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YIANGOS CHRISTODOULOU v. PANDELIS ANGELI

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

YIANGOS CHRISTODOULOU,

*Appellant-Defendant,*

*v.*

PANDELIS ANGELI,

*Respondent-Plaintiff.*

*(Civil Appeal No. 4685).*

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*Civil Wrongs—Negligence—Master and Servant—Duty of the employer to give proper safety instructions—Contributory negligence—Personal injuries—Damages—Apportionment of liability—Reasonably open to trial Court on the evidence to make the findings they did—Appeal and cross-appeal dismissed.*

*Negligence—Contributory negligence—Master and Servant—See above.*

*Master and Servant—Duty of master to give appropriate safety warnings, especially in the present case in view of the workman's young age and consequent lack of maturity and experience—See also above.*

*Apportionment of liability—Appeal—Principles on which the Court of Appeal will interfere with apportionment made by trial Court—The Appellate Court will reluctantly interfere even if somewhat differently inclined.*

*Damages—General damages in personal injuries cases—Quantum—Principles on which the Court of Appeal will approach the award and assessment of general damages.*

*Appeal—Credibility of witnesses—Findings resting on credibility of witnesses—Principles on which the Court of Appeal decides appeals on the credibility of witnesses—Findings of fact made by trial Courts—Approach thereto of the Court of Appeal.*

*Appeal—Approach of the Court of Appeal to: (a) Findings of fact, (b) apportionment of liability, and (c) award of general damages—See, also, above.*

*Personal injuries cases—See above.*

*Credibility of witnesses—Approach of the Court of Appeal—See above.*

*Contributory negligence—See above.*

*Witness—Credibility—Appeals on credibility of witnesses—See above.*

This is an appeal from the judgment of the District Court of Nicosia awarding to the plaintiff in the action (the respondent herein) £3,344.- damages against the defendant (the appellant in this appeal) for injuries received by the plaintiff in the course of his employment with the defendant, as a mechanic. The appeal was argued on the basis of common law negligence.

The injuries sustained by the respondent workman were quite serious necessitating the amputation of his left leg as from the middle of the thigh. The trial Court found the damages at £6,688.- under two heads: General damages £6,000.-; and special damages £688. And finding negligence in both sides, the trial Court apportioned the liability equally between the parties and gave judgment for the workman for £3,344.-

From this judgment the employer took the present appeal on four grounds which in substance may be reduced to two: (a) Against the findings of the trial Court on the question of negligence and the apportionment of liability; and (b) against the amount of the award. A cross-appeal was duly filed on behalf of the workman (respondent-plaintiff) also complaining against the apportionment of liability; and against the amount of general damages awarded.

The evidence as to the circumstances in which the accident occurred was conflicting; and the trial Court had to make their findings on the assessment of the evidence of the different witnesses and on its effect, considered as a whole. The employer's negligence as found by the trial Court consisted in that he, in breach of his duty to give such "safety instructions as a reasonably careful employer who has considered the problem presented by the work would give to his workman", failed to give such instructions to his young workman who was at the time only 18 years old; and whose "lack of maturity must have been accompanied by lack of sound experience". The

trial Court also found that the workman was then engaged in an obviously dangerous operation; and that both parties were aware of the danger involved.

After reviewing the facts and in dismissing both the appeal and the cross-appeal, the Court:-

*Held, I. Regarding the findings as to the cause of the accident:*

(1) The approach of this Court to this matter has been stated in a number of cases. In the case *Kyriakos Mylonas and Others* v. *Margarita Kaili* (1967) 1 C.L.R. 77 the Court said at p. 79:

> "The principles on which this Court decides appeals on the credibility of winesses are well settled and we need not enter into them in detail. It must be shown that the trial judge was wrong and the onus is on the appellant to *persuade* this Court. Matters of credibility are within the province of the trial Judge and if, on the evidence before him, it was reasonably open to him to make the findings which he did, then this Court will not interfere with the judgment of the trial Court".

This was referred to in *Moustafa Imam* v. *PapaCostas* (reported in this Vol. at p. 207 *ante*); and was followed in that case as well as in other cases mentioned therein.

(2) In the present appeal we have not been persuaded by either side that there are sufficient reasons for disturbing the findings of the trial Court as to the cause of the accident.

*Held, II. As to the quantum of general damages:*

(1) This Court will not interfere with the amount assesssed by the trial Court, unless persuaded that such assessment was an entirely erroneous estimate of the damages to which the plaintiff is entitled in the circumstances of the case (see *Du Puch* v. *Georghiou and Others* (reported in this Vol. at p. 202 *ante*)).

(2) And in the present case no sufficient reasons were shown justifying the Court to disturb the assessment of the general damages made by the trial Court.

*Held, III. As to the apportionment of liability:*

(1)(*a*) As to this point we may usefully refer to a recent case in the Court of Appeal in England, *Brown* v. *Thompson* [1968] 1 W.L.R. 1003 where the matter was fully considered. We propose following the same course. Where no error of principle has been shown and no misapprehension of the facts on the part of the trial Court has been made to appear on appeal, this Court will be reluctant to interfere with apportionment made by the trial Court even if somewhat differently inclined.

(*b*) We have not been persuaded by either side that there are sufficient reasons for interfering with the apportionment of the liability in the District Court.

*Held, IV. As to the employer's duty to give safety instructions to his employees:*

We would add, however, that we read the part of the judgment of the trial Court referring to the duty of the employer towards his servant, and to his failure to give safety warning to his workman regarding a known danger, as expressing a view directly connected with the circumstances of the present case; particularly the lack of maturity and experience of this young workman; and the circumstances in which the employer's instructions for the adjustment of the wire-ropes on the mixer then in motion were given.

*Appeal and cross-appeal dismissed. No order as to costs.*

Cases referred to:

*Kyriakos Mylonas and Others* v. *Margarita Kaili* (1967) 1 C.L.R. 77 at p. 79;

*Moustafa Imam* v. *PapaCostas* (reported in this Vol. at p. 207 *ante*);

*Du Puch* v. *Georghiou and Others* (reported in this vol. at p. 202 *ante*);

*Brown* v. *Thompson* [1968] 1 W.L.R. 1003.

**Appeal and cross-appeal.**

Appeal and cross-appeal against the judgment of the District Court of Nicosia (Mavrommatis & Stylianides, D.J.J.) dated the 30th November, 1967 (Action No. 219/64) whereby the

plaintiff was awarded £3,344.- damages for injuries he received in the course of his employment with the defendant.

*N. Pelides*, for the appellant.

*Chr. Mitsides*, for the respondent.

The judgment of the Court was delivered by:-

VASSILIADES, P.: This is an appeal from the judgment of the District Court of Nicosia awarding to the plaintiff in the action (the respondent herein) £3,344.- damages against the defendant (appellant in this appeal) for injuries received by the plaintiff in the course of his employment with the defendant, as a mechanic. The claim at this stage, is based on negligence. Allegations of breach of statutory duty were made in the statement of claim; but apparently these were not seriously pursued; and the appeal was argued on the basis of common law negligence.

The defence was denial of negligence, coupled with an allegation that the injuries sustained by the plaintiff resulted from an accident caused by his (the plaintiff's) own negligence in failing to take proper care of himself in carrying out his work.

The plaintiff is a young mechanic, eighteen years of age at the time of the accident, in February, 1964, employed by the defendant who runs a motor-garage in Nicosia. For easier reference, we shall refer hereafter, to the plaintiff as "the workman"; and to the defendant-appellant as "the employer".

The injuries sustained by the workman were quite serious necessitating the amputation of his left leg as from about the middle of the thigh. The trial court found the damages at £6,688.-, under two heads: General damages £6,000.-; and special £688.- And finding negligence in both sides, the trial court apportioned the liability equally between the parties and gave judgment for the workman for £3,344.

From this judgment, the employer took the present appeal on four grounds which in substance may be reduced to two:

*(a)* against the findings of the trial court on the question of negligence and the apportionment of liability; and

*(b)* against the amount of the award.

Shortly before the hearing of the employer's appeal, a cross-appeal was filed on behalf of the workman also complaining against the apportionment of liability; and against the amount of general damages awarded.

The facts of the case are not complicated and are clearly stated in the judgment of the trial court. On February 29, 1964, a concrete mixer was under repair in the yard of the garage of the employer. After the repairs which were carried out by the workman with the help of an apprentice, the concrete mixer was tested in the presence of the employer, who noticed that certain wire-ropes needed adjustment. The employer instructed the workman to adjust the wire-ropes and walked away apparently leaving the rest to his workman.

The latter climbed on the mixer, which was a rather large machine (10 feet wide by 12 feet high) and while engaged in adjusting the wires, his trousers as well as his left thigh were caught in the gear. The workman called out for help; the engine was stopped; and eventually, after the loosening of some knots, the injured workman was rushed to hospital where his leg had to be amputated from a point well up the thigh. He was kept in hospital for several months; and eventually he had to travel to Czechoslovakia twice, for the fixing of an artificial leg.

The evidence as to the circumstances in which the accident occurred was conflicting; and the trial court had to make their findings on the assessment of the evidence of the different witnesses and on its effect, considered as a whole.

The court found that the workman climbed on the mixer and tried to adjust the wire-ropes in question while the mixer was in motion; and that this was the direct cause of the accident. The court also found that this was obviously a dangerous operation; and that both parties were aware of the danger involved.

The main findings of the trial court may be best described by quoting from the judgment. It reads: (p. 30D of the record):

> "In the result our findings are that when the engine was tested whilst in motion as it could not be tested otherwise, the defendant noticed the slackened wire-ropes and instructed the plaintiff to shorten same, that

the plaintiff climbed on the engine without being noticed by the defendant and whilst the engine was in motion, he leaned his foot on the trough which was caught by the gear and the unfortunate accident which resulted in the amputation of his left leg took place.

"We find as a fact that to work on that engine whilst in motion is a dangerous operation. This was within the knowledge of the defendant and of the plaintiff himself who in so many words stated that he would not be so brave to be on it whilst the mixer was moving. But we find further that the defendant did not instruct the plaintiff to do the slackening of the wire-ropes whilst the engine was in motion or immediately on instructions given".

Further down, the judgment reads:

"*The plaintiff was the main servant of the defendant* whose other employee, P.W.2, was an inexperienced apprentice. The plaintiff was at the time only 18 years old and his lack of maturity must have been accompanied by lack of sound experience.

".....we are of the view that the duty of an employer towards his servant is to take reasonable care for the servant's safety in all the circumstances of the case. It is the duty of an employer to give such safety instructions as a reasonably careful employer who has considered the problem presented by the work would give to his workman.

"In this particular case, bearing in mind all the circumstances including the age of the plaintiff, the foreseeability and the magnitude of the risk and that workmen may act carelessly, we consider to have been the duty of the defendant to give instructions to the plaintiff not to climb on the mixer and/or not to do the work of the slackening of the ropes whilst the engine was in motion".

As regards the negligence of the workman the trial court took the view that-

"The plaintiff omitted to take the ordinary care that would be expected of him in the circumstances. He rashly climbed on the mixer to do the slackening of the

ropes whilst the engine was in motion, thus failing to use reasonable care for his own safety and/or contributed to his own damage.

"In the result, we find that both parties are equally to be blamed for the accident".

On these findings, as we have already stated, the trial court assessed the damages at £6,688.- and apportioning equally the liability, gave judgment for the plaintiff for half of the amount.

The matters for determination in this appeal may be put in two groups:

*(a)* The findings of the trial court as to the cause of the accident; and

*(b)* The amount of compensation.

The approach of this Court to both these matters has been stated in a number of cases. In *Kyriacos Mylonas and 2 Others* v. *Margarita Kaili* (1967) 1 C.L.R. 77, the Court said at p. 79:

"The principles on which this Court decides appeals on the credibility of witnesses are well settled and we need not enter into them in detail. It must be shown that the trial Judge was wrong and the onus is on the appellant to persuade this Court. Matters of credibility are within the province of the trial Judge and if, on the evidence before him, it was reasonably open to him to make the findings which he did, then this Court will not interfere with the judgment of the trial court".

This was referred to in *Moustafa Imam* v. *PapaCostas* (reported in this Vol. at p. 207 *ante*); and was followed in that case as well as in other cases mentioned therein.

As to the quantum of damages, this Court will not interfere with the amount assessed by the trial Court, unless persuaded that such assessment was an entirely erroneous estimate of the damages to which the plaintiff is entitled in the circumstances of the case. (*Du Puch* v. *Georghiou and Others* (reported in this Vol. at p. 202 *ante*).

And as to the apportionment of liability we may usefully refer to a recent case in the court of appeal in England, *Brown* v. *Thompson* [1968] 1 W.L.R. p. 1003 where the matter

was fully considered. We propose following the same course. Where no error of principle has been shown and no misapprehension of the facts on the part of the trial court has been made to appear on appeal, this Court will be reluctant to interfere with the apportionment made by the trial court even if somewhat differently inclined.

In the present appeal we have not been persuaded by either side that there are sufficient reasons for disturbing the findings of the trial court; or for interfering with their assessment of the damages; or the apportionment of the liability in the District Court.

We would add, however, that we read the part of the judgment of the trial court referring to the duty of the employer towards his servant, and to his failure to give safety warning to his workman regarding a known danger, as expressing a view directly connected with the circumstances of the present case; particularly the lack of maturity and experience of this young workman; and the circumstances in which the employer's instructions for the adjustment of the wire-ropes were given.

In the result, both the appeal and the cross-appeal are dismissed; and in the circumstances, we make no order for costs in these appeals.

*Appeal and cross-appeal dismissed. No order as to costs.*