[TRIANTAFYLLIDES, LOIZOU, HADJIANASTASSIOU, JJ.]

ELPIDOROS KARAVALLIS,

Appellant-Defendant,

v.

ANDREAS N. ECONOMIDES,

Respondent-Plaintiff,

(*Civil Appeal No.* 4726).

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1. NICOS ANDREOU ECONOMIDES a minor through his father and next friend ANDREAS N. ECONOMIDES,
2. ANDREAS N. ECONOMIDES,

Appellants-Plaintiffs,

v.

ELPIDOROS KARAVALLIS,

Respondent-Defendant.

(*Civil Appeal No.* 4760).

Personal injuries—Road accident—Negligence—Collision between car and lorry—Trial Court's finding that it is solely the failure of defendant (driver of the lorry) in his duty to take care that caused the collision, sustained on appeal—Credibility of witnesses—Assessment of—Approach of the Court of Appeal—Principles well settled—Appeal No. 4726 *by the defendant dismissed.*

Findings of fact—Depending largely on the credibility of witnesses—Principles applicable to appeals against such findings—Principles well settled.

Witnesses—Credibility—See supra.

Personal injuries—General damages—Principles governing assessment—Devaluation of Cyprus (and sterling) pound—A relevant consideration to be taken into account in assessing general damages in this kind of cases—Appeals against awards of general damages in personal injuries cases—Approach of the Court of Appeal—Principles well settled—The Court of Appeal will not interfere unless, inter alia, *the award is clearly inadequate (or clearly excessive)—See, also,* infra.

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Damages—General damages in personal injuries cases—Loss of one eye, damage to five teeth and disfigurement—Gross psychological upset—Loss of future earnings—Employment at reduced emoluments—No possibility of overtime earnings—No chance of promotion—Award of £3,500 *clearly inadequate—Increased on appeal to* £4,500*—Boy of six years—Permanent psychological damage, injuries to throat and permanent visible disfigurement—Award of* £300 *clearly inadequate—Increased on appeal to* £500*—See further* supra.

Appeal—General damages—Findings of fact depending largely on credibility of witnesses—Approach of the Court of Appeal—Principles applicable—See supra.

Devaluation of the currency—Its bearing on assessment of general damages in, inter alia, *personal injuries cases—Relevant consideration—See also* supra.

These proceedings have arisen as a result of a collision between a motor-car owned and driven by appellant No. 2 (in appeal No. 4760)—in which appellant No. 1, his minor son, was travelling as a passenger—and a lorry owned and driven by the respondent in the said appeal. The collision took place on the 30th July 1966 on a curve of the public road between Skouriotissa and Evrychou. Due to the collision both appellants sustained personal injuries for which they have been awarded general damages by the District Court of Nicosia as follows : (*a*) £300 the minor appellant (*b*) £3,500 the father, appellant No. 2. Both appealed against these awards.

Applying the well settled principles governing the approach of the Court of Appeal to appeals against awards of general damages, *inter alia,* in personal injuries cases, the Court of Appeal, after reviewing some of the principles regarding the proper assessment of general damages in this kind of cases, found that the amounts of general damages awarded by the trial Court were so low and so clearly inadequate that they should be increased to £500 and £4,500, respectively.

The most interesting point in this appeal is that the Court of Appeal in assessing the general damages as aforesaid took into account, *inter alia,* the devaluation by 14% of the sterling (and the Cyprus pound) in November 1967 and :

Held, (1). Though the prospect of inflation does not seem to be regarded as a valid reason for increasing the years' multiplier in assessing damages in a fatal accident (see the

Taylor case, *infra*), an element which cannot be overlooked in the present case is that between October 1967 when the judgments in the *Gardner* case (*infra*) were delivered, and May, 1968 when the judgment of the trial Court in the instant case was delivered, the pound sterling (and the Cyprus pound) were devalued, in November, 1967, by about 14%; and devaluation is quite a relevant consideration (see, in this respect, the judgment of *Crichton, J.* in *Povey* v. *Governors of Rydal School* [1970] 1 All E.R. 841 at p. 847).

(2) *After reviewing the evidence and some of the principles regarding the right assessment of general damages in this kind of cases :—*

On the basis of all relevant considerations, and particularly of those specifically referred to in this judgment, we have reached the conclusion that the amounts of £300 and £3,500, respectively, are so clearly inadequate that they should be interfered with and be increased to £500 and £4,500, respectively.

Appeal No. 4760 *allowed with costs. Appeal No.* 4726 *dismissed.*

Cases referred to :

Matsis v. *The Police* (1970) 6 J.S.C. 520 (to be reported in (1970) 2 C.L.R.) ;

Kyriakou v. *Aristotelous* (reported in this Part at p. 172 *ante*) ;

Kestas v. *The Police* (1970) 6 J.S.C. 562 (to be reported in (1970) 2 C.L.R.) (and the case law referred to therein) ;

Andronikou v. *Kitsiou* (reported in this Part at p. 8 *ante*) ;

Taylor v. *O' Connor* [1970] 1 All E.R. 365 at p. 369 per Lord Morris of Borth-Y-Gest and at p. 373 per Lord Dilhorne;

Nance v. *British Columbia Electric Ry Co., Ltd.* [1951] 2 All E.R. 448 ; [1951] A.C. 601 ;

Flint v. *Lovell* [1935] 1 K.B. 354 ; [1934] All E.R. Rep. 200 ;

Davies v. *Powell Duffryn Associated Collieries, Ltd.* [1942] 1 All E.R. 657 ; [1942] A.C. 601 ;

Gardner v. *Dyson* [1967] 3 All E.R. 762 at p. 764 per Russell, L.J. and Salmon, L.J. ;

Povey v. *Governors of Rydal School* [1970] 1 All E.R. 841 at p. 847 per Crichton, J. ;

Watson v. *Powles* [1967] 3 All E.R. 721 at p. 722 per Lord Denning, M.R. ;

Fletcher v. *Autocar and Transporters Ltd.* [1968] 2 Q.B. 322 ;

Yuill v. *Yuill* [1945] 1 All E.R. 183 at pp. 188 and 189 per Lord Greene M.R. ;

Christodoulou v. *Menicou and Another* (1966) 1 C.L.R. 17 ;

Antoniades v. *Makrides* (1969) 1 C.L.R. 245 ;

Paraskevopoullos v. *Georghiou* (reported in this Part at p.116 *ante*) ;

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

Constantinou v. *Salachouris* (1969) 1 C.L.R. 416 ;

Senior (an Infant) v. *Barker and Allen Ltd.* [1965] 1 All E.R. 818 at p. 819 per Lord Denning, M.R. ;

Appeals.

Appeals against the judgment of the District Court of Nicosia (A. Loizou, P.D.C. & Stavrinakis, D.J.) dated the 25th May, 1968 (Action Nos. 2740/66 and 2741/66—consolidated) whereby the defendant was ordered to pay to the plaintiff in Action No. 2740/66 the sum of £320 and to the plaintiff in Action No. 2741/66 the sum of £3,982 as damages for the injuries received by them in a road accident.

Ph. Clerides, for E. Karavallis.

Chr. Demetriades with *E. Odysseos*, for N. Economides and A. Economides.

Cur. adv. vult.

The following judgments were read :

TRIANTAFYLLIDES, J. : These two appeals, which have been consolidated, have been made against the decision of a Full District Court in Nicosia in consolidated civil actions Nos. 2740/66 and 2741/66. In both such actions the defendant was Elpidoros Karavallis (appellant in appeal No. 4726 and respondent in appeal No. 4760). In action No. 2740/66 the plaintiff was Nicos Economides (appellant No. 1 in appeal No. 4760) and in action No. 2741/66 the plaintiff was Andreas Economides (appellant No. 2 in the same appeal, No. 4760).

For the purposes of these proceedings I shall refer to Karavallis as the respondent and to Nicos Economides and Andreas Economides as appellant No. 1 and appellant No. 2, respectively.

These proceedings have arisen as a result of a collision between a car owned and driven by appellant No. 2—in which appellant No. 1, his minor son, was travelling as a passenger—and a lorry owned and driven by the respondent.

The collision took place on the 30th July, 1966, on a curve of the road between Skouriotissa and Evrychou. The car was proceeding in the direction of Skouriotissa and the lorry was proceeding in the opposite direction, towards Evrychou.

Due to the collision both the appellants were injured and the car in which they were travelling was severely damaged; there was, also, damaged the lorry of the respondent, though he, himself, was not injured.

The respondent has (by appeal No. 4726) appealed against the trial Court's finding that he was to blame for the collision, as well as against the amount of general damages awarded to appellant No. 2. On the other hand both appellants have (by appeal No. 4760) appealed against the amounts of general damages awarded to them.

The validity of the finding about the liability of the respondent for the collision depends primarily on whether or not the trial Court has, on the basis of the material before it, come to the right conclusion about the actual point of impact between the two vehicles and has correctly decided the issue regarding the discharge, respectively, by the drivers of the two vehicles, of the duty to exercise reasonable care, in view of the nature of the particular part of the road concerned and of other relevant circumstances.

In making its said finding the Court below had to deal mainly with the evidence of the appellants, of the respondent and a passenger of his, and of two police sergeants, the one having actually investigated the accident very soon after its occurrence and the other having been called, later, as an expert witness, by the respondent.

Having studied the very carefully prepared judgment of the learned trial Judges and given due weight to all that has been ably submitted by counsel for the respondent and for the appellants, and bearing in mind the principles governing interference on appeal with the assessment of credibility of witnesses made by a trial Court (see, *inter alia*, the recent decisions of the Supreme Court in *Matsis* v. *Police* (1970) 6 J.S.C. 520*, *Kyriacou* v. *Aristotelous* (reported in this Part at p. 172 *ante*) and *Kestas* v. *Police* (1970) 6 J.S.C.

* To be reported in due course in (1970) 2 C.L.R.

562*, and the case-law referred to therein) I see no good reason for which to disagree with the view of the trial Court in this case that the evidence called by the appellants, as to how the collision took place, carried more weight and could be more safely relied on than that of the respondent and his passenger.

I am, also, of the opinion that, on this point, the Court was right in preferring the expert evidence of police sergeant Michaelides, a witness for the appellants, who visited the scene of the accident and investigated the matter when the two vehicles and other material clues were still there, to the expert evidence of police sergeant Damaskinos, a witness for the respondent, who gave evidence on the basis of information received much later as to what had happened.

Furthermore, I am in full agreement with the trial Court that it is solely the failure of the respondent in his duty to take due care that caused the collision, in that, on a curve, he failed to keep as much as possible to his proper side, or, at least, to steer in time sufficiently towards his proper side when faced with the car of the appellants.

I, thus, have found no difficulty at all in dismissing the appeal of the respondent on the issue of liability.

I shall examine, next, the matters of the general damages awarded to each one of the two appellants :

As already stated, the respondent has appealed against the award of general damages made in favour of appellant No. 2, as being too high, while this appellant has appealed against such award, as being too low and wrong in principle. Appellant No. 1, has also, appealed against the award of general damages made in his favour, as being too low.

The principles governing the approach of a Court of appeal to awards of damages made by trial Courts have been expounded in many judgments delivered by our Supreme Court in past years ; and two of such precedents have been referred to, lately, in a case of this nature *Andronikou* v. *Kitsiou* (reported in this Part at p. 8 *ante*).

These principles, being the same both here and in England, have been reiterated there by the House of Lords in *Taylor* v. *O' Connor* [1970] 1 All E.R. 365 ; in this case Lord Morris of Borth-Y-Gest stated the following in his judgment (at p. 369) :

> " On appeal to the Court of Appeal the sole ground of appeal was formulated as being ' that the learned

* To be reported in due course in (1970) 2 C.L.R.

Judge awarded too high a sum'. In these circumstances, it is appropriate to bear in mind the principles which should be observed by an appellate Court in deciding whether it is justified in disturbing the finding of the Court of first instance. They were summarised by Viscount Simon in delivering the judgment of the Privy Council in *Nance* v. *British Columbia Electric Ry. Co.*,*. He pointed out that an appellate Court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure :

'Even if the tribunal of first instance was a Judge sitting alone, then, before the appellate Court can properly intervene, it must be satisfied either that the Judge, in assessing the damages, applied a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or, short of this, that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage (*Flint* v. *Lovell*† approved by the House of Lords in *Davies* v. *Powell Duffryn Associated Collieries, Ltd.***)'."

Also, Viscount Dilhorne had this to say, in the same case, in his judgment (at p. 373) :

"The principles to be applied in relation to such an appeal were stated by Lord Wright in *Davies* v. *Powell Duffryn Associated Collieries, Ltd.* as follows :

'.....an appellate Court is always reluctant to interfere with a finding of the trial Judge on any question of fact, but it is particularly reluctant to interfere with a finding on damages (which) differs from an ordinary finding of fact in that it is generally much more a matter of speculation and estimate..... In effect, the Court, before it interferes with an award of damages, should be satisfied that the Judge has acted upon a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion

* [1951] 2 All E.R. 448; [1951] A.C. 601.

† [1935] 1 K.B. 354; [1934] All E.R. Rep. 200.

** [1942] 1 All E.R. 657; [1942] A.C. 601.

or preference. The scale must go down heavily against the figure attacked if the appellate Court is to interfere, whether on the ground of excess or insufficiency'."

With these weighty dicta in mind I shall proceed to deal with the awards of general damages in favour of the appellants, starting, for the sake of convenience, with that concerning appellant No. 2:

This appellant was at the material time thirty-five years old, married, with children ; and he was working as an operator in the milling department of the Cyprus Mines Corporation at Xeros.

He suffered face injuries in the regions of the jaw and of his right eye, which had to be extracted, due to the danger of sympathetic ophthalmia affecting his left eye, and in the cavity there was fitted an artificial eye. Though there is no longer any danger of loss of the sight of his left eye, there exists—according to the report of Dr. A. Lapithis, an ophthalmic surgeon, which was put in by consent—" disfigurement from the removal of the eye and the scars " and " gross psychological upset ". He had, also, five of his teeth broken ; they were extracted and he was fitted with a denture.

He was absent from work as from the date of the collision, the 30th July, 1966, till the 13th September, 1966, when his services were terminated on account of his incapacity. He was, however, re-employed, by the same employers, as from the 1st December, 1966, in another section of their works, at reduced emoluments per working hour (170 mils instead of 206 mils) and without the possibility of earning any overtime pay, as he used to do regularly prior to his becoming incapacitated ; the trial Court has found that this results in a yearly loss of earnings amounting to about £160–£170. Though he had some chances of promotion in the job he was holding prior to the collision he has no such chance in the job which he has now, after his re-employment. The age of retirement for employees of the Cyprus Mines Corporation is that of sixty-five years.

The trial Court assessed special damages for this appellant at £482.100 mils. There is no complaint by either side regarding the amount of special damages. By way of general damages the Court awarded " £2,500 as a fair compensation for the plaintiff in respect of his said permanent incapacity ",—the loss of one eye—" including

the damage to his teeth, which we do not think it would exceed £100 to £150, and the disfigurement hereinabove mentioned, as well as the pain and suffering, loss of amenities of life, without overlooking the psychological effect these injuries will entail upon plaintiff's life". To this amount there was added, by way again of general damages, an amount of £1,000 in respect of loss of future earnings "not actually representing an actuarian's estimate, but by co-relating this sum with the substantial amount of £2,500 already assessed for the loss of the eye and the other injuries"; and the Court concluded by stating that in awarding, thus, a global figure of £3,500 by way of general damages "we have included all headings that compose general damages and have made the necessary deductions as to contingencies of life and cash value".

In the course of its relevant reasoning the trial Court referred, *inter alia*, to the case of *Gardner* v. *Dyson* [1967] 3 All E.R. 762; the plaintiff, in that case, had suffered very extensive lacerations to his face, lost his left eye and would need glasses for close work two years earlier than he would otherwise have done due to particles of glass having been embedded in his right eye. He was a police officer, thirty-nine years old. He did not lose his job and he would suffer no loss of earnings while still in the police force, apart from the loss of an amount of £62 per annum, which represented remuneration for giving physical training instruction. He was due to be retired at the age of fifty years, but would not necessarily be retired then. He was initially awarded a total of £2,550 general damages and he appealed against this amount as being insufficient.

In allowing the appeal, Russell L.J., stated (at p. 764) :—

> "Counsel for the defendant suggested, when he was offering us some figures, that the proper figure, or a proper figure, nowadays, in 1967, for the total loss of an eye, was £2,000. I take the view (my brethren, I believe, take slightly differing views, one upwards and one downwards) that the minimum award for the total loss of an eye should now, in 1967, be £2,750. I add to that a figure of £250, which counsel for the defendant was prepared to accept as appropriate, for loss of post-trial extra earnings as a P.T. instructor. I add to that a further figure of £250, which counsel for the defendant was prepared to accept as appropriate, and indeed put forward, to cover the fairly slight injury to the other eye and the over-all pain, suffering and shock of the accident, in which more than the eyes were damaged.

That brings me to a figure of £3,250. In addition to that, because I consider that a minimum conventional figure for the total loss of an eye does not include any element of possible loss of earnings, I add an allowance (which can only be to some extent a guess) to meet the fact that a man with one eye, such as this man, when he comes, or may come, on to the labour market at the age of fifty, must be in a disadvantageous position compared with a man who has two eyes. I for my part would add an allowance, to represent this disadvantage and to compensate for this disadvantage, of a further £250.

That, under the heading of general damages, produces a figure of £3,500, as compared with what appears to have been the general damages figure arrived at by the master of £2,550. This, it seems to me, shows a sufficient departure from or increase on the master's figure to justify, and indeed require, the interference of this Court."

Salmon L.J. in the same case, stated (at p. 764) :

"The only doubt that I feel is whether, in 1967, the sum of £2,750 is proper compensation for the loss of an eye. In all personal injury cases the scale of damages is necessarily to some extent conventional. It is impossible to assess precisely the pecuniary value of an eye, or an arm, or a leg ; but, although the damages are in a sense conventional, they must be real and amount to what the ordinary, reasonable man would regard as fair and sensible compensation for the injuries suffered. To say that the damages must be 'conventional' does not mean that the plaintiff, who has to wear an artificial eye for the rest of his life, is entitled to be awarded only 'artificial' damages.

I could not regard an award of £2,000, in 1967, for the loss of an eye, as being other than entirely artificial. It is neither sensible nor fair. I think that £3,000 is the least that should be awarded for such a grave injury. Accordingly I would for my part have gone above the figure of £2,750, but I do not dissent from it."

On the other hand, Sellers L.J., thought that £2,500 would be the appropriate amount of damages for the loss of the plaintiff's eye.

Judicial opinions do differ sometimes, but the fact remains that in October, 1967, when the *Gardner* case was decided,

the prevailing view was that the minimum amount of general damages for the loss of an eye was £2,750, and this amount was not to be taken as covering, too, related heads of general damages.

So, in examining whether the award of general damages in favour of appellant No. 2 should be allowed to stand I am at once faced with the fact that he was granted in May, 1968, when the judgment appealed from was delivered, £2,500, not for the loss of his eye only, but also for all—(except loss of future earnings)—other heads of general damages, including the pain and suffering, the loss of amenities of life, the disfigurement, the psychological upset, as well as the loss of his teeth (which was found to justify a compensation of between £100–£150).

Moreover, though the prospect of inflation did not seem to be regarded as a valid reason for increasing the years' multiplier in assessing damages in a fatal accident case (see the *Taylor* case, *supra*), an element which cannot be overlooked in the present case is that between October, 1967, when the judgments in the *Gardner* case were delivered, and May, 1968, when the judgment before us was delivered, the pound sterling and the Cyprus pound were devalued, in November, 1967, by about 14% ; and devaluation is quite a relevant consideration (see, in this respect, the judgment of Crichton, J. in *Povey* v. *Governors of Rydal School* [1970] 1 All E.R. 841, at p. 847).

In the light of all the foregoing I feel that the amount of £2,500 awarded to appellant No. 2 as a component of the global figure of general damages, and intended to cover all heads of such damages other than loss of future earnings, is really so insufficient as to call for intervention by this Court ; taking, especially, into account the prevailing view in the *Gardner* case (*supra*) and the devaluation of the pound which has taken place after that case I do not think that anything less than £3,000 for the loss only of the eye, as such, would be adequate ; and I shall duly bear this factor in mind when I come, later on in this judgment, to decide about the total amount of general damages to which this appellant is, in my opinion, entitled.

Regarding the other component of general damages, £1,000, which refers to the loss of future earnings, the trial Court, as already mentioned, did not proceed to assess such loss on the basis of an actuarian's estimate but correlated it to what it described as the " substantial amount of £2,500 already assessed for the loss of the eye and the other injuries ".

In adopting such an approach to the assessment of general damages it based itself on the following dictum of Lord Denning, M.R. in *Watson* v. *Powles* [1967] 3 All E.R. 721 (at p. 722) :

> " At the end all the parts must be brought together to give fair compensation for the injuries. If a man is awarded a very large sum for loss of future earnings, it may help to compensate him for his future pain and suffering. If he has no loss of earnings, he may be more generously compensated for pain and suffering—and so forth."

It may be added, in this connection, that in the *Povey* case (*supra*) the need to guard against over-lapping elements of damage—which had been mentioned, also, in *Fletcher* v. *Autocar & Transporters Ltd.* [1968] 2 Q.B. 322—was again referred to.

I think that it is reasonable to assume that had the trial Court felt, as I do feel, that the amount of £2,500 awarded for all heads of general damages, other than loss of future earnings, was not a really " substantial amount " it would in all probability have awarded more than £1,000 for loss of future earnings, when correlating this component of the global figure of general damages to that of £2,500 on which it had already decided ; and while on this point I might state that I did not find any substance in the submission of counsel for respondent that the trial Court erred as regards the calculation of the yearly loss of future earnings of appellant No. 2 ; what such loss will, actually, be can be ascertained with sufficient certainty from the evidence of witness Koumparides, the pay-roll clerk of the appellant's employers ; it is to be derived therefrom that during 1967, the first whole year after the re-employment of appellant on lower emoluments, his yearly earnings diminished by about £150, plus his loss in terms of contribution by his employers, for his benefit, to the provident fund of the company, which would amount to about £11 per annum ; so, it appears that the relevant calculation of the Court below was failry correct.

On the basis of all relevant considerations, and particularly of those which have been specifically referred to in this judgment, I have reached the conclusion that the total amount of £3,500 general damages awarded to the appellant is so clearly inadequate that it should be interfered with and be increased to £4,500. Thus, the appeal of appellant No. 2 in this respect should be allowed and the appeal of respondent, on the same issue, should be dismissed.

I come, then, to deal with the appeal of appellant No. 1 against the amount of £300 general damages awarded to him; he complains that such amount is manifestly inadequate. There is no complaint regarding the amount of special damages, *viz.* £20.

At the time of the collision appellant No. 1 was a young boy, aged six years. He suffered injuries on the throat which were stitched up but they left visible marks; he stayed in hospital for fourteen days. As he had disturbed sleep and a degree of irritability he was taken to a psychiatrist, Dr. T. Evdokas, who examined him for the first time in March, 1967. According to his evidence, this appellant was found to be suffering from irritability and nightmares; the latter had disappeared when he was last seen by the doctor in January, 1968, but the sumptom of irritability still persisted. The boy "was nervous, crying and was difficult in management". As already a long period had elapsed since the accident, the doctor's prognosis was that the irritability would continue, and as a result this appellant "will be aggressive, nervous, excitable, a little particular and he will be difficult in management by his parents and in a way with his relations to other people". The doctor explained that he was not sure that the symptom of irritability was a permanent symptom, but he was inclined towards that view on the basis of the long time that had elapsed since the accident; he added that he believed that with the passage of time the irritability would be reduced.

As, in my view, the evidence of Dr. Evdokas, as accepted by the trial Court, does establish, on the balance of probabilities, that appellant No. 1 has suffered some permanent psychological damage and as he has suffered, also, injuries on his throat, which, apart from the pain and suffering which they entailed, have resulted in permanent visible disfigurement, I regard the amount of general damages awarded to him, *viz.* £300, as clearly inadequate and I think that it has to be increased to £500.

In the result appeal No. 4726 by Elpidoros Karavallis is dismissed and appeal No. 4760 by Nicos Economides and Andreas Economides is allowed; consequently the decision of the Court below is varied so that there shall be judgment against Karavallis and in favour of Nicos Economides and Andreas Economides for £520 and £4,982.100 mils, respectively, (including special damages, in each case, which were not in issue).

Karavallis to bear, also, the costs of these appeals, for one advocate ; the costs of the trial, as already awarded in favour of the appellants, to be assessed on the basis of the damages awarded on appeal.

LOIZOU, J. : I agree. Although I must confess that it is with some reluctance that I do so in the case of the minor, appellant No. 1, in appeal No. 4760. My inclination is that the facts hardly justify interference with the award of the trial Court in his case ; but, nevertheless, I do not think that this is a case in which I should dissend from the conclusion reached by my brothers.

HADJIANASTASSIOU, J. : I agree. Triantafyllides, J. has covered the ground so fully that I have only a few words to add.

The facts are simple ; the plaintiff, Andreas Economides, was 35 years of age, married with children and was working with the Cyprus Mines Corporation at Xeros earning about £43.500 mils per month. On July 30, 1966, the plaintiff and his son Nicos were travelling in his car Reg. No. M689 on their way from Evrychou to Skouriotissa. In approaching a culvert, he stopped off the road on the berm in order to give a big lorry approaching from the opposite direction room to pass. This lorry was driven by the defendant, Elpidoros Karavallis but due to the negligent driving of the defendant whilst he was negotiating a curve on the wrong side of the road, a collision occurred and as a result of such collision both the plaintiff and his son were injured.

As usual, there were two sharply conflicting versions, but the trial Court after weighing the two versions made a finding that the defendant was wholly to blame for the accident, because the driver of the lorry " had a duty to keep to his left as far as possible when about to start negotiating a curve and in any event to drive in such a manner, even in the middle of the road, but be able to take to his left when faced with an oncoming vehicle ".

It is true that an appellate Court, which sees only the transcript and does not see the witness, must hesitate for a very long time before reaching a conclusion different from that of the trial Judge as to the credibility or honesty of a witness. It was very properly urged on us in this appeal by counsel for the appellant-defendant that there are considerations which may lead the appellate Court to take a different view on the evidence. He indicated particularly that there were discrepancies in the

evidence of the plaintiff and his witnesses, and he said that the existence of such discrepancies is one of the matters which may justify the appellate Court in interfering with the finding of the trial Judges.

It seems to me that the principles governing interference by this Court with the assessment of the credibility of a witness made by trial Judges, have been enunciated in many cases. See the recent case of *Kyriakou* v. *Aristotelous*, (reported in this Part at p. 172 *ante* at pp. 176-177); but in this matter I am content to adopt and apply the words of Lord Greene, M.R., in *Yuill* v. *Yuill* [1945] 1 All E.R. 183 at pp. 188, 189. Lord Greene, M.R., said :—

> "We were reminded of certain well-known observations in the House of Lords dealing with the position of an appellate Court when the judgment of the trial Judge has been based in whole or in part upon his opinion of the demeanour of witnesses. It can, of course, only be on rarest occasions and in circumstances where the appellate Court is convinced by the plainest considerations that it would be justified in finding that the trial Judge had formed a wrong opinion. But when the Court is so convinced it is, in my opinion, entitled and indeed bound to give effect to its conviction. It has never been laid down by the House of Lords that an appellate Court has no power to take this course. Puisne Judges would be the last persons to lay claim to infallibility, even in assessing the demeanour of a witness. The most experienced Judge may, albeit rarely, be deceived by a clever liar or led to form an unfavourable opinion of an honest witness and may express his view that his demeanour was excellent or bad, as the case may be. Most experienced counsel can, I have no doubt, recall at least one case where this has happened to their knowledge. I may further point out that an impression as to the demeanour of a witness ought not to be adopted by a trial Judge without testing it against the whole of the evidence of the witness in question."

Now, I have read with care the whole evidence, and although there are certain discrepancies with regard to the question as to how the collision occurred and as to the point of impact, nevertheless, I see no reason whatever to think that the view of the learned trial Judges should be

set aside. I would, therefore, affirm the judgment of the trial Court that the defendant was wholly to blame for the accident, and dismiss the contention of counsel.

The next ground of appeal was that the amount of £3,500 awarded as general damages by the trial Court was unreasonably high having regard to the nature of the injuries of the plaintiff. On the contrary, the plaintiff also made an appeal against the award of general damages, complaining that this amount was manifestly inadequate. Moreover, the son of the plaintiff, Nicos Economides, also appealed for the same reason against the award of general damages.

The trial Court stated in their judgment that in assessing the damages to give a fair compensation for the injuries to the plaintiff, in action No. 2741/66, took into consideration the following : That at the time of the accident the plaintiff was a man of 35 years of age, and was a permanent employee earning about £43.500 mils per month ; because of loss of bonuses and other benefits from the provident fund he will have a loss of earnings amounting to about £160 to £170 per year ; the retiring age for the employees of the Corporation being 65 and that the plaintiff no longer had a chance of promotion in his present work ; the pain and suffering for the loss of his eye, which according to Dr. Lapithis had to be extracted and an artificial one fitted in the cavity ; disfigurement from the removal of the eye and the scars and five broken teeth.

Having given the matter my best consideration, and having in mind the principles enunciated when an appellate Court is justified in disturbing the finding of the Court of first instance, I have reached the view that the trial Court acted upon a wrong principle of law and that the amount awarded was so inordinately low as to make it, in my judgment, an entirely erroneous estimate of the damage to which the plaintiff is entitled. See *Flint* v. *Lovell* [1935] 1 K.B. 354 at 360, C.A. approved by the House of Lords in *Davies* v. *Powell Duffryn Associated Collieries, Ltd.*, [1942] A.C. 601 ; also *Christodoulou* v. *Menicou and Another* (1966) 1 C.L.R. 17 at p. 36 ; *Antoniades* v. *Makrides* (1969) 1 C.L.R. 245 ; and *Paraskevopoullos* v. *Georghiou* (reported in this Part at p.116 *ante*).

Moreover, in deciding to interfere with the finding of the trial Court on the question of general damages, including an amount of £1000 in respect of loss of future earnings, it is also because I am in agreement with counsel for the

plaintiff that the Court did not apply correctly the formula used in *Gardner* v. *Dyson* [1967] 3 All E.R. 762. Russell, L.J. has this to say at p. 764 :—

> " That brings me to a figure of £3,250. In addition to that, because I consider that a minimum conventional figure for the total loss of an eye does not include any element of possible loss of earnings, I add an allowance (which can only be to some extent a guess) to meet the fact that a man with one eye, such as this man, when he comes, or may come, on to the labour market at the age of fifty, must be in a disadvantageous position compared with a man who has two eyes. I for my part would add an allowance, to represent this disadvantage and to compensate for this disadvantage, of a further £250.
>
> " That, under the heading of general damages, produces a figure of £3,500, as compared with what appears to have been the general damages figure arrived at by the master of £2,550. This, it seems to me, shows a sufficient departure from or increase on the master's figure to justify, and indeed require, the interference of this Court."

Taking into consideration everything which has been said, and bearing in mind that here in Cyprus a person with one eye when he comes on to the labour market at the age of sixty-five, must find himself in a more disadvantageous position than the same person in England—being an industrial country—as well as the fact that our pound was devalued in 1967, I have decided to increase the amount of general damages to £4,500.

On the question of the diminishing purchase value of the pound, see my own judgment in *Christodoulides* v. *Kyprianou* (1968) 1 C.L.R. 130 at p. 134 ; also the case of *Constantinou* v. *Salachouris* (1969) 1 C.L.R. 416, where the Court has adopted the judgment of Lord Denning, M.R. in the case of *Senior* (*an Infant*) v. *Barker and Allen Ltd.*, [1965] 1 All E.R. 818 at p. 819, on the same question that the value of money changes with the passing of the years. I would, therefore, dismiss the appeal of the appellant-defendant and allow the appeal of the plaintiff.

Now, having considered the medical evidence with regard to the appellant-plaintiff in action No. 2740/66, as well as the fact that he was a young boy of six years of age and that he suffered as a result of the same collision

personal injuries on his throat, which were still visible on the date of the hearing of the appeal, I have decided to disturb the finding of the trial Court, and substitute the figure awarded from £300 to £500, bearing in mind the principles I have expounded earlier in the judgment. This amount I fully realize that it is not a perfect compensation for the pecuniary injury, but taking into consideration all the circumstances, is a fair compensation.

I would, therefore, allow the appeal.

TRIANTAFYLLIDES, J.: In the result appeal No. 4726 is dismissed and appeal No. 4760 is allowed to the extent that the decision of the trial Court is varied so that there shall be judgment for £520 and £4,982.100 mils in favour of the two appellants, respectively.

The appellant in appeal No. 4726 to bear the costs of the proceedings before this Court regarding these two appeals, which were consolidated, for one advocate, and the order for costs as made by the trial Court in favour of the appellants to be implemented on the basis of the amounts of damages awarded on appeal.

Appeal No. 4726 *dismissed.*
Appeal No. 4760 *allowed.*
Order for costs as above.