[VASSILIADES P. TRIANTAFYLLIDES & JOSEPHIDES JJ.]

DEMETRIOS ANTONIADES,

Appellant – Plaintiff,

v.

ANDREAS NICOLAOU MAKRIDES,

Respondent – Defendant.

(*Civil Appeal No.* 4680).

Damages—Quantum of in personal injuries cases—Personal injuries—General damages—Assessment—Loss of future earnings—Award though on the low side yet not so low as to be an entirely erroneous estimate and as such to be disturbed by the Court of Appeal—Award for pain and suffering and loss of amenities—Wholly erroneous estimate of—Amount increased on appeal—See also herebelow.

General damages—Personal injuries—The law as to the basis of compensation for personal injuries—Mode of assessment—Factors to be taken into account—Wrong to take each of the items separately and then just add them up at the end—Items are not separate heads of compensation—Fair and reasonable compensation—Perfect compensation not possible—See also herebelow.

General damages—Personal Injuries—Quantum of damages—Appeals—Principles upon which the Court of Appeal will act in appeals as to quantum of general damages awarded by trial Courts.

Personal injuries—General Damages—Assessment—Appeals as to the quantum of such damages—Principles applicable—See above.

Court of Appeal—How it acts in appeals as to the quantum of general damages awarded in personal injuries cases—See above.

Appeal—General damages—Appeals as to the quantum of general damages awarded by trial Courts—Approach by the Court of Appeal—See above.

This was an action for damages for personal injuries received by the plaintiff (now appellant) in a road accident. The trial Court assessed the general damages at £4,500 as follows:

(a) for loss of future earnings £3,000; and

(b) for pain and suffering and loss of amenities £1,500.

The only issue in this appeal by the plaintiff is the quantum of damages. Allowing the appeal, the Court increased the damages and:—

Held, I. As to the principles on which this Court acts in Appeals as to the quantum of general damages in personal injuries cases:—

The principles on which this Court acts in appeals as to the amount of damages have been repeatedly stated and there is a series of cases beginning with *Christodoulou* v. *Menicou* (1966) 1 C.L.R. 17 at p. 36, and ending with *Djemal* v. *Zim Israel Navigation Co. Ltd. and Another* (1968) 1 C.L.R. 309, in which these principles were summarised. It is well settled that this Court would not be justified in 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 upon 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 (*Christodoulides* v. *Kyprianou* (1968) 1 C.L.R. 130 at p. 132).

Held, II. As to the law governing the assessment of compensation in personal injuries cases:—

(1) (a) The law as to the basis of the compensation in personal injuries cases has been recently summarised by Lord Denning M.R. in *Fletcher* v. *Autocar and Transporters Ltd.* [1968] 2 W.L.R. 743, at p. 748 et seq. The compensation to be awarded should be a fair and reasonable compensation, and the Court must not attempt to give damages to the full amount of a perfect compensation in money. That was settled 90 years ago in the case of *Philips* v. *London and South Western Railway Co.* [1879] 4 Q.B.D. 406; [1879] 5 Q.B.D. 78, C.A. Cf. *Rowley* v. *London and North Western Railway Co.* (L.R. 8 Ex. 221, at p. 231) per Brett J. quoted with approval by Cockburn C.J. in *Philips's* case (*supra*) 4 Q.B.D. at p. 407. As Lord Denning M.R. says in *Fletcher's* case (*supra*) at p. 748 "those passages were quoted with approval by Lord Devlin in *H. West and Son Ltd.* v. *Shephard* [1964] A.C. 326, at p. 356, and undoubtedly represent the law".

(b) And the Master of Rolls goes on to say (at p. 749D):

"In the second place. I think that the Judge was wrong to take each of the items separately and then just add them up at the end. The items are not separate heads of compensation. They are only aids to arriving at a fair and reasonable compensation. That was made clear by the decision of this Court in *Watson* v. *Powles* [1967] 3 W.L.R. 1364, at 1368..... There is only one cause of action for personal injuries, not several causes of action for the several items. The award of damages is, therefore, an award of one figure only, a composite figure, made up of several parts..... At the end all the parts must be brought together to give fair compensation for the injuries."

(c) As Diplock L.J. says in *Fletcher's* case (*supra*) it is a platitude that the purpose of compensatory damages in an action for personal injuries is to put the victim in the same position as he would have been if he had not sustained those injuries, so far as money can do this. But money never can do this. The effect of any physical injury is to make the life of the person who sustains it different from what it would otherwise have been. The change may be temporary or permanent; it may be slight or fundamental; but his position can never be the same as it would have been but for the injuries (at page 752 C of the report). Diplock L. J. further on says (at p. 752 F):

"So, except to the extent that I have mentioned, the platitude gives little guide to the scale of values to be applied in assessing the compensation in money for the change in life of the victim which results from the personal injuries he has sustained. The law assumes that any physical injury to a man's body, wrongfully inflicted by another, involves a change for the worse and entitles him to some damages. But to assess the degree of worsening involved in one kind of injury as compared with that involved in another calls for the application of some common standard of comparison: and to convert the degree of worsening so assessed into money values for the purposes of compensation calls for the application of some arbitrary conversion table."

(d) And the learned Lord Justice concludes that the result of the decisions is that the standard of comparison which the law applies, "if it is not wholly instinctive and incommunicable,

is based, apart from pain and suffering, upon the degree of deprivation—that is, the extent to which the victim is unable to do those things which, but for the injury he would have been able to do" (at page 753 A of the report, *supra*).

(2) Finally, in assessing compensation, allowance must be made for contingencies which might upset the plaintiffs future prospects, such as illness, accident, bad trade, etc.; and for the fact that compensation is paid at once in a lump sum, so that it can be invested and the interest used at once, whereas his earnings would have been spread over many years. And, at the end we must look at the overall figure to see that it is a fair compensation (see Lord Denning's M.R. Judgment in *Fletcher's* case at page 750 G.H. of the report *supra*).

Held, III. As to the assessment of the general damages:

(1) Considering the age of the plaintiff at the time of the accident (63 years old) and all the facts of this case, including the plaintiff's residual permanent incapacity, we are of the view that his full earning capacity should be taken at a median income of £1,800 per annum. Considering further that his earning capacity is now about one half, his loss for partial incapacity should be taken at a median income of £900 per annum at 4 years' purchase and so reach a figure of about £3,600. This figure is arrived after making allowance for contingencies which might upset his future prospects and for discount for accelerated payment of a lump sum.

(2) Considering that the trial Court awarded £3,000 under this head (less of future earnings), we do not think that there is any serious error in their award so as to make it "a wholly erroneous estimate". True, the award is a little on the low side but it is not so low that it could be disturbed by this Court.

(3) *Pain and suffering and loss of amenities:* Having given the matter our best consideration, taking into account the facts of this case and everything that the appellant has suffered and will go through during the rest of his life, we are of the view that the sum of £1,500 awarded by the trial Court was far too low in the circumstances and a wholly erroneous estimate. We hold that a fair compensation under this head would be £3,000 on the basis of full liability.

Appeal allowed as above. Judgment varied accordingly. Costs in favour of appellant here and in the Court below.

Cases referred to:

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

Djemal v. *Zim Israel Navigation Co. Ltd.* (1968) 1 C.L.R. 309;

Christodoulides v. *Kyprianou* (1968) 1 C.L.R. 130 at p. 132;

Fletcher v. *Autocar and Transporters Ltd.* [1968] 2 W.L.R. 743, at p. 748, per Lord Denning, M.R. and at pp. 752 and 753, per Diplock L.J.;

Phillips v. *London and South Western Ry Co.* [1879] 4 Q.B.D. 406, at p. 407 per Cockburn C.J.; [1879] 5 Q.B.D. 78 C.A. at p. 79;

Rowley v. *London and North Western Ry Co.* (L.R. 8 Ex. 221 at p. 231) per Brett J.;

H. West and Son Ltd v. *Shephard* [1964] A.C. 326, at p. 356 per Lord Devlin.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (A. Loizou P.D.C. & Stavrinakis D.J.) dated the 25th November, 1967, (Action No. 1587/66) whereby the defendant was adjudged to pay to him the sum of £3,435 as damages for the injuries he sustained when knocked down by a car driven by defendant.

G. Ladas with *G. Cacoyianis*, for the appellant.

L. Demetriades, for the respondent.

Cur. adv. vult.

VASSILIADES, P.: The judgment of the Court will be delivered by Josephides, J.

JOSEPHIDES, J.: On the 2nd October, 1965, at about 8.30 p.m. the plaintiff was crossing Loukis Akritas Avenue in Nicosia in order to post a letter on the other side of the street. Before he had time to do so he was knocked down by a car driven by the defendant and he sustained severe and extensive injuries. He was in a coma for six weeks and he remained in hospital for five months. In the end this resulted in a serious permanent incapacity for which he sued the defendant claiming damages.

After hearing evidence, the Full District Court of Nicosia found that the defendant was two-thirds to blame and the plaintiff one-third to blame for the accident and apportioned liability accordingly.

The special damages were agreed at £650 on a full liability basis covering the period up to the 26th June, 1967. The trial Court assessed the general damages at £4,500 as follows:

(a) for loss of future earnings £3,000; and

(b) for pain and suffering and loss of amenities £1,500.

In the result judgment was given in favour of the plaintiff in the sum of £3,435.

The plaintiff appealed both against the finding of the trial Court as to the apportionment of blame and the award of general damages. The defendant cross-appealed against the finding as to the apportionment of blame, but both parties, at the hearing of the appeal, abandoned this ground of appeal, and the only issue before us was the quantum of damages.

The principles on which this Court acts in appeals as to the amount of damages have been repeatedly stated and there is a series of cases beginning with *Christodoulou* v. *Menicou* (1966) 1 C.L.R. 17 at p. 36, and ending with *Djemal* v. *Zim Israel Navigation Co. Ltd. and Another* (1968) 1 C.L.R. 309, in which these principles were summarised. It is well settled that this Court would not be justified in 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 upon 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 (*Christodoulides* v. *Kyprianou* (1968) 1 C.L.R. at p. 132).

The law as to the basis of the compensation has been recently summarised by Lord Denning M.R. in *Fletcher* v. *Autocar and Transporters Ltd.* [1968] 2 W.L.R. 743, at page 748 et seq. The compensation to be awarded should be a fair and reasonable compensation, and the Court must not attempt to give damages to the full amount of a perfect compensation in money. That was settled 90 years ago in the case of *Phillips* v. *London and South Western Railway Co.* [1879] 4 Q.B.D. 406;

[1879] 5 Q.B.D. 78, C.A. The plaintiff in that case was an eminent physician making £6,000 or £7,000 a year. He was so severely injured in a railway accident that he was reduced to utter helplessness with every enjoyment of life destroyed. Field J. in his summing up to the jury said (5 Q.B.D. 78, at page 79):

> "In actions for personal injuries of this kind it is wrong to attempt to give an equivalent for the injury sustained. I do not mean to say that you must not do it, because you are the masters and are to decide; but I mean that it would operate unjustly, and in saying so I am using the language of the great Baron Parke, whose opinion was quoted with approval in *Rowley's* case ([1873] L.R. 8 Ex. 221). Perfect compensation is hardly possible, and would be unjust. You cannot put the plaintiff back again into his original position".

This direction was approved by Cockburn C.J. who added another reason (4 Q.B.D. 406, 407):

> "The compensation should be commensurate to the injury sustained. But there are personal injuries for which no amount of pecuniary damages would afford adequate compensation, while, on the other hand, the attempt to award full compensation in damages might be attended with ruinous consequences to defendants..... Generally speaking, we agree with the rule as laid down by Brett J. in *Rowley* v. *London and North Western Ry. Co.* (L.R. 8 Ex. 221, at page 231)..... that a jury in these cases 'must not attempt to give damages to the full amount of a perfect compensation for the pecuniary injury, but must take a reasonable view of the case, and give what they consider under all the circumstances a fair compensation' ".

As Lord Denning M.R. says in *Fletcher's* case (at page 748H) "those passages were quoted with approval by Lord Devlin in *H. West and Son Ltd.* v. *Shephard* [1964] A.C. 326 at page 356, and undoubtedly represent the law". And the Master of the Rolls goes on to say (at page 749 D):

> "In the second place, I think that the judge was wrong to take each of the items separately and then just add them up at the end. The items are not separate heads of compensation. They are only aids to arriving at a fair and reasonable compensation. That was made clear by the

decision of this Court in *Watson* v. *Powles* ([1967] 3 W.L.R. 1364 at 1368), given after the judge had given his judgment.

> " 'There is only one cause of action for personal injuries, not several causes of action for the several items. The award of damages is, therefore, an award of one figure only, a composite figure, made up of several parts..... At the end all the parts must be brought together to give fair compensation for the injuries.' "

As Diplock L.J. says in *Fletcher's* case, it is a platitude that the purpose of compensatory damages in an action for personal injuries is to put the victim in the same position as he would have been if he had not sustained those injuries, *so far as money can do this.* But money never can do this. The effect of any physical injury is to make the life of the person who sustains it different from what it would otherwise have been. The change may be temporary or permanent; it may be slight or fundamental; but his position can never be the same as it would have been but for the injuries (at page 752C of the report). Diplock L.J. further on says (at page 752F):

> "So, except to the extent that I have mentioned, the platitude gives little guide to the scale of values to be applied in assessing the compensation in money for the change in the life of the victim which results from the personal injuries he has sustained. The law assumes that any physical injury to a man's body, wrongfully inflicted by another, involves a change for the worse and entitles him to some damages. But to assess the degree of worsening involved in one kind of injury as compared with that involved in another calls for the application of some common standard of comparison: and to convert the degree of worsening so assessed into money values for the purposes of compensation calls for the application of some arbitrary conversion table".

And the learned Lord Justice concludes that the result of the decisions is that the standard of comparison which the law applies, "if it is not wholly instinctive and incommunicable, is based, apart from pain and suffering, upon the degree of deprivation – that is, the extent to which the victim is unable to do those things which, but for the injury, he would have been able to do" (at page 753A of the report).

Finally, in assessing compensation, allowance must be made for contingencies which might upset the plaintiff's future prospects, such as illness, accident, bad trade, etc.; and for the fact that compensation is paid at once in a lump sum, so that it can be invested and the interest used at once, whereas his earnings would have been spread over many years. And, at the end we must look at the overall figure to see that it is a fair compensation (see Lord Denning's judgment at page 750G–H).

Reverting to the facts of this case, the plaintiff was at the time of the accident 63 years of age and he held the post of Secretary in the Greek Embassy in Nicosia. His emoluments, by way of salary and other allowances, amounted to £250 a month. He was due to retire some three months after the accident and, in fact, he did retire on the 31st December, 1965. His monthly pension is £50. Considering his age, the plaintiff before the accident was a bright and active man, in good health except that he had been suffering from diabetes. He led an active professional and social life.

As a result of the accident he remained critically ill and in a comatosed state for a period of six weeks. He received injuries all over the body with serious damage to his shoulders, arms, legs and spine, and he had cerebral contusion. The fractures and dislocations of the shoulders and the tibial and elbow fractures were reduced and immobilised in plaster casts. According to the report of the orthopaedic surgeon (the production of which was agreed to by the defendant) the plaintiff sustained "a number of major crushing injuries which nearly cost him his life", and he put up with "a good deal of pain and suffering". The doctor's estimate of the plaintiff's degree of residual permanent partial incapacity was 60 per cent, but this was not accepted by the other side.

The injuries and their respective after-effects fall into two categories: (a) multiple injuries to the body and limbs; and (b) head injuries.

As to (a), the plaintiff has now partial residual ankylosis of both shoulders; partial ankylosis of the left elbow allowing only half of its normal range of movement; 1 1/2 to 2 ins. real shortening of the left lower extremity coupled with tibial angulation deformity and 3/4" wasting left thigh and leg; and impairment by one-third of inherent stability of the left knee

and ankle joints; and other consequential injuries. The practical residual incapacity of the plaintiff consists of the following:—

(a) difficulty in walking which can only be done with the use of a walking stick, (b) difficulty in sitting down and getting up, (c) inability to bend down, (d) restriction of the movements of the arms upwards and backwards, and (e) inability to drive a car, swim, dance or pursue any sport calling for physical exertion.

As regards the head injuries, according to Dr. Drymiotis, a mental specialist who was called by the plaintiff and whose evidence was not disputed, the plaintiff was found, after examination, to have the following:—

(a) multiple bodily injuries, (b) present residual signs of cerebral injuries manifested by recent and remote memory defects, (c) giddiness, (d) difficulty in concentration, and (e) forgetfulness.

The doctor described the degree of the plaintiff's incapacity regarding his intellectual faculties as moderate to severe.

Plaintiff remained in hospital for five months and experienced great pain and suffering which will continue probably for the rest of his life. In his present condition he is unable to do any work involving standing, or walking. He takes longer than in the past to do the same mental work. At the time of the hearing of the action, which was in November 1967, the plaintiff was working, after retirement, gratuitously at the Greek Embassy in Nicosia on an honorary basis. The trial Court were of the view that the plaintiff's prospects of securing an appropriate remunerative employment were limited not only on account of the accident but also "in view of his past career and social standing"; presumably meaning that it would be difficult for him to secure a similar or comparable employment.

In support of his case as regards the loss of future earnings, the plaintiff called a business man (Mr. L. Zachariades), who gave evidence regarding the prospects of a joint venture with the plaintiff after his retirement in promoting certain agencies held by Zachariades's firm, which venture was expected to yield a sum of about £2,000 a year profits to the plaintiff. It was the plaintiff's allegation that owing to his incapacity he could not participate in this business venture and that he consequently lost about £2,000 a year. The trial Court, after

weighing this evidence, were of opinion that the proposed arrangement for "future co-operation was vague in terms and uncertain in its future implementation"; and they came to the conclusion that the loss of future earnings of this prospective co-operation was too speculative and uncertain and, therefore, difficult for them to rely on it with any degree of certainty. But in assessing the plaintiff's future loss of earnings in general the trial Court took this into consideration as "a good indication of the potentials of the plaintiff in securing employment after retirement".

The trial Court, after taking into consideration all the surrounding facts and circumstances of the case, found that the plaintiff "had the potentials and chances of earning a not insubstantial annual income, apart from his pension". In assessing the compensation under this head, the trial Court took into account that the plaintiff was not an invalid, incapable of doing any kind of work, and they made allowance for his probable future earnings in his present condition. In the end the Court assessed the plaintiff's loss of future earnings at £3,000 "taking into consideration the cash value of the sum to be awarded as well as the liability to pay income tax thereon and the contingencies of life".

With regard to the damages under the head of pain and suffering and loss of amenities, the trial Court took into consideration that the plaintiff sustained multiple serious injuries and suffered great pain and discomfort which will persist indefinitely; that he will never be in a position to enjoy life fully as a normal healthy man of his age; and that he cannot dress himself unaided, which adds to the general feeling of helplessness. The trial Court stated that under this head the damages should be substantial and they assessed them at £1,500.

Loss of Future Earnings:

Counsel for the plaintiff, after referring us to several English cases on the question of damages, including *Fletcher's* case (*supra*), submitted that the trial Court should have awarded the sum of £7,000 damages on the basis of full liability under this head having regard to the following considerations: the plaintiff's earning capacity should have been fixed at about £2,000 per annum, but as plaintiff was partially incapacitated his loss should have been taken at £1,000 per annum at six to seven years' purchase; and the figure thus reached would be £7,000.—

Counsel for the defendant cited also a number of cases and submitted that the plaintiff's full earning capacity should have been fixed at £1,200 per annum but, as the plaintiff was partially incapacitated about fifty per cent, his loss should have been taken at £600 per annum at 5 years' purchase, and so reach the figure of £3,000 which was actually awarded by the trial Court under this head.

Both sides referred to the case of *Djemal* v. *Zim Israel Navigation and Another* (1968) 1 C.L.R. 309, and they gave us their analysis of the figures awarded under the judgment of this Court in respect of loss of earnings, pain and suffering, loss of amenities and impotence. We do not consider it necessary to elaborate on this point because we are of the view that the amount of damages awarded in the *Djemal* case was based on the facts of that case and we do not think that any comparison with the present case will be helpful as the facts and circumstances are entirely different.

Considering the age of the plaintiff at the time of the accident (63 years old) and all the facts of this case, including the plaintiff's residual permanent incapacity, we are of the view that his full earning capacity should be taken at a median income of £1,800 per annum. Considering further that his earning capacity is now about one half, his loss for partial incapacity should be taken at a median income of £900 per annum at 4 years' purchase and so reach a figure of about £3,600. This figure is reached after making allowance for contingencies which might upset his future prospects and for discount for accelerated payment of a lump sum.

Considering that the trial Court awarded £3,000 under this head, we do not think that there is any serious error in their award so as to make it "a wholly erroneous estimate". True, the award is a little on the low side but it is not so low that it could be disturbed by this Court.

Pain and Suffering and Loss of Amenities:

We have stated earlier the pain, suffering and discomfort through which the plaintiff went over a period of five months in hospital and, subsequently, up to the time of the hearing, and which will continue for the rest of his life. Counsel for the plaintiff submitted that the sum of £1,500 awarded by the trial Court under this head was wholly inadequate and should be raised to £4,500. Counsel for the defendant conceded that

the sum awarded by the trial Court was on the low side but contended that it was not such an erroneous estimate as to justify this Court to disturb the award. He conceded that the trial Court might have awarded the sum of £2,000 but as they gave a higher figure, according to him, for loss of earnings and a lower figure for pain and suffering, all in all the award was a reasonable one and should not be disturbed.

Having given the matter our best consideration, taking into account the facts of this case and everything that the plaintiff has suffered and will go through during the rest of his life, we are of the view that the sum of £1,500 awarded by the trial Court was far too low in the circumstances and a wholly erroneous estimate. We hold that a fair compensation under this head would be £3,000 on the basis of full liability.

To sum up, our conclusions are as follows:—

(a) *Loss of future earnings*: The sum of £3,000 awarded by the trial Court, on a full liability basis, remains the same.

(b) *Pain and suffering and loss of amenities*: The sum of £1,500 awarded by the trial Court is increased to £3,000, on a full liability basis.

The special damages, as stated earlier, have been agreed at £650, on a full liability basis.

The total of these figures is £6,650, on a full liability basis, and the plaintiff is entitled to two-thirds of this sum. Judgment should accordingly be entered for the plaintiff in the sum of £4,435.

In the result, the plaintiff's appeal is allowed and the amount awarded under the judgment of the District Court is raised from £3,435 to £4,435 in favour of the plaintiff, plus costs here and in the Court below for one advocate. The cross-appeal is dismissed.

Appeal allowed as above. Judgment varied accordingly. Order for costs as above.