

1970
April 2

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

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STAVROS
GREGORIADES
v.
EVANGELOS
KYRIAKIDES

STAVROS GREGORIADES,
Appellant-Plaintiff,
v.
EVANGELOS KYRIAKIDES,
Respondent-Defendant.

(Civil Appeal No. 4846).

Assault—Aggravated assault without provocation—Calling for exemplary damages—Amount of damages awarded by the trial Court increased on appeal.

Damages—Exemplary damages—Assault.

Trespass to person—Assault—Exemplary damages.

Appeal—General damages—Case calling for increase of the amount awarded by the trial Court.

The appellant, a young medical practitioner took this appeal from the judgment of the District Court of Nicosia awarding him £100 exemplary damages against his ex-father-in-law for aggravated assault on the court premises. The appellant's complaint is that the amount so awarded was manifestly inadequate in the circumstances of the case. The trial Court took the view that this is an aggravated assault on the court premises, without provocation on the part of the appellant, committed by the defendant (now respondent) when the parties were in the District Court of Nicosia in connection with maintenance proceedings for the child of the appellant and his ex-wife, the daughter of the respondent. But in measuring the damages the District Court found them at £100. It is from this judgment that the plaintiff now appeals.

Allowing the appeal and increasing the damages to £300, the Court :

Held, (1). We share the view expressed in the judgment of the trial Court that this was an aggravated assault calling for exemplary damages. But we think that £100 damages is a very inadequate award in the circumstances.

(2) In a recent case *Paraskevopoulos v. Georghiou* (reported in this Part at p.116 *ante*) the District Court awarded £250

general damages for assault ; and this Court declined to interfere with the award, although it appeared to be " rather on the low side ". Comparing the relevant circumstances, we think that the case now before us calls for a higher amount which we assess at £300.

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Appeal allowed. Judgment of the District Court varied accordingly with costs here and below.

Cases referred to :

Loudon v. Ryder [1953] 1 All E.R. 741 at pp. 743, 744 ;
Dumbell v. Roberts [1944] 1 All E.R. 326 at pp. 329, 330 ;
Lane v. Holloway [1967] 3 All E.R. 129, at p. 132 ;
Paraskevopoulos v. Georghiou (reported in this Part at p.116 ante).

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (A. Loizou, P.D.C. and Stavrinakis, D.J.) given on the 13th September, 1969 (Action No. 5092/68) whereby he was awarded the sum of £100 as damages for assault.

L. Clerides with *G. Constantinides*, for the appellant.

A. Paikkos, for the respondent.

The judgment of the Court was delivered by :—

VASSILIADES, P.: The appellant, a young medical practitioner, was married to respondent's daughter in September, 1966 ; the couple had a child born to them on September 2, 1967, during the short life of the marriage which, unfortunately came to an end with a divorce in July, 1968.

On November 22, 1968, the parties were before the District Court of Nicosia in connection with maintenance proceedings for the child. The appellant was then a medical officer in the Government service. While in the court corridor, the respondent attacked the appellant with a blow on his face which was described as a slap; but, apparently, was intended to be much more than that.

The appellant retained full control of himself ; and avoiding any violent reaction, proceeded with his advocate to the registrar's office where he complained for respondent's conduct ; and from there he proceeded to a police

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station where he lodged a complaint. The respondent was prosecuted (according to the information given to the trial Judge from the bar), was convicted for assault and was sentenced to one day's imprisonment. We do not know how far that information is correct. We take it from the trial Court's judgment in this case. If it is correct, the outcome of that prosecution may well have led to the action now before us.

Be that as it may, eventually the appellant filed this action on December 13, 1968, claiming damages for assault. The statement of claim alleged several injuries as resulting from the attack, such as bruises on the left chin, mild concussion, dizziness, vomiting, headaches, ear buzzing and vertigo and impairment of the hearing nerve "in spite of proper treatment".

The respondent, by his defence, admitted the attack but alleged that it was provoked by insulting language used by the appellant; and put the appellant to the strict proof of his allegations for the injuries listed in the statement of claim.

The case went to trial in June, 1969, and continued in September, after the summer vacation. Four witnesses were called in support of the claim including the plaintiff; and four witnesses were called for the defence including the defendant.

The District Court delivered their judgment on September 13, when the only issue left for decision, was the amount of damages. The trial Court found no special damages, as the appellant had failed to satisfy them that he had suffered "permanent impairment of his hearing", as alleged in the statement of claim. "The trial Court accepting on this point the evidence of appellant's ex-wife that he had been "using drops for his ear long before the slap" found that his ear trouble, which the plaintiff connected with the blow complained of had its origin in earlier earaches.

The trial Court then went to consider the question of general damages. The Court took the view that this was an aggravated assault, committed on the Court premises, without provocation on the part of the appellant; and that it called for exemplary damages. But in measuring such damages the District Court found them at £100, for which they gave judgment to the appellant with £25.—costs.

From this judgment, the appellant took the present appeal, mainly on the ground that for an aggravated assault, committed in the circumstances of this case, in the

Court premises, without provocation, on a medical practitioner by his ex-father-in-law, the sum of one hundred pounds could not be considered as adequate damages ; especially when the Court who found them, took the view that the case called for exemplary damages.

Learned counsel presenting the appeal, very rightly, in our opinion, pointed out to the gravity of an attack by one litigant against the other within the Court premises ; and the disproportion of the amount awarded to such gravity. He referred to *Loudon v. Ryder* [1953] 1 All E.R. 741, at pp. 743 and 744 ; also to *Dumbell v. Roberts* [1944] 1 All E.R. 326, at pp. 329 and 330.

Counsel for the respondent endeavoured to support the award by making reference to the strained family reasons connected with this case ; and referred us to *Lane v. Holloway* [1967] 3 All E.R. 129, at p. 132.

We find it unnecessary to go into detail regarding the origin of the personal feelings of the parties ; and the circumstances in which the assault was committed. We share the view expressed in the judgment of the trial Court that this was an aggravated assault calling for exemplary damages. But we think that £100 damages is a very inadequate award in the circumstances. We are, therefore, unanimously of the opinion that the appeal must succeed ; and that this Court must now proceed to make the appropriate award, avoiding referring the case back to the District Court for the purpose, as the facts upon which the damages must be found are fully before the Court.

In a recent case *Paraskevopoulos v. Georghiou* (reported in this Part at p.116 *ante*) the District Court awarded £250 general damages for assault ; and this Court declined to interfere with the award, although it appeared to be " rather on the low side ". Comparing the relevant circumstances, we think that the case now before us calls for a higher amount ; and it is not without difficulty that we have reached the conclusion that the damages in this case should be increased by at least three times the amount awarded. There will be judgment for the appellant-plaintiff for £300 general damages, with costs in the District Court and in the appeal on the appropriate scale.

Appeal allowed and judgment varied accordingly, with costs here and below.

*Appeal allowed with costs
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