1969
June 20
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ATHINA
SYMEONIDOU
v.
PHIVOS
MICHAELIDES

[JOSEPHIDES, LOIZOU AND HADJIANASTASSIOU, JJ.]

ATHINA SYMEONIDOU,

Appellant-Plaintiff,

v.

PHIVOS MICHAELIDES

Respondent-Defendant.

(*Civil Appeal No.* 4744).

Damages—General damages—Quantum—Personal injuries sustained in a road accident—Neurosis, hysteria—Damages awarded for neurotic disability—Appellant totally disabled for an indefinite period due to hysteria and neurosis—"Compensation neurosis"—Suffering and pain past and future—Loss of amenities—Future loss of earnings—General damages awarded by the trial Court too low—Increased on appeal—See also herebelow.

Damages—Personal injuries—Neurosis—Causation—Remoteness of damages—Unsuccessful allegation of such remoteness and of breach of causation—Appellant's symptomless osteoarthritis-condition at the time of the accident—Osteoarthritic symptoms awakened as a result of the rather light injuries appellant sustained in the road accident in question due to the negligence of the respondent—Whether the respondent is in law responsible for the plaintiff's neurotic condition and consequential total disability for an indefinite period—A tortfeasor takes his victim as he finds him—Neurosis, though not an organic injury, is a disorder of the psychic functions—For which damages should be awarded—Findings of trial Court—Amply justified on the medical evidence—No breach of the chain of causation.

Quantum of general damages—In personal injuries cases—See above.

Neurosis—Neurotic disability—See above.

Hysteria—See above.

Personal injuries—Consequential neurosis—See above.

Causation—Damages—Chain of causation—See above.

Remoteness of damage—See above.

General Damages—Quantum—See above.

Practice—Costs—Costs for two advocates awarded by the trial Court—The two-thirds rule for the second advocate—The Civil Procedure Rules, Order 59, rule 6—Costs in Civil proceedings matter of the Court's discretion—The Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960) section 43—The Civil Procedure Rules, Order 59, rules 1 and 6—In view of the nature and complexity of the medical evidence, the Court of Appeal unable to say that the trial Court failed to exercise judicially their discretion—Award of costs, therefore, left undisturbed.

Costs—Costs for two advocates—Court's discretion—See hereabove.

This is an appeal by the plaintiff in a personal injuries action against the quantum of general damages and cross-appeal by the defendant on the ground, *inter alia*, of remoteness of damage. This case arises out of a road accident which occurred on November 12, 1965, in the town of Limassol while the plaintiff-appellant was about to start her motorcycle. She was struck from behind by a motor car driven by the defendant-respondent and she sustained injuries. At the time of the accident she was 50 years of age and had been practising as a midwife for 33 years. It was agreed between the parties that the plaintiff was 25 per cent to blame for the accident and 75 per cent the defendant. The damages awarded by the trial Court on a full liability basis are as follows:

(a) Special damages £2,685 including £2,480 being plaintiff's loss of earnings for a period of 31 months at the rate of £80 a month.

(b) General damages £2,000

Total £4,685.—

The trial Court awarded, also, costs to the plaintiff for two advocates. This award is challenged by the defendant-respondent by his cross-appeal, claiming that the trial Court wrongly awarded costs for two advocates.

The trial Court, relying on the evidence of Wing Commander Mander, Orthopaedic Specialist at the R.A.F. Hospital, Akrotiri Base (by whose findings the parties agreed to abide), made the following findings:

(a) That for some time before the accident the plaintiff had been suffering from an osteoarthritic condition which was asymptomatic;

(b) that as a result of the accident she received some minor injuries which, however, awakened the osteoarthritic symptoms of her condition;

(c) that, on the radiological picture, these symptoms would normally keep her away from work for six weeks; that people in that condition are prone to emotional overlay; that she had been examined by a score of doctors; that serious operations had been suggested; that she was told that unless she had an operation there was danger of total paralysis; that she had been involved in lengthy and tiring Court proceedings and that she became hysterical and neurotic;

(d) that due to a combination of "compensation neurosis" (this expression is explained in the judgment of the Court, *post*) superimposed upon a minor orthopaedic lesion, the plaintiff became totally disabled; and that at the time of her examination by the medical expert Commander Mander she was in a condition of hysterical sensory loss.

It was argued on behalf of the appellant (plaintiff) that the sum of £2,000 awarded as general damages (*supra*) was clearly inadequate. On the other hand respondent's counsel argued, *inter alia,* that the aforesaid "neurosis" of the appellant was not caused directly by the accident and that, consequently, the chain of causation had been broken.

Increasing the general damages awarded and dismissing the cross-appeal, the Court:

Held, (1). The trial Court's findings (*supra*) are amply justified on the medical evidence.

(2) (a) The trial Court having found that the plaintiff at the time of the accident had a symptomless osteoarthritic condition and that as a result of the injuries she sustained her condition became symptomatic, the question arises whether the defendant (now respondent) is responsible for all the injury which followed.

(b) It is well settled law that a tortfeasor takes his victim as he finds him: see *Smith* v. *Leech Brain and Co. Ltd.* [1962] 2 Q.B. 405, at pp. 414, 415, per Lord Parker C.J., *applied; McLaren and Others* v. *Bradstreet* "The Times", May 16, 1969, *distinguished.*

(c) The trial Court, on the evidence before them, rightly found that the defendant in the present case was clearly responsible for the awakening of the osteoarthritic symptoms of the plaintiff, which caused her pain, headaches and dizziness; and although normally, these would have kept her away from work for about six weeks, she subsequently became hysterical and neurotic and totally disabled and the question which arises for determination is whether the defendant is responsible in law for the plaintiff's neurotic condition and consequential total disability for an indefinite period. Undoubtedly neurosis, although not an organic disease, is a disorder of the psychic functions. And the Courts have in the past awarded damages for neurotic disability and pain. (See *Liffen* v. *Watson* [1940] 2 All E.R. 213, at pp. 217, 218 E. per Slesser L.J.).

(3) Respondent's counsel, however, argued that the said neurosis was not directly caused by the accident and that, consequently, the chain of causation had been broken. On this point the trial Court were satisfied, on the evidence before them, that the causes of the plaintiff's present condition were the injuries she sustained which activated the symptoms of her osteoarthritic conditions which in turn induced hysteria and neurosis. This finding is amply supported by the evidence before them, especially the concluding part of Commander Mander's report. (*Rothwell* v. *Caverswell Stone Co.* [1944] 2 All E.R. 350, at p. 364, per Du Parcq L.J., approved by the House of Lords in *Hogan* v. *Bentinck West Hartley Collieries etc.* [1949] 1 All E.R. 588, at p. 592, *considered*).

(4) For these reasons we are satisfied that the trial Court rightly came to the conclusion that the plaintiff's incapacity as described by Commander Mander was due to the accident, and they proceeded to assess the amount of damages.

(5) Considering the medical evidence to the effect that the prognosis of the cervical osteoarthritis is good and that it should not cause a permanent disability; that the plaintiff was totally disabled due to hysteria and neurosis up to the conclusion of the hearing but that this disability is amenable

to treatment; that she will have to undergo prolonged psychiatric treatment; and that according to Commander Mander "she is at the moment totally disabled but given care, understanding and good treatment from now onwards should in time be able to return to her employment without disability and without having undergone any massive or painful operations"; and considering her loss of earnings after the date of the judgment of the trial Court and her pain and suffering, part and future, and loss of amenities, we are of the view that the sum of £2,000 awarded as general damages by the trial Court is far too low in the circumstances and we accordingly award by way of general damages a global figure of £3,500, after making allowance for contingencies which might upset her future prospects and for discount for accelerated payment of a lump sum.

As the plaintiff is 25 per cent to blame for the accident she is, thus, entitled to the total of £4,639 instead of £3,513.750 mils awarded by the trial Court.

Held: As to the final ground of the cross-appeal relating to the award of costs for two advocates:—

(1) Needless to say that the two thirds' rule applies to the fees allowed for the second advocate (Civil Procedure Rules, Order 59, rule 6). Both by statute and under the rules, the costs of all civil proceedings are in the discretion of the Court which has full power to determine by whom and to what extent such costs are to be paid (The Courts of Justice Law, 1960 section 43; and the Civil Procedure Rules, Order 59, rules 1 and 6).

(2) In the present case, considering that there were special reasons due to the nature and complexity of the medical evidence we are unable to say that the trial Court failed to exercise their discretion judicially and we would not, therefore, be prepared to disturb their order.

Appeal allowed with costs for one advocate in the appeal; cross-appeal dismissed. Judgment of the trial Court varied as above.

Cases referred to:

Smith v. *Leech Brain and Co. Ltd.* [1962] 2 Q.B. 405, at pp. 414, 415, per Lord Parker C.J.;

McLaren and Others v. *Bradstreet* "The Times" May 16, 1969;

Liffen v. *Watson* [1940] 2 All E.R. 213 C.A., at pp. 217F, 218E, per Slesser L.J.

Rothwell v. *Caverswell Stone Co.* [1944] 2 All E.R. 350 at p. 364 per Du Parcq L.J.;

Hogan v. *Bentinck West Hartley Collieries etc.* [1949] 1 All E.R. 588 H.L. at p. 592.

Appeal and Cross appeal.

Appeal and cross-appeal against the judgment of the District Court of Limassol (Vassiliades and Ioannides D. JJ.) dated the 29th June, 1968 (Action No. 712/66) whereby the plaintiff was awarded the sum of £3,513.750 mils as damages for injuries she sustained when struck by a motor car driven by defendant.

G. Cacoyiannis with *A. Neokleous*, for the appellant.

Ph. Clerides, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:

JOSEPHIDES, J.: This is an appeal by the plaintiff against the quantum of damages and a cross-appeal by the defendant on the ground of remoteness of damage and other grounds.

This case arises out of an accident which occurred on the 12th November, 1965, in the town of Limassol while the plaintiff was about to start her motorcycle. She was struck from behind by a motor car driven by defendant and she sustained injuries. At the time of the accident she was 50 years of age and had been practising as a midwife for 33 years.

The hearing of the case before the Full Court of Limassol began on the 11th December, 1967, and ended on the 24th June, 1968 (with adjournments in between), and judgment was delivered on the 29th June, 1968. Until the 8th April, 1968, nine witnesses (seven on behalf of the plaintiff and two on behalf of the defendant) were heard by the Court, including the plaintiff and four doctors on behalf of the plaintiff and two doctors on behalf of the defendant.

There was considerable conflict in the medical evidence adduced but fortunately, on the 8th April, 1968, after all

witnesses had been heard, the parties informed the Court that "having realised the complexity of the medical evidence in view of the difference of opinion between doctors and specialists who examined the plaintiff as to the nature and extent as well as the origin of her present condition, have agreed to let the plaintiff be examined by a doctor who has not so far expressed any opinion on the matter who will report to the Court his findings so that the Court may act on such findings". The parties agreed to abide by the findings of such doctor and eventually Wing Commander Mander, Orthopaedic Specialist at the R.A.F. Hospital Akrotiri, was appointed and accepted to examine the plaintiff and submit a report to Court. For the purposes of his examination he was authorised to consult with the other doctors in the case and to read the medical evidence already given, including the X-rays. We shall revert to his report later.

At the same time the parties agreed as to the apportionment of liability between them as follows: that the defendant was 75 per cent to blame for the accident and the plaintiff 25 per cent. Special damages, except loss of earnings, were also agreed upon by the parties at £205.

Wing Commander Mander examined the plaintiff on the 20th May, 1968, and on the same day he discussed his findings with two doctors from each side (Dr. Papasavvas, Drymiotis, Pelides and Rose), and he then prepared his report which was filed in Court (and marked Exhibit "A"). This report consists of five closely typed pages giving full particulars of his observations and conclusions. In addition to that, he was called and gave evidence before the Court on the 21st June, 1968, explaining and supplementing his report in answer to questions put to him by both sides and the Court.

The Court relying on Commander Mander's medical evidence made the following findings:

(a) that for some time before the accident the plaintiff had been suffering from an osteoarthritic condition which was asymptomatic;

(b) that as a result of the accident she received some minor injuries which, however, awakened the osteoarthritic symptoms of her condition;

(c) that, on the radiological picture, these symptoms would normally keep her away from work for six weeks; that

people in that condition are prone to emotional overlay; that she had been examined by a score of doctors; that serious operations had been suggested; that she was told that unless she had an operation there was danger of total paralysis; that she had been involved in lengthy and tiring Court proceedings and that she became hysterical and neurotic;

(d) that due to a combination of "compensation neurosis" (we shall be explaining that expression later) superimposed upon a minor orthopaedic lesion, the plaintiff became totally disabled; and that at the time of Commander Mander's examination she was in a condition of hysterical sensory loss.

The question which now arises for determination by this Court is whether these findings of the trial Court are justified on the medical evidence. For this purpose it is necessary for us to go into some detail into the medical report and evidence of Commander Mander.

The clinical examination of the plaintiff revealed that there was no evidence of muscular spasm and that she had a normal cervical lordotic curve indicating no neck spasm; that there was no spasm of either trapezius muscle, but apparently pressure on these muscles caused considerable pain. Passively her neck could be flexed forwards by 25 degrees, backwards by 5 degrees and rotation to the left and right was about 50 degrees each. She was not able to produce lateral flections in either direction passively. There was no discolouration of the limbs hanging by the side of her body and there was no evidence of muscular wasting. The hands were in good condition showing no evidence of interosseus wasting although she was unable to produce abduction or adduction of the fingers. The sensory examination, according to Commander Mander, was most significant: "There was a complete anaesthesia to pin prick, blunt sensation and cotton wool over the whole of each limb, the trunk from the nipple line upwards circumferentially front and back, the neck and the whole of the head". As explained by him in his oral evidence before the Court, he was satisfied that these symptoms were objectively established.

Commander Mander could not see any evidence of recent trauma on the X-ray and by this he explained that there was no crack fracture, which was alleged to have existed by two

other doctors. He saw on the X-ray a lesion of an osteo-arthritic nature which pre-existed the accident, although asymptomatic, that is to say, that the plaintiff had been suffering from an osteoarthritic degeneration for certainly a year or more before the accident. He was quite definite that the radiological picture was not caused by the accident but that it pre-existed it, and that the nature of the accident was minor but could have been responsible for the awakening of symptoms in this arthritic area. According to him, the picture, as seen on the day of his examination, was one of a hysterical sensory loss as it was symmetrical and covered the whole of the upper part of the body, not conforming to any root or roots; and that the systemic symptoms that occured were also not explained by any local pathology and he was of the view that they were a manifestation of a psychiatrically unstable state. Underlying all these exaggerated manifestations it was possible that there was some organic feature which, however, one would expect to be minor and treatable; that until such time as the gross symptoms and signs could be successfully treated, it would be impossible to effect satisfactory treatment of any underlying lesion; and that the prognosis of this case, therefore, depended entirely upon this factor.

With regard to the psychiatric side, Commander Mander felt that this was the aspect which provided the worst prognosis in the absence of treatment and he was of the view that the plaintiff needed a prolonged course of psychiatric care, including the use of tranquilizer drugs to eliminate her present state. He felt that the plaintiff's present state had been to a large extent induced by the long drawn out Court case and "in a phrase, one would describe it as a compensation neurosis". Once the Court proceedings had been settled and psychiatric treatment administered, he thought the patient would improve considerably, and one would then be left with the problem of the cervical lesion which would commonly be amenable to physiotherapy and the use of mild analgesic tablets. He did not consider that there was any question of laminectomy (a risky and costly operation, which had been suggested by Dr. Papasavvas) being required.

With regard to the expression "compensation neurosis", used by Commander Mander in his report, this is how he explained it in his evidence before the Court:

"*Q.* When you say compensation neurosis do you mean

that her condition is consciously brought about for compensation purposes?

A. No.

Q. Did compensation neurosis develop later?

A. Yes. This is already established.

Q. What is meant by compensation neurosis?

A. I would define it as an emotional state of the mind under subconscious control which leads to exaggeration of organic symptoms resulting in some financial advantage.

Q. And this is what the plaintiff is suffering from? Compensation neurosis?

A. I have already stated this is my report.

Q. At p. 1 of Exh. "A" (bottom para.) you say "On examination ..... being said". Was she trying to deceive you?

A. No, this presentation did not necessarily imply a deliberate attempt to deceive but is typical of the manifestations expected in the presence of hysteria and emotional overlay, which could all be under subconscious control.

Q. You say she made a great play at being in pain (p. 1 bottom) what do you mean?

A. This is another manifestation of hysteria.

Q. Was not she grossly exaggerating her symptoms?

A. Subconsciously yes.

Q. Is it not a result of compensation neurosis?

A. It is part of it". (Pages 77F–78G–79D).

Commander Mander concluded his report as follows:

"But taken as an isolated case I would consider that the prognosis of the cervical osteoarthritis is good and that it should not cause a permanent disability. This lady is certainly totally disabled at the moment but as I have explained I feel that this is due to a combination of compensation neurosis and super-imposed upon a minor orthopaedic organic lesion. From such an injury as she sustained, with such a radiological picture, I would have thought she should have been able to return to work within

six weeks of her injury and would have anticipated that she would be able to continue work for quite a few years yet. Although I have used expressions which may on the face of it sound unkind, hysteria and neurosis are when brought down to basic facts still conditions causing disability. They are not deliberately brought on but are products of a slightly unstable emotional state and are usually amenable to treatment. I think these facts should be brought to mind as also should the basic orthopaedic lesion in assessing judgment in this particular case. Whether the patient wished to produce symptoms or not she is at the moment totally disabled, but given care, understanding and good treatment from now onwards should in time be able to return to her employment without disability and without having undergone any massive or painful operations".

In his evidence before the Court, Commander Mander gave the following supplementary evidence explaining his report:—

"*Q.* Once you have a person in the plaintiff's condition as it was before the accident, is that person prone to become symptomatic following an injury even a trivial one?

A. Yes.

Q. In such a case would it be reasonable to assume that symptoms resulted from the injury?

A. Yes.

Q. If such a person suffers no injury is it possible to say whether symptoms would develop?

A. It is impossible although the probability is that symptoms would arrive eventually but one cannot specify a time limit.

Q. If the symptoms have come about without an injury would you expect them to be accompanied by psychological side-effects?

A. Yes this is not uncommon as people with that complaint are prone to emotional overlay. But of course if in addition to this there is other factor physical or emotional the position would be worse.

Q. In this case would you not say that the plaintiff's neurosis was brought about by the accident?

A. This question cannot be answered. There are so many factors involved.

Q. But when you say that 'Symptoms were awakened' what do you mean?

A. I mean organic symptoms". (Page 75C to 75F).

On the question whether the plaintiff's complaint was genuine or whether she was malingering, Commander Mander said:

"*Q.* You say in your report that her hysteria and neurosis are not deliberately brought about but are products of a slightly unstable emotional state.

A. Yes.

Q. Therefore the plaintiff is not malingering but these conditions have their origin in the subconscious level?

A. I agree.

Q. Did this condition come about with the awakening of symptoms?

A. Of course." (Page 77C–D).

It will thus be seen that the Court findings referred to earlier in this judgment are amply justified on the medical evidence.

The trial Court having found that the plaintiff at the time of the accident had a symptomless osteoarthritic condition and that as a result of the injuries she sustained her condition became symptomatic, the question arises whether the defendant is responsible for all the injury which followed. It is well settled law that a tortfeasor takes his victim as he finds him. As Lord Parker C.J. said in *Smith* v. *Leech Brain & Co. Ltd.* [1962] 2 Q.B. 405, at page 414:

> "For my part, I am quite satisfied that the Judicial Committee in the *Wagon Mound* case ([1961] A.C. 388) did not have what I may call, loosely, the thin skull cases in mind. It has always been the law of this country that a tortfeasor takes his victim as he finds him. It is unnecessary to do more than refer to the short passage in the decision of Kennedy J. in *Dulieu* v. *White & Sons* ([1901] 2 K.B. 669), where he said: ([1901] 2 K.B. 669, 679): 'If a man is negligently run over or otherwise negligently injured in his body, it is no answer to the sufferer's claim for damages that he would have suffered

less injury, or no injury at all, if he had not had an unusually thin skull or an unusually weak heart.'.

To the same effect is a passage in the judgment of Scrutton L.J. in *The Arpad* ([1934] P. 189, 202, 203). But quite apart from those two references, as is well known, the work of the Courts for years and years has gone on on that basis. There is not a day that goes by where some trial judge does not adopt that principle, that the tortfeasor takes his victim as he finds him."

And further down Lord Parker says (at page 415):

> "In those circumstances, it seems to me that this is plainly a case which comes within the old principle. The test is not whether these employers could reasonably have foreseen that a burn would cause cancer and that he would die. The question is whether these employers could reasonably foresee the type of injury he suffered, namely, the burn. What, in the particular case, is the amount of damage which he suffers as a result of that burn, depends upon the characteristics and constitution of the victim".

It was recently held by the Court of Appeal in England, in *McLaren and Others* v. *Bradstreet* ("The Times", May 16, 1969), that it was true that a tortfeasor must take the victim of an accident who suffered from a nervous disorder as he found him, but the possibility that the victim of a road accident will return to a home dominated by a neurotic mother who is obsessed by the accident and who influences him to believe that he is still suffering from it when otherwise he would be cured, is not something which is reasonably foreseeable, and, therefore, it was not a matter for compensation. But the facts in the case before us are entirely different and the tortfeasor must take his victim as he finds him.

The trial Court, on the evidence before them, rightly found that the defendant in the present case was clearly responsible for the awakening of the osteoarthritic symptoms of the plaintiff, which caused her pain, headaches and dizziness; and although, normally, these would have kept her away from work for about six weeks, she subsequently became hysterical and neurotic and totally disabled and the question which arises for determination is whether the defendant is responsible in law for the plaintiff's neurotic condition and consequential total disability for an indefinite period. There is no doubt

that in the present case the plaintiff's neurotic condition is a genuine one. And the Courts have in the past awarded damages for neurotic disability and pain. Undoubtedly neurosis, although not an organic disease, is a disorder of the psychic functions. As was said by Slesser L.J. in *Liffen* v. *Watson* [1940] 2 All E.R. 213, at page 217F (C.A.), "the very complaint from which she suffers – namely, the neurosis – may itself prevent her from making that effort which Mr. Morley thinks is necessary in order to make the disability cease. It seems to me to beg the question to say that she will recover if she makes an effort, if part of the neurosis be that she feels she cannot make the effort". And further on he says (at page 218E): "I think that matter can be determined conclusively by merely saying that she is neurotic. There is still the question of damages which would compensate her for this condition of neurosis into which admittedly the accident has thrown her".

Defendant's counsel, however, argued that the neurosis was not caused directly by the accident and that, consequently, the chain of causation had been broken. On this point the trial Court were satisfied, on the evidence before them, that the causes of the plaintiff's present condition were the injuries she sustained which activated the symptoms of her osteoarthritic conditions which in turn induced hysteria and neurosis, and the Court were of the view that it may be that a subconscious desire for compensation contributed to the plaintiff's neurotic conditions but the fact remained that at the time of the hearing she was still completely disabled. Defendant's counsel in submitting that the chain of causation had been broken relied on an extract from the judgment of Du Parcq L.J. in *Rothwell* v. *Caverswell Stone Co.* [1944] 2 All E.R. 350, at page 364, where he is reported to have said, *inter alia*, that "negligent or inefficient treatment by a doctor or other person may amount to a new cause and the circumstances may justify a finding of fact that the existing incapacity results from the new cause and does not result from the original injury. This is so even if the negligence or inefficient treatment consists of an error or ommission whereby the original incapacity is prolonged. In such a case if the arbitrator is satisfied that the incapacity would have wholly ceased, but for the omission, a finding of fact that the existing incapacity results from the new cause and not from the injury will be justified." And he concluded by saying that he was not laying down any new principles but stating the rules which seemed to emerge from the decided

cases which do no more than indicate the bounds within which an arbitrator is free to decide – the province of fact.

This statement of the law was approved by the House of Lords in the case of *Hogan* v. *Bentinck West Hartley Collieries etc.* [1949] 1 All E.R. 588, at page 592, where it was stressed that the question is always one of fact for the arbitrator to determine from what a present incapacity "results". It should, perhaps, be added that both cases turned on the construction of section 9(1) of the Workmen's Compensation Act, 1925.

Be that as it may, in the present case we are satisfied that the finding of fact of the trial Court is amply supported by the evidence before them, especially the concluding part of Commander Mander's report (quoted earlier) and the following extract from his evidence:—

"*Q.* You said you assumed that the plaintiff was totally incapacitated since the date of the accident. Having in mind the symptomatology which you describe in page 1 of Exh. 'A', do you agree that until she was taken care of by Dr. Papasavvas she had only the after-effects of this trifling injury?

A. It is a difficult question to answer but I would have felt that the symptoms she originally complained of should not have prevented her from some form of occupation but subsequent medical attendance have tended to worsen her symptoms.

Q. Do you agree that the fact that plaintiff was told that unless she had an operation she would be completely paralyzed created the so called compensation neurosis?

A. It is highly likely that this could have been a contributory cause.

Q. Do you think the neck traction and cervical collar contributed?

A. No". (Page 78C–78F).

For these reasons we are satisfied that the trial Court rightly came to the conclusion that the plaintiff's incapacity as described by Commander Mander was due to the accident, and they proceeded to assess the amount of damages payable to her.

Special Damages:

Apart from the agreed special damages of £205, the trial Court had to assess the loss of earnings of the plaintiff from the date of the accident on the 12th November, 1965, until the conclusion of the hearing and judgment in the case in June 1968, that is to say, a period of 31 months. On the question of the plaintiff's total inability to work the trial Court accepted her evidence and they also relied on the report of Commander Mander, who gave the following supplementary evidence on this point:

"*Q*. You say she is totally disabled could you say for how long since the accident she has been totally disabled?

A. I think it is fair to assume that she has been totally disabled since the time of the accident.

Q. Can you say for how long she will be totally disabled?

A. This is impossible to say.

Q. You agree that she will have to have prolonged treatment.

A. Yes.

Q. Would a final judgment in this case help the plaintiff?

A. Yes but not conclusively so.

.....

Q. Do you think that the plaintiff will ever be in a position to work?

A. I would say yes but whether fully able to return to her previous profession would depend upon the outcome of the original but developing lesion". (Page 77D–77F and 77F–G).

The Court also accepted the plaintiff's evidence that as a midwife she was earning between £80 and £90 a month. They consequently found that her loss of earnings for a period of 31 months at the rate of £80 a month amounted to £2,480, until the date of the judgment. We agree that this is a reasonable sum, which we are not prepared to disturb. Consequently, the total special damages on the basis of full liability amount to £2,685.–

General Damages:

The trial Court "having in mind what Wing Commander

Mander stated regarding the prospects of the plaintiff's future good recovery", with which they agreed, they awarded the sum of £2,000.– as general damages. They did not give any particulars or analysis of this figure nor did they state what they actually took into account in reaching the aforesaid figure.

Considering the medical evidence to the effect that the prognosis of the cervical osteoarthritis is good and that it should not cause a permanent disability; that the plaintiff was totally disabled due to hysteria and neurosis up to the conclusion of the hearing but that this disability is amenable to treatment; that she will have to undergo prolonged psychiatric treatment; and that according to Commander Mander "she is at the moment totally disabled, but given care, understanding and good treatment from now onwards should in time be able to return to her employment without disability and without having undergone any massive or painful operations"; and considering her loss of earnings after the date of judgment by the trial Court and her pain and suffering, past and future, and loss of amenities, we are of the view that the sum of £2,000 awarded by the trial Court is far too low in the circumstances and we accordingly award by way of general damages of global figure of £3,500.–, after making allowance for contingencies which might upset her future prospects and for discount for accelerated payment of a lump sum.

The *final ground* of the cross-appeal was that the trial Court wrongly awarded costs for two advocates. Needless to say that the two-thirds' rule appliés to the fees allowed for the second advocate (Civil Procedure Rules, Order 59, rule 6). Both by statute and under the rules, the costs of all civil proceedings are in the discretion of the Court which has full power to determine by whom and to what extent such costs are to be paid (Courts of Justice Law, 1960, section 43; and Civil Procedure Rules, Order 59, rules 1 and 6). In the present case, considering that there were special reasons due to the nature and complexity of the medical evidence in the case, we are unable to say that the trial Court failed to exercise their discretion judicially and we would not, therefore, be prepared to disturb their order.

In the result the damages awarded on a full liability basis are as follows:

(a) Special damages		£2,685
(b) General damages		£3,500
	Total	£6,185

As the plaintiff is 25 per cent to blame for the accident she is entitled to £4,639.—

The appeal is, therefore, allowed and the judgment of the trial Court varied by raising the sum of the judgment in favour of the plaintiff from £3,513.750 mils to £4,639.— with costs for two advocates in the Court below.

The cross-appeal is dismissed, and we allow costs for one advocate in the appeal.

Appeal allowed; cross-appeal dismissed; order for costs as above.