he is left with a deformed index".

And, on the basis of this finding he awarded to the respondent the sum of £1,000.– as general damages.

Counsel for the appellants submitted that in view of the findings of the trial Court as regards the injuries that the respondent suffered and their after-effects, the amount of £1,000.– awarded to him as general damages is excessive.

We are in agreement with him and having considered the findings of the trial Court on this issue, we have decided to reduce the amount of general damages from £1,000.– to £800.–. On this amount the sum of £350.– agreed special damages should be added.

There will be, therefore, judgment in favour of the respondent for £1,150.– but there will be no order as to costs.

Appeal partly allowed with no order as to costs.