[TRIANTAFYLLIDES, P., L. LOIZOU, MALACHTOS, JJ.]

IOANNOU & PARASKEVAIDES LTD.,
Appellants-Defendants,

v.

CHRISTOS NEOCLEOUS,
Respondent-Plaintiff.

(*Civil Appeal No.* 5155).

Master and Servant—Master's duty to provide safe system of work—Electrically operated saw—Defective handle and absence of guard—Employee injured as a result—Employer liable—Trial Court's findings and judgment sustained on appeal by the employers—Cf. further infra.

Negligence—Safe system of work—Duty of master towards his servants—See supra.

Damages—Personal injuries—General damages—Assessment—Loss of future earnings—Loss of amenities of life—Pain and suffering—Thirty-four years old skilled mason cutting wrist of his right hand—Which was rendered nearly useless disabling him from working in any skilled or semi-skilled capacity—Award of £4,000 sustained on appeal.

General damages—Personal injuries—Assessment—See supra.

Personal injuries—General damages—See supra.

Special damages—Personal injuries—Loss of earnings—For a period continuing after completion of medical treatment and up to the date of conclusion of hearing of the case—Such loss can be included in the award of special damages for personal injuries—Calculation to be made not only on the basis of the earnings at the time of the accident but, also, on the expected increased earnings until the hearing of the case—Trial Court's conclusions as above, sustained on appeal—Cf. further infra.

Special damages—Practice—Pleadings—Special damages for personal injuries—Amendment of statement of claim during the trial of the case in order to include therein special damages up to the date of hearing—Evidence concerning special damages heard prior to the amendment held rightly to be admissible—Kemal *v.* Kasti, 1962 *C.L.R.* 317, followed.

Practice—Amendment of pleadings—Special damages—See supra.

Evidence in civil cases—Evidence concerning special damages heard prior to the relative amendment of pleadings held to be admissible—See further supra.

The facts are set out in the judgment of the Court, dismissing this appeal by the employers regarding both the issue of liability and the quantum of damages awarded by the trial Court to the plaintiff (respondent) servant in this personal injuries case.

Cases referred to :

Wilson v. *Tyneside Window Cleaning Co.* [1958] 2 Q.B. 110, at p. 116, *per* Parker L.J. ;

Kemal v. *Kasti*, 1962 C.L.R. 317 ;

Constantinides v. *Hjiloannou* (1966) 1 C.L.R. 191 ;

Symeonidou v. *Michaelides* (1969) 1 C.L.R. 394 ;

British Transport Commission v. *Gourley* [1956] A.C. 185, at p. 206 ;

Davies v. *Taylor* [1972] 3 W.L.R. 801 ;

Field v. *British European Airways Ltd.*, "The Times" March 1, 1973.

Appeal.

Appeal by defendant against the judgment of the District Court of Limassol (Loris, P.D.C. and Hadjitsangaris, D.J.) dated the 12th January, 1973, (Action No. 1084/69) whereby he was ordered to pay to the plaintiff the sum of £6,455.350 mils as damages for injuries received by the plaintiff while working in the course of his employment by the appellants.

R. Michaelides, for the appellant.

B. Vassiliades, for the respondent.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P.: The respondent, who was the plaintiff in the Court below, was seriously injured while working in the course of his employment by the appellants.

The trial Court gave judgment in his favour for a total sum of £6,455.350 mils, by way of special and general damages ; the general damages were £4,000 and the remainder were special damages, out of which only a small amount, namely £39, was not in dispute.

This appeal has been made both as regards the issue of liability and the issue of the quantum of damages.

We shall, first, deal with the issue of liability :—

The circumstances in which the respondent was injured appear to be as follows :—

He was being employed as a mason by the appellants and he was cutting floor tiles by means of an electrically operated saw. According to the allegation of the respondent, on the material date there was no guard for the saw and its handle was loose. The respondent explained that he put a tile which he was cutting on a wooden case and was steadying it with his right foot; with his right hand he was holding the handle near the saw and with his left hand he was operating the switch ; when he switched on the saw in order to cut the tile a piece of it flew off and hit him on the right arm ; as the handle near the saw was loose and because, too, of the vibration of the saw the right hand of the respondent slipped off the handle and the rotating disc of the saw, which was without a guard, cut the wrist of his right hand.

The trial Court accepted the version of the respondent and found that the accident occurred because of the defective handle of the saw and due to the absence of a guard.

We agree with the trial Court that in the circumstances of the present case there was a breach of the appellants' duty, as employers, towards the respondent, as an employee. In this respect useful reference may be made to *Wilson* v. *Tyneside Window Cleaning Co.* [1958] 2 Q.B. 110, at p. 116, where Parker L.J., as he then was, said :—

> " The master's duty is general, to take all reasonable steps to avoid risk to his servants. For convenience it is often split up into different categories, such as safe tools, safe place of work, or safe system of work, but it always remains one general duty."

We, therefore, see no reason for interfering with the judgment of the Court below as regards its finding that the appellants were liable to compensate the respondent.

We shall deal, next, with the question of damages :—

As has been correctly found by the trial Court the plaintiff has suffered not only considerable pain and suffering but, also, his right hand was rendered nearly useless, disabling him thus from working in any skilled or semi-skilled capacity ; he can do only light work by using his left hand, mainly.

It is convenient to consider, at this stage, an objection taken by counsel for the appellants to the effect that, as during the trial there was an amendment of the statement of claim in order to include therein special damages up to the date of the hearing of the case, any evidence concerning such special damages, which had been heard prior to such amendment, was inadmissible evidence. We find no merit at all in this contention, which can find no support in the established practice of the Courts in this respect (see, for example, *Kemal* v. *Kasti*, 1962 C.L.R. 317).

It has been argued on behalf of the appellants that all special damages, by way of loss of earnings after the completion of the respondent's medical treatment, should have been included in the award of general damages ; we cannot uphold this argument.

The trial Court based its decision to award special damages for loss of earnings up to the date of the conclusion of the hearing on the case of *Kemal*, *supra*, where it was held that an amendment of the statement of claim should be allowed so as to include special damages for loss of earnings up to the date of the conclusion of the hearing, as evidence, in this respect, had already been adduced at the trial.

Useful reference may be made to two more decided cases : In *Constantinides* v. *HjiIoannou* (1966) 1 C.L.R. 191, the point was raised as to whether the trial Court had erred by including special damages in respect of loss of earnings in the global figure of general damages ; it was held on appeal that it was judicially open to the trial Court either to assess special damages up to the hearing or to include such damages, after a certain date, in the amount of general damages. In *Symeonidou* v. *Michaelides* (1969) 1 C.L.R. 394, the incapacity of the plaintiff, which was of total nature, had crystallized quite a long time before the hearing ; yet this Court approved, on appeal, an award of special damages which were assessed on the basis of the plaintiff's loss of earnings from the date of the accident up to the end of the proceedings.

Also, reference may be made to McGregor on Damages, 13th ed., p. 14, paragraph 19, where there is set out the following dictum of Lord Goddard in *British Transport Commission* v. *Gourley* [1956] A.C. 185 (at p. 206) :—

> " In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as special damage, which has to be specially pleaded and proved. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. Secondly, there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future."

The other point raised by counsel for the appellants in relation to special damages for loss of earnings was that they were calculated not only as " actual " loss of earnings of the respondent but on the basis, too, that his earnings would, under an agreement between the appellants and the trade union to which he belonged, have been increased over the period of time which intervened between the accident and the conclusion of the hearing. That there was such an agreement it has been established by evidence. That he was a skilled mason and that, in the normal course of things, it could be expected that he would continue to be employed by the appellants on a more or less regular basis, because there was scarcity of skilled masons, could be reasonably inferred from the evidence adduced ; it is true that there is evidence that there were cases in which other employees of the appellants were dismissed or were without work for short periods of time, but we find nothing wrong with the fact that the trial Court took the view that this skilled mason would in all probability be employed more or less on a continuous basis and, therefore, would have received the increases which were due to him as an employee of the appellants on the strength of the agreement with the trade union.

It was held by the House of Lords in England in the case of *Davies* v. *Taylor* [1972] 3 W.L.R. 801, that there is a distinction between speculative possibilities which should be ignored in assessing damages and substantial probabilities which can be taken into account (see, also, *Field* v. *British European Airways Ltd.*, reported in the London " Times " on the 1st March, 1973).

We think there was, indeed, a substantial probability that the respondent would continue in the service of the appellants and would receive, accordingly, the increased emoluments of which he was deprived due to the accident.

On the basis, on the one hand, of the evidence before the trial Court as regards the respondent's earnings at the time of the accident and his expected increased earnings in the course of the period until the hearing of the action and on the basis, on the other hand, of the evidence adduced at the trial as to his reduced earning capacity, we have no difficulty in upholding the award to him of £2,455.350 mils special damages (including the £39 special damages which were agreed to between the parties in respect of other heads of damage).

We pass, next, to the question of general damages : Having in mind the injury and consequent incapacity suffered by the respondent, who was, at the time of the accident, thirty-four years old and a skilled mason, and taking into account that he has been permanently deprived of the possibility of working in future in such a capacity, we find that the amount of £2,500, which was included in the award for general damages, as anticipated loss of future earnings—(on the basis of 10 to 12 years of purchase and in the light of evidence as to his present possibility of earnings, namely about £7 to £9 a week in a capacity such as a guard, as compared with the £15 a week which he could have been earning by the end of 1971)—is an amount which is not so high as to call for our intervention in order to reduce it.

The remaining amount of £1,500 general damages, which was awarded for loss of amenities, pain and suffering, is not, in our view, in the circumstances, outside the normal brackets for the injury and incapacity which the respondent has suffered and, therefore, we are not prepared to interfere with it. It is interesting to note that in the *Field* case (*supra*) where the plaintiff, who was a young man, lost the ends of two fingers of his left hand and had another finger of the same hand deformed, an award of £1,750 was made in his favour by way of general damages (otherwise than for prospective loss of earnings) for his said injuries ; and these injuries were, indeed, less serious than those suffered by the respondent.

In the result this appeal is dismissed with costs.

Appeal dismissed with costs.