[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

SPYROS CL. POULLOU,

Appellant-Defendant,

v.

STYLIANOS CONSTANTINOU,

Respondent-Plaintiff.

(*Civil Appeal No.* 5075).

Negligence—Road accident—Motor vehicle knocking down cyclist whilst attempting to overtake him—Duty of driver to leave safe berth when overtaking another vehicle, particularly a cyclist—And make reasonable allowance for some deviation from a straight course—Driver of motor vehicle (defendant-appellant) solely to blame for the accident.

Road accident—Negligence—See supra.

Personal injuries—Damages—Assessment—Sixty five years old moulder suffering, inter alia, *fracture of the greater trochanter of the right femur—Great difficulty in using his right wrist in any moderately heavy work—Inability to work in future as a moulder—Award of* £1000 *sustained on appeal—Cf. immediately herebelow.*

Damages—Personal injuries—Assessment—Loss of earnings—Earning capacity—Reaching the age of entitlement to pension under the Social Insurance Law, does not by itself and automatically mark the end of one's working life.

Loss of earnings—Earning capacity—See immediately hereabove.

Findings of fact made by trial Courts—Approach of the Appellate Court—Principles applicable, well settled—Restated.

Dismissing this appeal by the defendant against the judgment of the District Court of Limassol, awarding to the plaintiff in this road accident (and personal injuries) case £1000 general damages, the Supreme Court :—

Held, (1). (*After reviewing the findings and conclusions reached by the trial Court*) :

(A) This Court will only interfere with findings of fact when they are not warranted by the evidence considered as a whole ; or the reasoning behind such

findings is unsatisfactory ; or is of opinion that the trial Court was clearly wrong, bearing always in mind that the making of such findings and the appreciation in general of the evidence at the trial is what trial Judges are there for. (See *Ekrem* v. *McLean* (1971) 1 C.L.R. 391 ; *Charalambides* v. *Michaelides* (reported in this Part at p. 66 *ante*) ; *Vassiliki Theodorou and Others* v. *Vias Demetriou and Others* (1972) 1 C.L.R. 183, at pp. 192–193 *et seq.*).

(B) We have not been persuaded by the appellant, upon whom the onus rested, to interfere with the findings of fact made by the trial Court and the acquittal of the plaintiff (respondent) of any contributory negligence.

Held (2). (*As to the award of general damages*) :

(A) General damages awarded once and for all, include damages for pain and suffering or loss of amenities of life, headings conventional in character, not capable of mathematical calculation ; they have to be assessed on the basis of comparable awards in comparable cases and there is always a margin of discretion. So long as the amount of general damages awarded are within those limits, this Court will not interfere.

(B) The trial Court took a reasonable view of the case and we have found nothing to suggest that its assessment (£1000) of general damages was based on some wrong principle of law or that it was extremely high as to make it a wholly erroneous estimate, so as to justify our interference.

(C) Regarding loss of earnings in particular, we are of the opinion that reaching the age of entitlement to pension under the Social Insurance Law, does not by itself and automatically mark the end of one's working life which has to be considered in relation to a number of factors, including the financial condition, the health and the nature of one's work, as well as the fact that pension benefits are not so big as to offer the means for complete retirement from profitable employment to a number of people.

Appeal dismissed with costs.

Cases referred to :

Nearchou v. *The Police* (1965) 2 C.L.R. 34, at p. 41 ;
Ekrem v. *McLean* (1971) 1 C.L.R. 391 ;

Charalambides v. *Michaelides* (reported in this Part at p. 66 *ante*) ;

Vassiliki Theodorou and Others v. *Vias Demetriou and Others* (1972) 1 C.L.R. 183, at pp. 192-193 *et seq.*

Appeal.

Appeal by defendant against the judgment of the District Court of Limassol (Loris, P.D.C. and Hadjitsangaris' D.J.) dated the 20th March, 1972, (Action No. 1954/70)' whereby he was adjudged to pay to the plaintiff the sum of £1,200 as damages for injuries which he sustained due to the negligent driving of the defendant.

J. P. Potamitis, for the appellant.

C. P. Erotokritou, for the respondent.

Cur. adv. vult.

HADJIANASTASSIOU, J.: The judgment of this Court will be delivered by Mr. Justice A. Loizou.

A. LOIZOU, J.: This is an appeal by the defendant from the judgment of the District Court of Limassol whereby the plaintiff was awarded £1,200 as special and general damages for the injuries he suffered as a result of the negligent driving of the defendant of motor car under Reg. No. CM 791. The special damages totalling £200 and including the loss of earnings until the 9th September, 1970, were agreed by the parties at the commencement of the hearing of the case and so the issues left for determination by the trial Court were that of liability and of general damages.

As it is usual in such cases, the Court was confronted with two conflicting versions, and having heard the evidence adduced by both sides, accepted the version of the plaintiff as to how this accident occurred and came to the conclusion that the defendant was solely to blame for it.

The present appeal has been argued on behalf of the defendant, on two grounds, namely,—

(1) that the judgment in so far as it decided that the defendant was to blame for the accident entirely

or at all, was wrong in law and in fact and was not supported by evidence, and the findings on which it was based could not reasonably be reached ; and

(2) the Court's assessment of general damages was wrong in law as being unreasonably high in the circumstances.

This traffic accident occurred on the 1st May, 1970, at about 1 p.m. in Gladstone Street, Limassol. The plaintiff, aged 65, a contractor moulder by profession, was riding his bicycle along the said street from west to east. When he reached the Fiveways cross-road which is controlled by traffic lights, he found the lights on his side red and stopped by the traffic pole at the extreme lefthand side of the road. For the same reason, four cars stopped, one after the other, the defendant's car being the 4th one. When the traffic lights turned into green, the plaintiff and the four saloon cars moved on. After the plaintiff proceeded for about 6–7 feet, the car of the defendant which followed him, when in the process of overtaking him, knocked the right edge of the steering bar of the bicycle with the left side of the car at a point near its centre, towards the rear door. As a result, the plaintiff fell down and received the injuries complained of.

The version of the defendant is that at no time he saw the plaintiff before the accident. When the lights turned into green, he proceeded with his trafficator on, indicating that his direction would be to enter Ayia Zoni Street, a street in a somewhat oblique to his left direction towards the Fiveways cross-road, as shown on the sketch, *exhibit* 1. As soon as he proceeded for a short distance, he heard a knock on the offside of his car behind the door. He stopped and saw the plaintiff on the ground.

Police Constable Panayiotis Petrides (P.W.1) arrived at the scene, prepared the sketch and investigated into the case. The point of impact (point 'X' on *exhibit* 1) in relation to the road, was agreed by both parties as being 1' 6" from the extreme left side of the road which is 24' 6" wide. This witness also observed on the motor car a scratch on its offside about the centre of its body, slightly to the rear and at the height of the bicycle's steering bar.

The trial Court accepted the version of plaintiff " having considered his evidence in the light of the real evidence " referring in this respect to the findings of the Police Constable Petrides (P.W.1). Although the version of plaintiff was supported by that of Angeliki Ioannidou (P.W.3),

the trial Court rejected her evidence as she did not impress them favourably. After making a number of findings, the material one being that " defendant failed to heed the presence of the plaintiff in time or at all and he drove so closely to him as to knock him down " the trial Court went on to say the following :—

> " The facts of this case are similar to the case of *Nicolaos Nearchou* v. *The Police* (1965) 2 C.L.R. p. 34 ; at page 41, Josephides, J. had this to say :—
>
> ' It is true that the evidence shows that the appellant was driving his lorry at about 10 m.p.h. and that he did not hit the cyclist with the front part of the vehicle ; but all the same, the fact remains that this was a comparatively wide road of 18 1/2 ft. and there was no other vehicle on the road at the time ; and the appellant drove so closely to the cyclist as to knock him down.'
>
> In view of our aforesaid findings, we are of the opinion that the defendant is entirely to blame for this accident."

It has been the complaint of the appellant that the trial Court misconceived or misapprehended the facts of the case by holding that it was an undisputed fact that, the defendant was driving behind the plaintiff at the material time, and that the plaintiff's version was supported by the real evidence which, on the contrary, was against the plaintiff's version. Counsel further argued that the *Nearchou* case (*supra*) had been wrongly applied and should have been distinguished from the facts of the present case, in as much as in that case the road was clear and there was no other traffic on the road, so the overtaking vehicle in that case could move more to its right, whereas the appellant in the present case could not do so on account of oncoming cars. It was also pointed out that the question of contributory negligence was not examined in the *Nearchou* case, being a criminal one.

We cannot but observe, however, that in the present case the defendant never claimed to have seen the plaintiff at any time prior to the accident admitting that he stopped at the traffic lights ; so, the latter's evidence remained uncontradicted as to the issue of his position when the red lights were on at the cross road. So, it was only reasonable for the trial Court to infer that it was undisputed, or to be more exact, uncontradicted by evidence that the vehicle of the defendant followed and knocked the plaintiff in his effort to overtake same.

In so far as the *Nearchou* case is concerned, the connection apparently between the case in hand and that case is that the negligence consisted of driving so closely to the cyclist in both cases, as to cause an impact with the side of the car. Indeed, a prudent driver is expected to leave safe berth when overtaking another vehicle, particularly so in the case of a bicycle, and make reasonable allowance for some deviation from a straight course which depends not only on the nature of the steering, but on its combined effect with the balance of the rider, a fact inherent in this type of vehicle. Furthermore, such allowance should be made for safe clearance whilst overtaking the whole length of one's vehicle.

Having considered the evidence on its totality and the arguments advanced by counsel on both sides, we have not been persuaded by the appellant, upon whom the onus rested, to interfere with the findings of fact of the trial Court and the acquittal of the plaintiff of any contributory negligence, as, in our view, there was ample material to justify their finding of negligence to the effect that the appellant was entirely to blame for the accident, inspite of certain discrepancies with regard to the question as to how the impact occurred.

No doubt, this Court when hearing and determining an appeal, is not bound by any determinations of questions of fact made by trial Courts and has power to review the whole evidence and draw its own inferences. It will only do so, however, when a finding is not warranted by the evidence considered as a whole ; the reasoning behind a finding is unsatisfactory ; or is of opinion that the trial Court was clearly wrong and that as a Court of Appeal it should interfere to put right that which has gone wrong in the Court below, bearing always in mind that the making of such findings and the appreciation in general of the evidence at the trial is what the trial Judges are there for. (See *Ekrem* v. *McLean* (1971) 1 C.L.R. 391 and Civil Appeal No. 5129, *Christos Charalambides* of Limassol v. *Polyvios Michaelides*, as yet unreported*. Also, *Vassiliki Theodorou & Others* v. *Vias Demetriou and Others* (1972) 1 C.L.R. page 183 at pp. 192–193 *et seq.*).

In relation to the second ground of appeal, namely, the complaint of the defendant regarding the assessment of general damages, the trial Court had before it the medical reports of Dr. Xeros (*exhibit* 3), Dr. Tornaritis (*exhibit* 2)

* Now reported in this Part at p. 66 *ante*.

and the joint medical report (*exhibit* 4) of both doctors as to the present condition of respondent. They had also the opportunity of hearing in the witness box Dr. Tornaritis (P.W.2). It was a common ground that the plaintiff was admitted to the Limassol Hospital on the 1st May, 1970 and on examination he was found to suffer from the following :—

"1. Fracture of the greater trochanter of the right femur.

2. Fracture of the scaphoid bone and the radius on the right side.

3. Abrasions on the right leg.

He stayed in hospital as an in-patient until the 5.5.1970 and his right wrist was immobilized in plaster. He was given sick leave until the 1.9.1970."

Dr. Xeros described the accident as quite a serious one, which left the plaintiff-respondent in this appeal, with permanent incapacity of about 23 per cent, due to the loss of power, osteoarthritic changes and limping in walking, adding that he would never be able to use his hand and leg in a heavy job.

The findings of the two doctors in their joint report as to the present condition of the plaintiff, are as follows :—

"(1) There is a slight aggravation in the condition of the right wrist since our previous examinations.

(2) The aggravation was the result of the injury sustained on 1.5.70, which injury occurred on a wrist that already showed osteoarthritic changes. In the natural course of events these changes would have worsened ; however there is no doubt that the injury accelerated both the extent and the chronological aggravation of this condition.

(3) In our opinion with the present condition of his wrist, this man will have great difficulty in using it in any moderately heavy work, *i.e.* continuous hammering or similar acts."

On the basis of the evidence the trial Court found that it was quite clear that the plaintiff had considerable pain and suffering and which progressively got worse. He could not jump or get up easily after squatting.

With regard to the plaintiff's ability to work, the trial Court made the following findings :—

" The plaintiff in giving evidence himself said that he is unable to work as a moulder since the date of this accident. Although, however, he alleged that he was earning £4 a day prior to this accident, on this point we accept the evidence of D.W.1, Themistoclis Harilaou, another moulder who said that the wages of plaintiff immediately prior to this accident in 1970, were £11 per week. We thus find that the average earning capacity of plaintiff was £11 per week and not £4 per day as he alleged.

We also find that although the plaintiff will be unable to work in future as a moulder, he can still work as a contractor and/or give assistance and supervision to other such moulders."

And they sum up the position as follows :—

" In the present case we are of the opinion that the plaintiff who was at the date of the accident 65 years old, born on 5.5.05, had only 1 year at the most of active work as a moulder ; there is evidence from D.W.1 that he was the oldest moulder in the entire Limassol District and further there is medical evidence that he was already suffering from osteoarthritis which became more acute due to this accident. Of course a tortfeasor must take the victim as he finds him.

On the other hand, as we have already found, the plaintiff can still supervise and work as a contractor moulder for many years. In this respect his earning capacity has not been diminished."

And they awarded, taking also into consideration future contingencies and the payment by way of a lump sum, £1,000 as general damages.

Counsel for the appellant has argued that the main head in assessing general damages was the loss of prospective earnings and that the trial Court was wrong, on the one hand in calculating them on the basis of £11 per week and on the other hand, allowing loss of earnings for one more year, as the plaintiff's working life—being 65 years old—should have been considered as having come to an end.

In our view, reaching the age of entitlement to pension under the Social Insurance Law, does not by itself and automatically mark the end of one's working life which

has to be considered in relation to a number of factors, including the financial condition, the health and the nature of one's work, as well as the fact that pension benefits are not so big as to offer the means for complete retirement from profitable employment to a number of people.

The trial Court, in our judgment, in the performance of its duty to give a fair and reasonable compensation to the plaintiff in order to put him in the same position so far as money can do it, as he would have been had he not sustained those injuries, took a reasonable view of the case and we have found nothing to suggest that its assessment of general damages was based on some wrong principle of law or that it was extremely high as to make it a wholly erroneous estimate, so as to justify our interference.

General damages awarded once and for all, include damages for pain and suffering or loss of amenities of life, headings conventional in character, not capable of mathematical calculation ; they have to be assessed on the basis of comparable awards in comparable cases and there is always a margin of discretion. So long therefore as the amounts awarded are within those limits, this Court will not interfere.

For all the above reasons the appeal is dismissed with costs.

Appeal dismissed with costs.