

ALISAVOU CHRISTODOULOU AND ANOTHER,
Appellants-Plaintiffs,

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC
AND OTHERS,
Respondents-Defendants.

ALISAVOU
CHRISTODOULOU
AND ANOTHER
v.
THE ATTORNEY-
GENERAL
OF THE
REPUBLIC
AND OTHERS

(Civil Appeal No. 4981).

Personal injuries—General damages—Assessment—Local paralysis of the left facial nerve causing ptosis of the left eye-brow—Slight displacement of mouth and inability to close properly left eye-lid with resulting flow of tears therefrom—Inability to do work necessitating much stooping—Amount of £1,150 a wholly erroneous estimate—Increased to £1,500—See further infra.

Husband and wife—Consortium—General damages for personal injuries—Impairment or loss of wife's consortium—Wife injured at road accident for which defendant liable—Appeal by husband against award of £15 for impairment of wife's consortium, as a result of loss of sexual desire by wife due to the injuries—Finding of the trial Court that there was no such loss due to the accident—Upheld.

Civil Procedure—Appeal—Cross-appeal—Filed after commencement of hearing of the appeal—Leave to file cross-appeal within the discretion of the Court—Order 35, rules 10 and 8 of the Civil Procedure Rules—Requirement under rule 10 that notice of cross-appeal should set forth fully the grounds relied upon in support thereof and the reasons therefor—It is one of substance and has to be duly complied with.

Cross-appeal—Filing after commencement of the hearing of appeal—Leave—Discretion of the Court etc. etc.—See supra.

The facts sufficiently appear in the ruling and the judgment of the Court.

Cases referred to :

Lawrence and Another v. Biddle [1966] 1 All E.R. 575.

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Appeal.

Appeal by plaintiffs against the judgment of the District Court of Paphos (Malachtos, P.D.C. and Boyiadjis, D.J.) dated the 9th April, 1971, (Action Nos. 324/68 & 944/69) whereby the sum of £1,150 was awarded to plaintiff No. 1 and the sum of £15 to plaintiff No. 2 as general damages for injuries suffered by them in a traffic collision.

X. *Clerides*, for the appellants.

A. *Evangelou*, for respondent No. 1.

L. *Papaphilippou*, for respondents Nos. 2 and 3.

The following ruling was delivered on the 10th November, 1972, by :

TRIANAFYLLIDES, P. : The hearing of this appeal commenced on the 27th October, 1972. On that day we reached the stage at which counsel for respondents No. 2 and 3 had begun his address ; but before it was concluded the hearing had to be adjourned to today for lack of time.

In the meantime, on the 3rd of November, 1972, counsel for the said respondents filed a notice of cross-appeal, seeking variation of the decision of the trial Court, on the ground that such Court did not give proper weight to, or did not take into consideration, all the facts established by the evidence adduced in relation to the damage suffered by the appellants (the plaintiffs in the Court below).

The said facts are those relating to the injuries suffered by appellant No. 1, which are also relevant, to a certain extent, to the claim by appellant No. 2 for loss of the consortium of appellant No. 1, who is his wife.

As counsel has stated today, he has made the cross-appeal under rule 10 of Order 35 of the Civil Procedure Rules ; he explained that he has decided to take this course because after considering more carefully the relevant evidence, and particularly the medical evidence, he deemed it necessary to adopt such a course.

It is clear that under rule 10 we have a discretion to allow, even at this stage, counsel for respondents Nos. 2 and 3 to file a cross-appeal ; and so that we may be in a position to exercise fully our powers in dealing with the present appeal under rule 8 of Order 35 of the Civil Procedure Rules, we are prepared to grant leave for the filing of the

cross-appeal ; however, the notice of cross-appeal, as filed, does not conform with the requirement in rule 10 that it should set forth fully the grounds to be relied upon in support of the cross-appeal and the reasons therefor. Non-compliance with this requirement cannot be treated as being an immaterial defect ; it is a matter of substance ; counsel for the appellants is entitled to know, and this Court should also know, what exactly are the said grounds and reasons. So counsel for respondents Nos. 2 and 3 should duly comply with the said requirement.

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Order accordingly.

The following judgment was delivered on the 10th November, 1972, by :

TRIANAFYLLIDES, P. : In this appeal we are concerned with the amount of general damages—£1,150—awarded to appellant No. 1 (to whom we shall refer as “ the wife ”) in respect of injuries which she suffered in a traffic collision, and with the amount of general damages—£15—awarded to appellant No. 2 (to whom we shall refer as “ the husband ”) for loss of consortium of his wife as a result of her injuries.

Counsel for the wife has attacked the said award to her of general damages as being the outcome of an erroneous estimate, having regard to the injuries, consequential pain and suffering and incapacity suffered by her.

The trial Court has stated in this respect the following :—

“ In considering the evidence adduced in the case of this plaintiff, we must say from the outset that as regards the after-effects of her injuries, she greatly exaggerated her condition in giving evidence before us.

Taking the medical evidence as a whole, we are satisfied that she suffered rather serious injuries but she became neither a wreck nor a useless person, as she has tried to convince us. Her face has been disfigured to some extent as a result of the scar on the left side. The ptosis of her left eye-brow and the slight displacement of her mouth as well as her inability to close properly her left eye-lid, with the resulting flow of tears therefrom, are all due to the permanent local paralysis of the left facial nerve.

* Editor's Note : The cross-appeal was eventually abandoned.

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We take it that the slight cerebral concussion the plaintiff sustained in the accident might have resulted into what is known as a post-concussional syndrome. As to her diminution of hearing, which is very slight, although the medical evidence tends to show that it may be attributed to her age, yet, we also take it to be the result of the accident, as this possibility cannot be excluded.

There is no doubt that the plaintiff had considerable pain in the beginning and will continue to have some pain in the future, especially, on pressure at the point where the scar on her head starts. However, she is able to do domestic and agricultural work, except perhaps the kind of work which necessitates much stooping.

Her alleged lack of libido is an after-thought. We are not satisfied that any injuries she sustained in the accident resulted in the impairment of her sexual desire, which, if it really exists, is due to her age."

Having heard exhaustive arguments on behalf of all the parties, we consider that the above findings of the trial Court were reasonably open to it on the evidence adduced and we are not prepared to treat them as unsatisfactory or to interfere with them on any other ground ; therefore, we reject, in particular, the contention of counsel for the appellants that as a result of the accident the wife has been deprived of her sexual desire ; this possibility was excluded by a medical expert called to testify in support of her claim and, thus, the relevant finding of the trial Court is fully supported even by evidence adduced on her behalf.

On the basis, however, of the injuries, pain and suffering and consequent incapacity found by the trial Court to have been suffered by the wife, including especially the permanent local paralysis of the left facial nerve, causing ptosis of her left eye-brow, slight displacement of her mouth, and, what is very serious in our view, her inability to close properly her left eye-lid, with the result that there is a flow of tears from that eye, and bearing in mind, also, that, though as a wife living in a village she is expected to work hard both at home and in the fields, she is unable, as a result of her injuries, to do work necessitating much stooping, we find the amount of £1,150 a wholly erroneous estimate of general damages and we have no difficulty in increasing it to £1,500.

Regarding the general damages awarded to the husband for loss of consortium of his wife we—in the light of, *inter alia*, *Lawrence and Another v. Biddle* [1966] 1 All E.R. 575—might have been inclined to increase it ; but as, in this respect, the husband's appeal was based solely on the ground that general damages for the loss of consortium were inadequate due to a wrong finding of the trial Court about the wife's loss of sexual desire and as on this issue we have upheld the finding of the trial Court that there was no such loss due to the accident, we are not prepared to increase the amount of general damages—£15—awarded in respect of loss of consortium.

In the result, the appeal is allowed to the extent stated above ; the appellants are to be paid by the respondents the costs of this appeal.

Appeal allowed with costs.

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