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[JOSEPHIDES, STAVRINIDES, LOIZOU, JJ.]

MICHALAKIS
PARASKEVO-
POULLOS
v.
GEORGHIOS
GEORGHIOU

MICHALAKIS PARASKEVOPOULLOS,
Appellant-Defendant,
v.
GEORGHIOS GEORGHIOU,
Respondent-Plaintiff.

(Civil Appeal No. 4841).

*Assault—Lack of justification—Findings of trial Court sustained—
Damages for assault—Basis of compensation to be awarded—
Compensation should be a fair and reasonable one—The Court
must not attempt to give damages to the full amount of a perfect
compensation in money—See further infra.*

*Assault—Damages—Findings of trial Court as to the quantum
of damages—Approach of the Court of Appeal to awards of
general damages—Principles applicable—The Appellate Court
will not interfere with awards 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.*

*Appeal—General damages—Quantum—Approach of the Court
of Appeal in appeals against awards of general damages—
Principles applicable—Assault—See supra.*

*Appeal—Findings of fact made by trial Courts—Findings based
on the assessment of the evidence and on the credibility of
witnesses—Principles upon which the Court of Appeal will
interfere, restated.*

*Damages—General damages—Assault—Basis of assessment—
Approach of the Court of Appeal in appeals against awards
of general damages—See supra.*

Damages—Neurotic disability—Damages awarded.

*Findings of fact—Assessment of the evidence and credibility of
witnesses—Approach of the Court of Appeal in appeals against
such findings—See supra.*

Civil Wrongs—Assault—See supra.

Neurotic disability—Damages are awarded for such disability.

Cases referred to :

Gregoriadou v. Kyriakides, reported in this Part at p.84 *ante* ;
Ponou v. Ibrahim, reported in this Part at p.78 *ante* ;
Christodoulou v. Menicou (1966) 1 C.L.R. 17 at p. 36 ;
Djermal v. Zim Israel Navigation Co. Ltd. and Another (1968)
1 C.L.R. 309 ;
Antoniades v. Makrides (1969) 1 C.L.R. 245 ;
Symeonidou v. Michaelides (1969) 1 C.L.R. 394.

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The facts sufficiently appear in the judgment of the Court dismissing both the appeal and the cross-appeal against the judgment of the District Court of Nicosia awarding £250 general damages to the plaintiff for assault.

Appeal and cross-appeal.

Appeal and cross-appeal against the judgment of the District Court of Nicosia (Stylianides, D.J. and HjiTsangaris, Ag. D.J.) dated the 4th July, 1969 (Action No. 3124/68) whereby the defendant was adjudged to pay to the plaintiff the sum of £300 as damages for assault.

G. Platritis, for the appellant.

D. Papachrysostomou, for the respondent.

The judgment of the Court was delivered by :

JOSEPHIDES, J.: Strange as it may sound, this case arises out of a friendly game of "trick-track" ("tavli"). The appellant-defendant was, on the 5th of May, 1968, playing this game with the respondent-plaintiff at a club in Nicosia. There was some misunderstanding between them, certain words were exchanged and, eventually, the plaintiff instituted the present proceedings claiming damages for assault. The trial Court, after hearing evidence on both sides, gave judgment for the plaintiff in the sum of £300 damages as follows : £50 special damages and £250 general damages.

The defendant appealed and the plaintiff cross-appealed against the judgment of the trial Court.

On the evidence it appears that the plaintiff, who is a tailor, is aged 68 and of a weak physique, while the defendant, who is a commission-agent, is aged 54 and of a strong physique. There was considerable dispute as to the actual facts on that day, but the Full Court of Nicosia, after hearing the plaintiff and two other witnesses on his behalf, and the

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defendant and one witness on defendant's behalf, decided to accept the plaintiff's version as corroborated by one of his witnesses, Petros Pantzaris, whom the Court considered as independent. In fact, the defendant himself in evidence stated that, while they were playing, he—the defendant—said to the plaintiff: "You have done this on many occasions and I would request you to play your game as a gentleman"; and he continued: "While I stooped down he pushed the 'trick-track' and, as I thought that he would hit me, I hit him with the back of the right hand". This amounts to an admission on the part of the defendant that he slapped the plaintiff.

The trial Court, after weighing the evidence given by both sides, and after giving their assessment of each witness, made their findings of fact that the plaintiff was actually assaulted on the face, in the region of the ear, by the defendant, and that this was done without any justification. Mr. Platritis today, on behalf of the defendant, has tried to show that these findings of the trial Court were wrong or not supported by the evidence.

The approach of this Court in such matters is well settled both as regards questions of findings of fact and the credibility of witnesses, which are within the province of the trial Judge. Needless to say that that does not mean that, if the reasoning behind the trial Judge's findings is wrong, this Court will not interfere with such findings. Two recent decisions on this point are those in *Maroulla Gregoriadou v. Evangelos Kyriakides* (reported in this Part at p. 84 *ante*); and *Ponou v. Ibrahim* (reported in this Part at p. 78 *ante*). These cases summarize the principles and refer to previous decisions of the Court.

Having heard learned counsel for the appellant (defendant) and having considered the whole evidence and the very careful judgment of the trial Court, we are satisfied that the findings of fact, both as regards the assault and the lack of justification, were clearly open to the Court on the evidence before them, and we have not been persuaded that the reasoning behind such findings is either unsatisfactory or defective.

Coming now to the question of damages, the defendant appealed against the amount of general damages of £250 as being excessive, and the plaintiff also cross-appealed against this award as being far too low in the circumstances.

On this question of damages there is the evidence, *inter alia*, of a clinical psychologist, Dr. Georghiades. But, before we come to his evidence, we should state that the

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assault was not a serious one, as found by the trial Court, and that the plaintiff did not suffer considerable pain ; but he developed a neurotic condition which, according to the clinical psychologist, was as follows : " Depression, anxiety, irritability and sudden jerks ". The trial Court found that the plaintiff would need treatment at the hospital which would cost about £50 and that his neurotic symptoms—at least most of them—would be cured in about six months' time. The trial Court, after taking all these into consideration, awarded, as already stated, the sum of £250 to the plaintiff.

Considering both the appeal and the cross-appeal on this point, we should refer to the general principles applicable in such cases, to the effect that this Court would not be justified in disturbing the finding of the trial Court, unless it is convinced either that that 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. The law as to the basis of the compensation is that 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 : See, *inter alia*, *Christodoulou v. Menicou* (1966) 1 C.L.R. 17 at p. 36 ; *Djemal v. Zim Israel Navigation Co. Ltd. and Another* (1968) 1 C.L.R. 309 ; and *Antoniades v. Makrides* (1969) 1 C.L.R. 245.

With regard to the neurotic condition of the plaintiff it is well settled law that a tortfeasor takes his victim as he finds him. According to Dr. Georghiades the plaintiff was an over-sensitive man and of a neurotic pre-disposition and, as a result of this assault, he developed the neurotic condition described earlier. Undoubtedly damages are awarded for a neurotic disability : For a recent case on this point see *Symeonidou v. Michaelides* (1969) 1 C.L.R. 394.

Considering all the facts and circumstances of this case as found by the trial Court, we are of the view that the trial Court was neither wrong in principle nor was their estimate erroneous in any way. If anything, their award may have been rather on the low side but the estimate is not so low as to make it a wholly erroneous estimate to justify any interference by this Court.

For these reasons we are of the view that both the appeal and the cross-appeal should be dismissed, but we award the full costs of this appeal in favour of the respondent.

Order accordingly.