[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, A. LOIZOU, JJ.]

ALI RIZA OMER,

Appellant-Plaintiff,

v.

IOANNIS PAVLIDES AND ANOTHER,

Respondents-Defendants.

(*Civil Appeal No.* 4917).

Negligence—Contributory negligence—What is contributory negligence—Apportionment of liability—Road accident—Pedestrian knocked down by motor vehicle when crossing avenue—And after he had crossed more than half of the width of avenue, in a diagonal manner away from the oncoming vehicle—Avenue in front of driver "quite clear"—Apportionment of liability—Two Judges constituting the trial Court disagreeing thereon—View taken by the President of the District Court that pedestrian's liability is less than that of the driver, upheld on appeal—Contrary approach adopted by the other Judge cannot be upheld in view of a "clearly discernible error" appearing in his judgment.

Contributory negligence—When a person is guilty of contributory negligence.

Apportionment of liability—Approach of the Court of Appeal—See supra.

General damages in personal injuries cases—Assessment—Principles upon which the Court of Appeal will act in appeals against awards of such damages—Restated—In the instant case the Supreme Court increased the general damages awarded in the first instance because they were so low as to make it necessary for the Court to interfere.

Road accident—Negligence—Contributory negligence—General damages—See supra.

Costs—Matter primarily within the discretion of the trial Court—And as a rule costs follow the event—In view of the trial Judges disagreement as to costs in the instant case, the Supreme Court on appeal dealt with the issue of costs to a greater extent than they would otherwise have done—As a rule each case depends on its merits.

Practice—Costs—Appeal—See immediately hereabove.

This is an appeal by the plaintiff from a judgment of the District Court of Larnaca whereby he was awarded £1,405 damages (without costs) in an action brought by him against the respondents for personal injuries which he suffered when he was knocked down by a station-wagon driven by respondent No. 2, a servant of respondent No. 1.

The learned trial Judges—the President of the District Court and a District Judge—disagreed regarding both the respective degrees of liability of appellant and the driver (respondent No. 2) for the accident and the amount of general damages payable on a full liability basis. They estimated the special damages suffered by the appellant to be £1,684 and this amount is not in dispute in this appeal. As a result of the disagreement of the trial Judges there prevailed the view more adverse to the plaintiff (appellant), that of the District Judge, *viz.* that the driver and the appellant were both responsible for the accident to an extent of 30% and 70%, respectively, and that an amount of £3000 was adequate as general damages on a full liability basis ; the President took the view that the aforesaid respective shares of liability should have been 60% and 40% and that the general damages should have been £3,500.

After reviewing the facts, the Supreme Court allowed the appeal, reversed the judgment appealed from, and :—

Held, (1). As stated by Denning L.J. (as he then was) in *Jones* v. *Livox Quarries Ltd.* [1952] 2 Q.B. 608, at p. 615, and adopted by Edmund Davies L.J. in *O' Connell* v. *Jackson* [1971] 3 All E.R. 129, at p.130 :

> " Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might hurt himself ; and in his reckonings he must take into account the possibility of others being careless."

We, therefore, do agree with the trial Judges that the appellant was, indeed, to blame, to a certain extent, for what happened.

(2) Regarding the apportionment of liability we see no sufficient reason to interfere with the apportionment made by the President of the District Court the respective shares being 60% for the driver (respondent No. 2) and 40% for the

appellant. In the contrary approach adopted by the District Judge to the effect that appellant was more to blame (70%) than the driver (30%), there is clearly on the facts a " clearly discernible error " as a result of which it cannot be upheld by us (see *Baker* v. *Willoughby* [1969] 3 All E.R. 1528, at p. 1530 ; as well as the case law cited in *Ekrem* v. *McLean* (reported in this Part at p. 391 *ante*).

(3)(*a*) In relation to the amount of general damages we have decided—bearing duly in mind the extent of our relevant powers (*see, inter alia, Antoniades* v. *Makrides* (1969) 1 C.L.R. 245)—to increase it from £3000 to £4000. In view of the injuries suffered by the appellant and their after-effects—total incapacity of his right leg etc.—the amount of £3000 was so low as to make it necessary for us to increase it as stated.

(*b*) Thus the total damages, payable on the basis of full liability, including £1,684 special damages, *supra*, is £5,684 out of which the appellant, on the basis that he is to blame to the extent of 40%, is entitled to receive a round figure of £3,410.

(4) Regarding the question of costs there was again disagreement between the two trial Judges. The matter of costs is primarily within the discretion of the Court of first instance ; in view however of the disagreement as to costs of the trial Judges we have to proceed to deal ourselves with the issue of costs to a greater extent than we would otherwise have done if the trial Judges were unanimous about the costs, having always in mind that each case depends on its own merits (see Halsbury's Laws of England, 3rd ed. Vol. 11, p. 318, paragraph 515). We think that a just order as to costs in the present case would be to award to the appellant two thirds of his costs in the Court below on the basis of the amount for which we have today given judgment, and full costs in the appeal.

Appeal allowed. Order as to costs as above.

Cases referred to :

Jones v. *Livox Quarries Ltd.* [1952] 2 Q.B. 608, at p. 615 ;

O' Connell v. *Jackson* [1971] 3 All E.R. 129, at p. 130 ;

Baker v. *Willoughby* [1969] 3 All E.R. 1528, at p. 1530 ;

Ekrem v. *McLean* (reported in this Part at p.391 *ante*) ;

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

Appeal.

Appeal by plaintiff against the judgment of the District Court of Larnaca (Georghiou, P.D.C. and A. Demetriou, D.J.) dated the 3rd June, 1970, (Action No. 440/69) whereby he was awarded the sum of £1,405 as damages for injuries he sustained when he was knocked down by a station-wagon, driven by defendant No. 2, who was at that time acting in the course of his employment with defendant No. 1.

L. Demetriades with *I. Loizidou* (*Mrs.*) and *M. Hakki*, for the appellant.

M. Koumas, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P. : The appellant has appealed from a judgment of the Larnaca District Court by virtue of which he was awarded the amount of £1,405 as damages, without costs, in an action brought by him against the respondents for personal injuries which he suffered when he was knocked down by a station-wagon driven by respondent No. 2, who was at that time acting in the course of his employment with respondent No. 1.

The accident took place on the 13th April, 1968, at about 8 a.m., in Makarios III Avenue in Larnaca. The appellant had parked his own car and was attempting to cross the avenue, in a rather hurried manner, in order to reach its opposite side. At that moment respondent No. 2 was driving along the avenue, coming from the right of the appellant, and his vehicle knocked down the appellant, causing him severe injuries.

The avenue at that place is straight for a considerable distance and it is quite wide—about 26 feet.

The learned trial Judges—the President of the District Court and a District Judge—disagreed regarding both the respective degrees of liability of appellant and of respondent No. 2 for the accident and the amount of general damages payable on a full liability basis. They estimated the special damage, suffered by the appellant, to be £1,684 ; and this amount is not in dispute in this appeal. As a result of the disagreement of the trial Judges there prevailed the view more adverse for the appellant, that of the District

Judge, *viz.* that respondent No. 2 and the appellant were responsible for the accident to an extent of 30% and 70%, respectively, and that an amount of £3,000 was adequate as general damages on a full liability basis ; the President of the District Court took the view that the aforesaid respective shares of liability should have been 60% and 40% and that the general damages should have been £3,500.

The view of both the trial Judges that the appellant was guilty of contributory negligence was based on the fact that he had attempted to cross the avenue without ascertaining that it was safe for him to do so and, thus, he placed himself in the way of the vehicle which was driven by respondent No. 2.

As stated by Denning L.J. in *Jones* v. *Livox Quarries Ltd.* ([1952] 2 Q.B. 608, at p. 615) and adopted by Edmund Davies L.J. in *O'Connell* v. *Jackson* ([1971] 3 All E.R. 129, at p. 130) :—

> " Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might be hurt himself ; and in his reckonings he must take into account the possibility of others being careless."

We, therefore, do agree with the trial Judges that the appellant was, indeed, to blame, to a certain extent, for what happened.

Being faced with the disagreement of the two trial Judges regarding the extent of the liability of the appellant, we have reached the conclusion, after having given our best consideration to this matter, that the view taken by the President of the District Court, *viz.* that the appellant's liability for the accident is less than that of the respondent, is the correct one ; and that in the contrary approach adopted by the District Judge there is a " clearly discernible " error, as a result of which it cannot be upheld by us (see *Baker* v. *Willoughby* [1969] 3 All E.R. 1528, at p. 1530 ; as well as the case-law cited in *Ekrem* v. *McLean* (reported in this part at p. 391 *ante*)). We have, in this respect, taken into account, *inter alia*, that respondent No. 2—who admitted in evidence that the avenue in front of him was " quite clear "—ought to have been, had he been driving in a careful manner, in a position to take the necessary

avoiding action in time ; it cannot be lost sight of that the appellant was hit by the vehicle of respondent No. 2 after he had crossed, in a diagonal manner away from the oncoming vehicle, more than half of the avenue.

Regarding the apportionment of liability as between the appellant and respondent No. 2 we see no sufficient reason to interfere with the apportionment made by the President of the District Court and, therefore, we uphold his finding that the appellant's liability for the accident is 40% and that of respondent No. 2 60%.

In relation to the amount of general damages we have decided—bearing duly in mind the extent of our relevant powers (see, *inter alia*, *Antoniades* v. *Makrides* (1969) 1 C.L.R. 245)—to increase it from £3,000 to £4,000 ;we took the view that, in the light of the severe injuries suffered by the appellant and their after-effects, the main of which is the nearly total incapacity of his right leg, the amount of £3,000 was so low as to make it necessary for us to increase it as stated.

Thus, the total damages payable on the basis of full liability, including the special damages, is £5,684, out of which the appellant, on the basis that he is to blame to the extent of 40%, is entitled to receive a round figure of £3,410. It is, therefore, ordered that the judgment appealed from should be varied accordingly and that judgment should be entered in favour of the appellant and against the respondents for that amount.

Regarding the question of costs there was again disagreement between the two Judges of the trial Court ; the President of the District Court awarded the appellant costs on the basis of the amount for which he gave judgment in his favour, but the District Judge decided that there should be no order as to costs.

The matter of costs is primarily within the discretion of the Court of first instance ; in view, however, of the disagreement as to costs of the trial Judges we have to proceed to deal ourselves with the issue of costs to a greater extent than we would otherwise have done if the trial Judges were unanimous about the costs.

As a rule costs follow the event ; and counsel for the respondent has conceded that the appellant is entitled to part of his costs. The relevant case-law shows that there have been instances when full costs were awarded on the

basis of the amount recovered by a successful plaintiff, even though the plaintiff was found guilty of contributory negligence ; there are, also, cases in which only a certain part of the costs was awarded to a successful plaintiff who had been negligent too. Each case depends, indeed, on its own merits (see Halsbury's Laws of England, 3rd ed., vol. 11, p. 318, paragraph 515). We think that a just order as to costs in the present case would be to award to the appellant two thirds of his costs in the Court below, on the basis of the amount for which we have given judgment today, and full costs in the appeal.

This appeal is, therefore, allowed on the above terms.

Appeal allowed ;
order for costs as above.