1969
May 2
—
CHARALAMBOS SAVVA PILIOU
v.
CHRISTOS MARCOULLIS

[TRIANTAFYLLIDES, LOIZOU & HADJIANASTASSIOU JJ.]

CHARALAMBOS SAVVA PILIOU,

Appellant – Plaintiff.

v.

CHRISTOS MARCOULLIS,

Respondent – Defendant.

(*Civil Appeal No.* 4720).

Damages—General damages—Personal injuries—Road Traffic Accident—Quantum of general damages—Disturbance of the senses of smell and taste ought to have been taken into account in the assessment of general damages—Notwithstanding that the plaintiff-appellant failed to satisfy the trial Court about the exact extent of this loss—Once such loss has been established damages had to be awarded in respect thereof—And any uncertainty about the extent of the loss could, only, have operated to render the amount to be awarded smaller rather than larger—General damages increased by £100.

Personal injuries—General damages—Quantum—Disturbance of senses of smell and taste—See above.

The Supreme Court allowing in part the appeal by the plaintiff in this action for damages for personal injuries arising out of a road accident:—

Held, (1). It was not right to refuse to compensate the appellant (plaintiff) at all, regarding the loss of smell and taste because he had failed to satisfy the trial Court about the exact extent of this loss. Once such loss had been established, damages had to be awarded in respect thereof; and any uncertainty about the extent of the loss could, only have operated to render the amount to be awarded smaller than larger.

(2) We have not found it necessary, in the circumstances to send this case back to the trial Court for the assessment of the damages in relation to the loss of smell and taste suffered by the appellant; we are in a position on the material before us to reach ourselves a conclusion on this point, and we have

decided that an amount of £100 should be added to the amount of general damages as already assessed by the trial Court.

Appeal allowed; no order as to costs of the appeal.

The facts sufficiently appear in the judgment of the Court.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Stavrinakis & Stylianides D.JJ.) dated the 18th April, 1968 (Action No. 3005/68) whereby he was awarded the sum of £384 as damages for the injuries he suffered due to a traffic collision.

E. Vrahimi (*Mrs.*) with *Ch. Kyriakides*, for the appellant.

S. Nikitas, for the respondent.

The following judgment was delivered by:

TRIANTAFYLLIDES, J.: In this case the appellant-plaintiff complains against the amount of damages (£834) awarded in his favour in civil action 3005/66, on the 18th April, 1966, by a Full District Court sitting in Nicosia.

He filed the action claiming damages in respect of injuries suffered due to a traffic collision on the 7th August, 1966.

The only point which—in the light of the submissions before us—has to be decided, in this appeal, is whether or not the trial Court rightly failed to take into account, in relation to the issue of general damages, the loss of smell and taste which the appellant has suffered.

According to a medical report, dated the 23rd June, 1967, which was put in evidence by consent and was signed by two specialists, Dr. Economides and Dr. Pamborides, tests which were carried out did establish that there must have been some disturbance in the senses of smell and taste; but, as such senses are subjective, nobody could be sure regarding the extent of the disturbance.

The trial Court refused, however, to take into account, at all, the said disturbance, when assessing general damages; though it accepted the existence of the disturbance, it held that, on the basis of the evidence, and particularly in view of

the unreliability of the appellant as a witness, no connection could be found between such disturbance and the collision; and, furthermore, that the appellant had, in any case, failed to establish its extent.

In the light of all the material on record and, especially, of the fact that though the aforesaid medical report was put in by consent, in connection with the injuries which the appellant had allegedly suffered at the accident in question, yet no serious effort was made, during the proceedings, to disconnect the disturbance in his senses of smell and taste from the overall picture of the injuries received by him, we are of the opinion that the only proper course was to treat such disturbance as being related to the said injuries, notwithstanding the possibly unsatisfactory state of the evidence of the appellant.

Nor was it right, in our view, to refuse to compensate him, at all, regarding the loss of smell and taste because he had failed to satisfy the trial Court about the exact extent of this loss; once such loss had been established, damages had to be awarded in respect thereof, and any uncertainty about the extent of the loss could, only, have operated to render the amount to be awarded smaller rather than larger.

We have not found it necessary, in the circumstances, to send this case back to the trial Court for the assessment of the damages in relation to the loss of smell and taste suffered by the appellant; we are in a position, on the basis of the material before us, to reach ourselves a conclusion on this point, and we have decided, therefore, that an amount of £100.– should be added to the amount of general damages, as already assessed by the trial Court.

It is, thus, ordered that the judgment under appeal should be varied so as to increase the general damages from £900 to £1000; the amount of special damages remains the same, *viz*, £350.–, as was agreed upon before the trial Court. Out of the resulting total of £1350.–, the appellant is entitled to judgment for £900.–, on the basis of his being – as agreed upon between the parties – liable to the extent of one-third for the causing of the collision.

In the result the appeal is allowed, accordingly, in part; but in the light of all the circumstances of this case, we are not prepared to make any order as to the costs of the appeal.

Appeal allowed; no order as to the costs of the Appeal.