

COSTAKIS ANDREOU,
Appellant-Plaintiff,

v.

COSTAKIS KARKALLIS AND OTHERS,
Respondents-Defendants.

COSTAKIS
ANDREOU
v.
COSTAKIS
KARKALLIS
AND OTHERS

(Civil Appeal No. 4887).

Damages—Special damages—Loss of earnings—Award of special damages in respect of loss of earnings as a consequence of personal injuries, should cover the loss proved to have been suffered by the plaintiff until the commencement of the trial. Special damages for loss of earnings—See supra.

Damages—General damages—Personal injuries—Rendering plaintiff-appellant a helpless invalid for the rest of his life—Assessment of general damages—Costs of rehabilitation treatment as well as cost of help in order to meet the necessities of life should be taken into account—Amount of £10,000 awarded is, in the circumstances, so low an estimate of the loss as to call for intervention by the Court of Appeal—Amount awarded increased to £14,000.

General damages—In personal injuries cases—See supra.

General damages—Appeal—Principles upon which the Court approaches appeals against awards of general damages.

Personal injuries—See supra.

Appeal—General damages—Approach of Court of Appeal to awards of general damages made by trial Courts—See supra.

This is an appeal by the plaintiff in a personal injuries case against the amounts awarded by the trial Court, both as special and as general damages, viz. £570 and £10,000, respectively. The appellant, a bright young man of twenty eight years of age, sustained the crippling injuries described post in the judgment in a road accident.

Allowing the appeal and increasing the amounts awarded, the Court :—

Held, I. With regard to the special damages awarded for loss of earnings :

The claim for loss of earnings was £1,320 out of which the trial Court allowed only £570, limiting the award to the

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loss of earnings sustained until 19.11.1968. We are of opinion that the award of special damages for loss of earnings should cover the loss proved to have been suffered by the plaintiff until the commencement of the trial; in the instant case such loss amounts to £1,320. The award for special damages must, therefore, be increased accordingly.

Held, II. As regards the amount of £10,000 awarded as general damages :

(1) It was rightly urged on behalf of the appellant that owing to the condition in which he is now found due to his severe injuries, the expense of taking a course in a rehabilitation home abroad, as described by the evidence on record, must be taken into consideration in assessing the general damages. Several hundred pounds may have to be spent for this purpose.

(2) There is another factor which must be taken into account in this case. For considerable time, if not for the rest of his life—which for this young invalid of twenty eight years of age may well mean a rather long period—the appellant will need help in order to meet the necessities of life. He needs help to dress and undress; to wash himself; to go to the lavatory etc.

(3) As rightly pointed out by counsel for the respondents, the Court of Appeal should not interfere with the award of general damages made by the trial Court, unless the amount awarded is so low as to call for intervention (see *Antoniades v. Makrides* (1969) 1 C.L.R. 245; *Andronikou v. Kitsiou* (reported in this Part at p. 8 *ante*); *Theodossiou v. Koulia and Another* (reported in this Part at p. 310 *ante*).

(4) Approaching the case before us with all this in mind, particularly the two factors to which we have referred (*supra*) under (1) and (2), we find that the amount of 10,000 pounds awarded is so low an estimate of appellant's loss as to call for intervention by this Court. We think that this Court, in such circumstances, is not only justified but it has a duty to re-assess the general damages so as to make the award a reasonable estimate of the appellant's loss. In doing so we certainly take into consideration the reasons which led the trial Court to their assessment of £10,000. And we find that this sum should be increased to £14,000.

Appeal allowed with costs.

Cases referred to :

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

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

Theodossiou v. Koulia and Another (reported in this Part at p. 310 *ante*).

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Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Malachos, P.D.C. and Loris, D.J.) dated the 26th March, 1970, (Action No. 590/68) whereby he was awarded the sum of £10,643 by way of special and general damages due to injuries he received in a road traffic accident.

A. N. Lemis, for the appellant.

G. Cacoyiannis, for the respondent.

The judgment of the Court was delivered by :—

VASSILIADES, P. : The appellant (plaintiff) a young salesman of 28 years of age, was seriously injured in a road collision which occurred in the early hours of February 4, 1968, on the main Limassol-Paphos road. It was a very violent collision between two motor vehicles, travelling in the opposite direction ; a taxi, travelling in the direction of Limassol, and a mini-bus, travelling in the direction of Paphos. Both drivers were very seriously injured.

The driver of the taxi died soon after the collision, in consequence of his injuries ; the appellant, who was driving the mini-bus, survived ; but only as a physical wreck, after several months of treatment in two government hospitals. In Limassol Hospital for over a month, until March 12, 1968 ; and in Nicosia General Hospital for a further period, until the middle of November, 1968.

According to the evidence of an orthopaedic surgeon who examined the appellant on November 19, 1968, soon after his discharge from hospital, when his condition had practically “crystallized”—as the trial Court put it—and who also examined the appellant before giving evidence at the trial about a year later, in December 1969, the appellant shall be a helpless invalid for the rest of his life. His right leg was amputated in a “life-saving operation”—as the doctor described it—leaving only a short stump high

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up the thigh ; his right arm and hand are practically useless ; and he needs help even for the ordinary necessities of life. He may benefit from rehabilitation treatment in a rehabilitation centre abroad, as none is, so far, available in the Island.

At the time of the accident, the appellant was a healthy and jovial young man, earning a salary of £40 per month plus a commission on his sales averaging another £20 per month.

As regards liability, the trial Court found for the appellant. The Court say :—

“ On the evidence, as we have accepted it, we find that the deceased taxi driver is entirely to blame for this accident. We find it impossible to attribute any degree of negligence to the plaintiff.”

This part of the judgment, quite rightly we think, is not contested.

As to damages, the trial Court had this to say regarding appellant's injuries :—

“ There is no doubt that as a result of (his) injuries, he must have suffered considerable pain and discomfort. It is clear from the medical evidence, and in particular from that of P.W.4, Dr. Zambarloukos, that the plaintiff will not be able in future to do any work to earn his living ; on the contrary, he must have somebody to look after him for the rest of his life, as even he needs help for the ordinary necessities of life. Needless to say that the plaintiff has lost all amenities of life.”

Upon these findings, which are amply supported by the evidence, the trial Court awarded £643 special damages (out of £2,923 claimed) and £10,000 general damages, giving judgment to the plaintiff against all the defendants, for £10,643—plus legal interest and costs.

From this judgment the plaintiff appealed, complaining against the amounts awarded both as special and as general damages. Counsel on his behalf took several points mainly complaining for the sum allowed for loss of earnings, as special damages and for the general damages awarded. The claim for loss of earnings was £1,320 out of which the trial Court allowed £570, limiting the award to the loss

sustained until the 19.11.1968. It was submitted, for the appellant-plaintiff that the award of special damages for loss of earnings should cover the loss proved to have been suffered by the plaintiff until the trial. Learned counsel for the respondents-defendants conceded, quite rightly, we think, that the loss of earnings can be calculated for the purpose, until the trial. The award for special damages, therefore, must be increased accordingly. We increase it to a total of £1,393, consisting of £1,320 for loss of earnings until the commencement of the trial, plus £73 the amount awarded by the trial Court, for two other items.

We now come to the general damages. It was urged on behalf of the plaintiff that owing to the condition in which the plaintiff is now found due to his injuries, the cost of taking a course in a rehabilitation home abroad, as described by the evidence, must be taken into consideration, in the circumstances. Several hundred pounds may have to be spent for this purpose. Rehabilitation treatment will not only help the plaintiff physically by teaching him to make better use of what is left of his body, but it will also help him psychologically by keeping his hopes alive ; or reviving them. As rightly observed by Mr. Cacoyiannis, counsel for the respondents, a person of the plaintiff's age should not feel like 'closing his books' with life. There are forces in a human being—learned counsel reminded us—which nature will help him to develop in order to improve his condition. The cost of a rehabilitation treatment abroad will have to come out of the general damages.

There is another factor which must be taken into account in this case. For considerable time, if not for the rest of his life—which for this young invalid may well mean a rather long period—the plaintiff will need help in order to meet the necessities of life. He needs help to dress and undress ; to wash himself ; to go to the lavatory etc. Taking these facts into consideration together with all other matters bearing on the question of general damages, we now have to decide whether the appellant has been able to show sufficient reason for intervention by this Court, in the amount awarded by the trial Court. As rightly pointed out by counsel for the respondents, the Court of Appeal should not interfere with the award of general damages made by the trial Court, unless the amount awarded is so very low as to call for intervention. (See *Antoniades v. Makrides* (1969) 1 C.L.R. 245 ; *Andronikou v. Kitsiou*, (reported in this Part at p. 8 *ante*) ; *Theodossiou v. Koulia and Another* (reported in this Part at p. 310 *ante*).

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Approaching the case before us with all this in mind, particularly the two factors to which I have referred, we find that the amount awarded is so very low an estimate of plaintiff's loss as to call for intervention. We think that this Court, in such circumstances, is not only justified but it has the duty to re-assess the general damages so as to make the award a reasonable estimate of plaintiff's loss in the circumstances of this case. In doing so we certainly take into consideration the reasons which led the trial Court to their assessment of £10,000: And we find that this sum should be increased to £14,000. The total amount of damages will, therefore, have to be increased to £14,000 general damages, plus £1,393 special damages, making a total of £15,393. We allow the appeal to that extent and vary the judgment accordingly; with costs in the action and in the appeal.

Appeal allowed with costs.