

COSTAS CH. CONSTANTINIDES,

Appellant-Plaintiff.

YIANGOS HJI IOANNOU,

Respondent-Defendant.

1966

April 15,

May 10

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COSTAS CH.
CONSTANTINIDES

v.

YIANGOS
HJI IOANNOU

(Civil Appeal No. 4557).

Civil Wrongs Road Traffic Road accident - Damages for injuries to passenger Special and general damages Appeal for not awarding to Appellant special damage in respect of his loss of earnings and including such damage in the general damages And for inadequacy of general damages Open to trial Court, in the circumstances of this case to deal with the question of past loss of earnings under the heading of general damages Task of Court of Appeal to ensure that an award comes within the limits of proper restitution - Trial Court's award, by way of general damages, clearly inadequate Increased by Court of Appeal

Damages Road traffic Road accident General damages Assessment of general damages Approach by Court of Appeal to the question of assessment of damages

Findings of fact Road traffic Road accident Injury to passenger Finding of trial Court that appellant was an average normal person before the accident Upheld by Court of Appeal

The appellant in this appeal who suffered injuries in a traffic accident and was awarded the amount of £1,700 as general damages appealed against such award of damages on two grounds, namely (1) that the trial Court erred in not awarding to him special damages in respect of his loss of earnings up to the date of trial and including such damage in the global figure of £1,700 and (2) that the amount of £1,700 general damages is wholly inadequate in the circumstances of the case.

The trial Court found that the appellant was an average normal person before the accident and that after the accident he was suffering from insomnia, dizziness, vertigo and headaches and that he became partially sexually impotent.

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Held. (1) On ground (1) :

We can dispose right away of the first ground of appeal by saying that though it might have been open to the trial Court to assess separately as special damage the loss of earnings of appellant until the date of trial, we, nevertheless, are of the opinion that, in the particular circumstances of this case (and taking especially into account that it appears to exist some uncertainty as to what extent appellant did work during the period pending trial) it was equally open to the trial Court to deal with the question of the past loss of earnings under the heading of general damages, as it did ; and in this respect, therefore, this appeal fails.

Held. (11) On ground (2) :

(1) In the present case, we are not simply faced with the usual case of a person whose earning capacity has been diminished permanently, for the future, because of some partial physical incapacity due to injuries as e.g. is the case of a person who has been incapacitated to some extent regarding the use of an arm, but who can take up some other employment not necessitating such use and who can then in such other employment perform as effectively as the normal average person ; we are dealing here with the tragic case of a person who suffered a very appreciable mental deterioration rendering him indeed unfit, to a large extent, for *any* kind of employment, and also condemning him to the life of a person with subnormal reactions mentally, as well as sexually. Moreover, there does not appear to be really much prospect of recovery.

(2) It must, further, be borne in mind that out of the £1,700 awarded to appellant, a considerable part thereof must be attributed to the loss of earnings of appellant over the period of two years which ran between the accident and the trial of this case ; the trial Court did expressly say in its judgment that it included this special damage, by way of loss of earnings, in the general damages.

(3) It is common ground that appellant's average earnings at the time of the accident were £2 per day ; so, even if we make all possible allowances for any fluctuations in such earnings as appellant is a self-employed person—and for the fact that appellant may have earned some reduced earnings during the said two years, we still do not think that anything less than half of the amount of £1,700 can pro-

perly be attributed to the loss of earnings of appellant until the trial. Thus, we are left with the fact that, in effect, the other half of £1,700 was all that was awarded to appellant, by way of general damages, for future loss of earnings due to diminished earning capacity because of the more or less permanent consequences of his injuries as well as for his pain and suffering and for the general deterioration of his mental health and sexual potency.

(4) In the light of all the foregoing we have come to the conclusion that the award of the trial Court by way of general damages, is so clearly inadequate as to necessitate our intervention, and we think that anything less than a global figure of £2,500, by way of general damages, including past loss of earnings until the trial, cannot properly meet the situation, we, therefore set aside the award of £1,700 and we substitute one for £2,500 and this appeal is allowed to that extent with costs.

*Appeal allowed with costs
Trial Court's award of damages
set aside and substituted as
above*

Cases referred to

Christodoulou v Memcou reported in this Vol at p 37 ante.

Ioannou v Howard, reported in this Vol at p 45 ante.

Michaelides v. Polyviou, reported in this Vol at p 155 ante.

Appeal.

Appeal against the judgment of the District Court of Limassol (Malyali & Beha D JJ) dated the 4th December, 1965, (Action No 1360/63) whereby the defendants were adjudged to pay jointly and severally to the plaintiff the sum of £1700 by way of damages in respect of injuries he received in a traffic accident, while being a fare-paying passenger in a car belonging to defendant 1 and driven by defendant 2.

A P Anastassiades, for the appellant.

G Cacoyiannis, for the respondents

Cur ad vult

VASSILIADIS, J. : Mr Justice Triantafyllides will deliver the judgment of the Court.

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TRIANIAYIUDIS, J The plaintiff-appellant challenges by this appeal that part of the judgment of the District Court of Limassol, in civil action No 1360/63, by which he was awarded £1700 general damages in respect of injuries which he received on the 10th May, 1963, in a traffic accident, while being a fare-paying passenger in a car belonging to defendant-respondent 1, and driven by defendant respondent 2

Appellant challenges this award of damages on two grounds first, that the Court erred in not awarding to him special damage in respect of his loss of earnings up to the date of trial, and including such damage in the global figure of £1,700 as above, and, secondly, that the amount of £1,700 general damages is wholly inadequate in the circumstances of this Case

We can dispose right away of the first ground of appeal by saying that though it might have been open to the trial Court to assess separately as special damage the loss of earnings of appellant until the date of trial, we, nevertheless, *are of the opinion that, in the particular circumstances of this Case* (and taking especially into account that it appears to exist some uncertainty as to what extent appellant did work during the period pending trial) it was equally open to the trial Court to deal with the question of the past loss of earnings under the heading of general damages, as it did, and in this respect, therefore, this appeal fails

Coming now to the question of the adequacy of general damages it is useful to refer first to the relevant facts as found by the trial Court

We quote from pp 37-38 of the record of appeal

"As a result of this accident, the Plaintiff received injuries and was taken to Nicosia General Hospital where he was examined by Dr. P Theodorides, who found the plaintiff suffering from

- (a) Moderately severe Concussion
- (b) Two lacerated wounds on his face, one about 2" long and the other about 1" long
- (c) X ray revealed no fracture

The plaintiff was treated, his wounds were stitched and dressed, and the plaintiff was kept under observation and treatment up to 25th May, 1963

After his treatment, the plaintiff continued to suffer from insomnia, dizziness, vertigo, and headaches. These subjective symptoms which the plaintiff complained of, constitute part of a post-concussion syndrome and are consistent with a head injury and brain concussion.

On 16/9/1963, the plaintiff was examined by Dr. Takis Evdokas, a specialist neuro-psychiatrist. This Doctor examined the plaintiff on a number of other occasions and gave evidence before this Court as to his findings, we accept the evidence of Dr. Evdokas and we believe that the subjective symptoms plaintiff complained of are genuine and that they resulted from the said accident due to moderately severe concussion. This doctor classified the plaintiff's group of symptoms into two. The first one neurological and consist of insomnia, dizziness or at times vertigo, headaches and the second group of symptoms as mental or emotional nature and consist of depression, sluggishness and partial sexual impotence.

The fact that two years have elapsed from the date of the accident and the plaintiff continues to have the second group of symptoms, will render these group of symptoms permanent.

The plaintiff is a married man aged 50. He is a barber by profession and owns a barber shop. He also had a novelty or a gift shop. He used to employ apprentices in his barber shop to assist him. The plaintiff's earnings at the time of the accident, admittedly was £2. per day. The plaintiff was a healthy man and had none of these symptoms before the accident. From the date of the accident up to the present date the plaintiff has not been able to work, due to these symptoms but Dr. Evdokas states that it is time for the plaintiff to try his job as the usual period that all these symptoms take is 2 years, although in some cases it may be more and in other less.

From our above findings we come to the conclusion that the plaintiff up to the present date was unable to work as a barber. If the plaintiff starts to work as a barber now, and it is time for him so to start, he will be in a disadvantageous position, to some degree, due to the permanency of the second group of symptoms, i.e. depression and sluggishness. On the other hand, the

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plaintiff, after the lapse of a reasonable time to cover his treatments, was able to carry on with the management of his gift shop as this did not require much movement.

As to the sexual capacity of the plaintiff, we believe that he became impotent as a result of this accident".

On the material before us, we can do nothing else, in this appeal, than take it as a fact—as the trial Court has, also, done—that appellant was an average normal person before the accident. The presumption, in the case of any person who has been injured in an accident, should, normally, be that he was an average normal person before the accident, unless the contrary be proved. In this case, the evidence of the wife of appellant strengthens considerably this presumption and, even though appellant himself has not been called to give evidence, we are of the opinion that, on the preponderance of evidence before the trial Court, there could be no other conclusion than that appellant was an average normal person at the time of the accident.

In the light of the above let us now examine whether the general damages of £1,700 awarded by the trial Court, are so inadequate, as to warrant the intervention of this Court in the matter.

In considering the question of the adequacy of damages we have borne in mind the principles reiterated recently by this Court in the cases of *Christodoulou v. Menicou* (reported in this Part at p. 17 *ante*), *Ioannou v. Howard*, (reported in the Part at p. 45 *ante*) and *Michaelides v. Polyviou* (reported in the Part and the p. 155 *ante*) regarding the approach by this Court, on appeal, to such a matter.

In *Christodoulou v. Menicou* (*supra*) this Court refused to interfere with the assessment of general damages by the trial Court on the ground that it was "not convinced either that the Court acted upon some wrong principle of law or that the amount awarded was so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled (per Josephides, J. at p. 36).

In *Ioannou v. Howard* (*supra*) this Court said: "On the question of the quantum of damages, we should point out at the outset that an appellate Court will not lightly interfere with the discretion of a trial Court in the assessment of

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damages unless such assessment is found to be so manifestly excessive or so manifestly inadequate as to justify the making of a reassessment of damages on appeal" (per Muniu, J at p. 52), and also "The accepted test warranting intervention by the Court of Appeal in the assessment made by the trial Court, is whether it is, in the circumstances, 'a wholly erroneous estimate of the damage suffered'. That means, the assessment is too high or too low" (per Vassiliades J at p. 54). In the result, the amount of general damages in that case was increased on appeal by 50%

In *Michaelides v. Polyvion* (*supra*) this Court, applying the above principles, proceeded to increase general damages again by 50%, having taken the view that "the amount awarded to compensate the appellant for his loss in this respect, is clearly an erroneous estimate of his damage at present money value" (per Vassiliades J at p. 157)

In the last analysis, of course the question of the adequacy of an award of general damages, is a question primarily dependent upon the particular facts and circumstances of each specific case. The fact that in two of the above referred to cases this Court intervened to increase general damages by 50%, does not in any way establish that this Court would intervene only if in its opinion general damages are either too high or too low by at least 50%; it is a question of degree, and the said two cases merely show that such degree must be a substantial one before this Court would disturb an award of general damages as made by a trial Court. The task of this Court on appeal, in every such case, is, in effect, to ensure that such an award comes within the limits of proper restitution, if that is so, then this Court will not substitute its own views in the place of those of a trial Court as regards the exact amount assessed; if that is not so, then it is this Court's duty to intervene and reassess.

In the present case, we are not simply faced with the usual case of a person whose earning capacity has been diminished permanently, for the future, because of some partial physical incapacity due to injuries as e.g. is the case of a person who has been incapacitated to some extent regarding the use of an arm, but who can take up some other employment not necessitating such use and who can then in such other employment perform as effectively as the normal average person; we are dealing here with the tragic case of a person who suffered a very appreciable mental deterioration, rendering him indeed *unable to a large extent, for any kind of employment.*

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and also condemning him to the life of a person with subnormal reactions mentally, as well as sexually. Moreover, there does not appear to be really much prospect of recovery.

We think it might be useful to refer, at this stage, directly to the evidence of Dr. T. Evdokas, the specialist neuropsychiatrist, who was called by appellant, and whose evidence has been accepted by the trial Court ; his evidence, we must say, we find to be a very lucid exposition of the appellant's relevant health aspects.

At pp. 16-17 of the record Dr. Evdokas summarized the position as follows :

" Actually I see in this man two groups of symptoms. The first one is what I call more or less neurological and I specify them, first insomnia, i.e. difficulty in sleeping ; second, dizziness or at times vertigo and third, headaches.

The second group of symptoms is what I would call more on the mental side or of emotional nature ; these are two, his depression and partial impotence, that is his sexual energy is diminished. When I first saw him, I had the impression, about the first group of symptoms especially, that in time they would disappear ; and more or less, what was mental would persist, but as I understand he still continues having dizziness and headaches, and he presents the picture of what I would call psychomotor retardation, depression and sluggishness ; his whole reaction is slow, and I do not mean only in terms of muscles, emotionally his reactions are slow, and even intellectually he is slow ; for instance when you talk to him he does not respond right away, he is not alert enough and you have to wait ; if he starts a conversation he reaches a point and then stops or waits for a while and then starts again ; he is not alert. His general depression had also affected the sexual sphere".

And later on (at p. 17) the doctor proceeded to state that he regarded the mental picture and the dizziness as permanent features, from now on, of appellant's medical condition ; and he explained that, taking into consideration the fact that, at the time he was giving evidence, two years had elapsed since the accident, and that the relevant symptoms usually disappear in a period between 6 to 18 months, it was very difficult for him to see much progress being made by appellant from then on.

Dr. Ivdokas also stated (at p. 20) that it "would be very hard" for him to see appellant working again as a barber, in view of his being "very slow" and "very sluggish"; and (at pp. 23-24) on being asked to say whether appellant could manage a novelty shop, he testified that he would not say that appellant was unable to do this, if it did not require much movement, but he added that appellant would be at a disadvantage, in view of his sluggishness, in competing in the novelty-shop business.

It must, further, be borne in mind that out of the £1,700 awarded to appellant, a considerable part thereof must be attributed to the loss of earnings of appellant over period of two years which ran between the accident and the trial of this case; the trial Court did expressly say in its judgment that it included this special damage, by way of loss of earnings in the general damages.

It is common ground that appellant's average earnings at the time of the accident were £2 per day; so, even if we make all possible allowances for any fluctuations in such earnings—as appellant is a self-employed person—and for the fact that appellant may have earned some reduced earnings during the said two years, we still do not think that anything less than half of the amount of £1,700 can properly be attributed to the loss of earnings of appellant until the trial. Thus, we are left with the fact that, in effect, the other half of £1,700 was all that was awarded to appellant by way of general damages, for future loss of earnings—due to diminished earning capacity because of the more or less permanent consequences of his injuries as well as for his pain and suffering and for the general deterioration of his mental health and sexual potency.

In the light of all the foregoing we have come to the conclusion that the award of the trial Court, by way of general damages, is so clearly inadequate as to necessitate our intervention; and we think that anything less than a global figure of £2,500, by way of general damages, including past loss of earnings until the trial, cannot properly meet the situation; we, therefore, set aside the award of £1,700 and we substitute one for £2,500 and this appeal is allowed to that extent with costs.

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Appeal allowed with costs. Trial Court's award of damages set aside and substituted as above.