

1968
May 31
June 4

PATRICK DU
PUCH
v.
COSTAS
GEORGHIOU
AND 2 OTHERS

[VASSILIADES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

PATRICK DU PUCH,

Appellant-Plaintiff,

v.

COSTAS GEORGHIOU AND 2 OTHERS,

Respondents-Defendants.

(Civil Appeal No. 4687).

Road Traffic—Road accident—Personal injuries to passenger—General damages—Assessment—Principles on which the Court of Appeal will act in appeals against the quantum of damages, restated—See below.

Damages—General damages—Quantum—Principles on which the Court of Appeal will interfere—Personal injuries—Award of general damages in the sum of £3,500—Not so low or inadequate as to be rightly considered as a completely erroneous estimate of the plaintiff's loss—Consequently, the Court of Appeal will not disturb such award.

General Damages—Personal injuries—Quantum—See above.

Personal injuries—General damages—Quantum—See above.

Appeal—Personal injuries—General damages—Quantum—Principles on which the Court of Appeal will act in appeals against the quantum of general damages, restated—See, also, above.

In this case the Supreme Court, restating the principles on which it acts in appeals against the amount of general damages in personal injuries cases, declined to disturb the award of £3,500, holding that, on the evidence, this assessment was not so low as to make it a completely erroneous estimate of the plaintiff's - appellants loss.

Appeal dismissed.

Cases referred to:

Kyriakos Christodoulides v. Matheos Kyprianou (reported in this Vol. at p. 130 ante);

Christodoulou v. Menicou (1966) 1 C.L.R. 17 at 36;

Ioannou v. Howard (1966) 1 C.L.R. 45 at 55;

Manoli v. Evripidou (reported in this Vol. at p. 90 *ante*);
Papadopoulos v. Tryfonos (reported in this Vol. at p. 80
ante);

Flint v. Lovell [1935] 1 K.B. 354, at p. 360, C.A.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Mavrommatis & Stylianides D.J.J.) dated the 6th December, 1967, (Action No. 2076/66) whereby he was awarded the sum of £4,450 as special and general damages for injuries he sustained in a traffic accident whilst being a passenger in the taxi owned by defendant 2 and driven by defendant 1.

A.C. Hadjioannou, for the appellant.

F. Kyriakides, for respondent No. 1.

A. Emilianides, for respondent No. 2.

A. Dana, for respondent No. 3.

Cur. adv. vult.

VASSILIADES, P. : I shall ask Mr. Justice HadjiAnastassiou to deliver the first judgment.

HADJIANASTASSIOU, J. : This is an appeal by the plaintiff from the judgment of the Full District Court of Nicosia, whereby he was awarded the sum of £3,500 general damages, (in addition to £950 agreed as special damages), for injuries he sustained in a traffic accident whilst he was a passenger in the taxi owned by respondent 2 and driven by respondent 1. The appeal is taken only against the award of general damages.

The principles on which the Court acts in appeals against the quantum of damages have been repeatedly referred to in several cases, the most recent of which is that of *Kyriacos Christodoulides and Matheos Kyprianou*, Civil Appeal No. 4670, decided on the 12th April, 1968.*

The principle is that this Court would not be justified in

*Reported in this Vol. at p. 130 *ante*.

1968

May 31

June 4

—
PATRICK DU
PUCH

v.

COSTAS
GEORGHIOU
AND 2 OTHERS

—
Hadjianastas-
siou, J.

disturbing the finding of the trial Court on the question of the amount of damages, unless it is convinced either that the trial Court acted on some wrong principle of law, or that the amount awarded was so extremely high or so very small, as to make it in the judgment of this Court an entirely erroneous estimate of the damages to which the plaintiff is entitled.

The plaintiff, as a result of the accident, suffered injuries described by the trial Court at page 28 of their judgment. It reads:

“The main injury of the plaintiff is that to his right arm and hand and also a minor injury of the right leg. Plaintiff also complains of some sort of changed attitude as a result of his injuries towards his family, but in the absence of any medical evidence to support this, we do not consider it to be of any serious nature. Also, we may say that it is more probably because of phobia than because of physical defect that the plaintiff does not drive a car because, as he alleges of his leg injuries. As stated the main injury of the plaintiff is the result of complete section of the right ulnar nerve due to a wound”.

Later on, after quoting from the evidence of Dr. Collitsis who operated and treated the plaintiff, they had this to say: (page 28, G.).

“The ulnar nerve is completely paralysed from the elbow downwards. There is a good degree of limitation of almost all movements. Loss of sensation of most of the fingers of the right hand. In short we are of the opinion that for most intents and purposes his right hand is to such a degree affected that it might be deemed nearly useless”.

The trial Court found that the plaintiff was 47 years old at the material time, and was a general representative for the Middle East of a group of companies earning £350 per month; but despite his absence from work for the period for which he underwent his treatment, he suffered no loss of earnings.

The Court after taking into consideration that up to a certain limited degree the plaintiff will be handicapped in his present job, because of the accident to his right hand, and on

account of his injuries he may not be able to secure as good a job as his present one, nevertheless, the trial Court took the view that he will not suffer any appreciable loss of earnings. The Court further took into consideration in assessing damages, the prolonged treatment of the plaintiff both in Cyprus and abroad, and the consequent pain and discomfort of the plaintiff; also the loss of amenities, his pain, suffering and discomfort in the future, and, as a result, the trial Court awarded an amount of £3,500 as general damages, in addition to the special damages which were earlier agreed upon between the parties.

Having given due consideration to all these factors, after listening to counsel, and having regard to the amounts which are being awarded as general damages by trial Courts, in cases where the awards were either affirmed or varied by this Court on appeal, we are of the view that the sum of £3,500 awarded as general damages in this case, is not such an erroneous estimate of the damages to which the plaintiff is entitled as to justify intervention by this Court. It should be added, however, that we should not have interfered even if we thought that we would have awarded, as trial Judges, a little less or a little more. The amount awarded, having regard to what are usual awards in these cases, does not seem to me either excessive or inadequate in the circumstances of this case, and I take the view that the amount awarded for general damages should be affirmed. I would, therefore, dismiss the appeal.

VASSILIADES, P. : As indicated in the course of the argument, the finding of plaintiff's loss and the assessment of damages, to which he may be entitled, in a case of this nature, is primarily the function of the trial Court. Parties seeking to recover such damages must try to present to the trial Court, in due course, all the relevant facts upon which their claim rests. Upon those facts, a party can ask the trial Court to assess his loss in terms of money; and to award him damages accordingly. We must assume that all this was duly done in the present case. As a result, the trial Court has awarded the amounts stated in their judgment, for the reasons given therein.

The appeal is directed against the assessment of general damages; and it is based on the ground that the trial Court in assessing general damages, failed to give due consideration

1968
May 31
June 4
—
PATRICK DU
PUCH
v.
COSTAS
GEORGHIOU
AND 2 OTHERS
—
Hadjianastasi-
oiou, J.

1968
May 31
June 4
—
PATRICK DU
PUCH
v.
COSTAS
GEORGHIOU
AND 2 OTHERS
—
Vassiliades, P.

to relevant factors, particularly (a) the devaluation of the pound; and (b) the personal circumstances of the plaintiff which make his loss greater, it is alleged, than it would have been if he were carrying on the same business in Cyprus. If these matters have not been raised in the trial Court, we should decline to look at them here; if they have been raised—and we have no doubt that they have—the trial Court must have had them in mind in reaching their assessment. It is obvious to me that the trial Court must have had in mind the purchasing value of the pound at the time when the damages fell to be assessed; or else, how could they make their assessment? And any devaluation of the pound in the foreign money exchange is hardly relevant in the present case.

On appeal we have to be satisfied by the appellant, that the assessment of the trial Court is so low as to be rightly considered as a completely erroneous estimate of plaintiff's loss. (See *Christodoulou v. Menicou* (1966) 1 C.L.R. 17 at p. 36; *Ioannou v. Howard* (1966) 1 C.L.R. 45 at p. 55; *Manoli v. Evripidou* (reported in this Vol. at p. 90 ante); *Papadopoulos v. Tryfonos* (reported in this Vol. at p. 80 ante). Having heard counsel for the appellant with all the attention that I could give to his argument, I am not persuaded that there was such an entirely erroneous estimate of the damages to which the plaintiff is entitled in this case, as to justify intervention on appeal.

For this reason, I agree that the appeal must fail.

STAVRINIDES, J. : In substance the appellant's case is that the amount awarded to him by the trial Court as general damages was, to use the well known words of Greer, L.J., in *Flint v. Lovell*, [1935] 1 K.B. 354, C.A., at p. 360, "so very small as to make it an entirely erroneous estimate of the damage to which he is entitled;" and in this connection stress had been laid on the devaluation of the currency.

In my view the appellant has failed to make out his case and therefore the appeal must be dismissed.

VASSILIADES, P. : In the result the appeal fails and shall stand dismissed with costs. But these will have to be measured on the merits of the appeal, and the assistance received from counsel in the presentation of the case. We allow costs at the minimum of the appropriate scale (£12. each party) for one day only.

Appeal dismissed.

Order for costs as aforesaid.