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

CHRYSTALLA A. ASPROU AND ANOTHER,

Appellants-Defendants,

v.

PAVLOS SAMARAS AND ANOTHER,

Respondents-Plaintiffs.

(Civil Appeal No. 5429).

Negligence—Contributory negligence—Road traffic accident—Collision of motor vehicles moving in opposite directions—Defendant keeping wrong side of the road—Plaintiff applying brakes, reducing speed and pulling to the extreme left of the road—Finding of trial Court that defendant was wholly to blame for the accident upheld.

Damages—General damages—Personal injuries—Appeal against award of general damages—Principle on which Court of Appeal will intervene—Concussion and sprain of the spine—Award of £1400—Though on the high side not so radically wrong or inordinately high—Sustained.

Damages—Special damages—Loss of earnings.

Whilst respondent (plaintiff) was driving a lorry he collided with a Wolkswagen car driven by Andreas Asprou who was fatally injured. In proceedings against the administrators of the estate of the deceased driver the trial Court held that the latter was wholly to blame for the accident and awarded to the lorry driver an amount of £1400 as general damages and an amount of £940 as special damages.

The appellants (defendants) complain both against the finding of the trial Court that the deceased driver was wholly to blame for the accident and against the award of damages.

The appellants adduced no evidence on the issue of liability; and the trial Court after hearing the version of the plaintiff-driver and his witnesses, as to how the accident occured, which was to the effect that the

deceased driver was driving on the wrong side of the road, accepted such version and found as above.

The plaintiff sustained concussion and sprain of the spine. The X-rays revealed no bone injuries and what now remains is pain in the spine after prolonged standing or walking or hand work or weather changes. Plaintiff was also treated for headaches, dizziness, for having difficulty in sleep and for various somatic pains and attacks of blackouts.

Counsel for the appellants in attacking the finding of the trial Court as to liability submitted that once the plaintiff admitted in cross-examination that he had to pull into the ditch in order to avoid the accident, the Court was wrong in not finding him guilty of contributory negligence because what he did was simply to pull the lorry to the left without going further into the ditch.

Regarding general and special damages counsel submitted that the sums awarded were inordinately high; and that according to medical evidence, adduced by defendants, had the plaintiff tried to change his job and secure a lighter job his losses, in the form of special damages, would be minimized.

Held, (I) with regard to liability:

1. The defendants, on whom the burden rests, have not established that, had the lorry driver pulled nearer to the ditch before the collision, the accident might have been avoided. And we are not prepared to say that the prudent lorry driver could, in the circumstances, have done any more to avoid the accident.

2. The Court was aware of the answer of the plaintiff that he went into the ditch, and came to the conclusion that the plaintiff's act did not contribute in any degree to this accident; and we are not prepared to interfere with the findings of the trial Court. (See *Charalambides* v. *Michaelides* [1973] 1 C.L.R. 66, at p. 73, adopted and followed in *Christofi* v. *Nicolaou* (1973) 1 C.L.R. 170, at pp. 174 - 175).

Held, (II) with regard to the general damages:

Bearing in mind those authorities of our Court, in

relation to interference with an award of damages, as well as the judgment of Lord Denning M.R. in *Kerry* v. *Carter* [1969] 3 All E R 723 to the effect that the apportionment of damages stands on the same basis as damages themselves, in other words, that if this Court thinks that they are radically wrong then it ought to interfere even though the error cannot be pin-pointed, we have decided that although the damages are on the high side, yet we do not interfere because we do not think that they are radically wrong or inordinately high. (See also *Ekrem* v *McLean* (1971) 1 C.L.R. 391, where *Kerry* (*supra*) was adopted and followed)

Held, (III) with regard to the special damages

The contention of counsel about minimizing of losses is untenable, because apart from what Dr. Matsas said, no evidence at all was adduced by the defendants to show or indicate to the Court that the plaintiff was in a position to secure a lighter type of job, and we, therefore, affirm the judgment of the trial Court regarding this award

Appeal dismissed

Cases referred to

Charalambides v *Michaelides* (1973) 1 C L R. 66, at p 73;

Christofi v *Nicolaou* (1973) 1 C L R 170, at pp 174 - 175,

Kerry v. *Carter* [1969] 3 All E R. 723,

Ekrem v *McLean* (1971) 1 C L R 391

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Ioannides, P.D.C. and Evangelides, Ag. D.J.) dated the 8th April, 1975 (Consolidated Actions Nos. 4155/72 and 4156/72) whereby they were, *inter alia*, ordered to pay the sum of £2,340.- to plaintiff in action No 4156/72 as special and general

damages for personal injuries suffered, by him in a traffic accident.

A. Soupashis, for the appellants.

J. Mavronicolas, for the respondents.

The facts sufficiently appear in the judgment of the Court delivered by :

HADJIANASTASSIOU, J. : On June 24, 1971, the plaintiff Pantelis Samaras was driving a Dodge tipper motor lorry on the main road of Xeros - Nicosia and when he found himself within Prastio village, at a point near a curve of the road, he collided with a Wolkswagen car, driven at the time by Andreas Asprou who was driving in the opposite direction, and who was unfortunately fatally injured. As a result of the collision, both the driver, plaintiff in Action No. 4156/72 and the owner of the Dodge tipper motor lorry, Pavlos Samaras, plaintiff in Action 4155/72, instituted legal proceedings claiming damages against the defendants, in their capacity as administrators of the estate of the deceased driver, one for personal injuries and the other for the damage to his lorry.

On April 8, 1975, the Full District Court of Nicosia held in those two consolidated actions that the deceased driver was wholly to blame for the accident and awarded to both plaintiffs the sum of £2,340 and an amount of £1,778.660 mils respectively with interest at 4 per cent. Furthermore, the Court dismissed the counter claim of the administrators-defendants against the driver of the lorry for the alleged damage to the car of the deceased.

Having abandoned the appeal as far as the quantum of damages is concerned against the owner of the lorry, the defendants proceeded only against the judgment of the trial Court in Action No. 4156/72, and the appeal was argued on behalf of the defendants on the following grounds :- Firstly, that the finding of the trial Court that the deceased driver was wholly to blame for the accident was not supported by the evidence adduced; secondly that the amount of general damages awarded by the Court to the plaintiff in Action 4156/72 was inordinately high and not supported by the evidence; thirdly that the amount of special damages awarded to

the plaintiff in Action 4156/72 was not supported by the evidence, and that he failed to prove the alleged loss of earnings by positive evidence.

Although in traffic accident cases coming before the Courts usually appear two sharply conflicting versions, in the case in hand, the appellants adduced no evidence at all though they had alleged in their defence that the accident was due to the negligent driving of the driver of the lorry; and that in the alternative the negligent driving of the driver of the lorry contributed more to the accident.

It was the version of the driver of the lorry that the deceased driver was to blame for the accident, and said that on that date he was proceeding from Xeros towards Nicosia in order to run in the lorry. When he reached Prastio village, at a speed of about 25 - 30 m.p.h., he saw a small car coming from the opposite direction at a fast speed keeping the wrong side of the road, and when the driver was at a distance of about 30 - 35 meters, he applied his brakes, and reducing speed, pulled to the extreme left of the road; and the left wheels of his lorry went on to the berm. Although the driver of the small car tried to avoid the accident by turning to the left, because he was speeding, he lost control and did not manage to avoid the collision. The collision was a violent one and as a result he suffered injuries and the right side of the lorry was damaged. In cross-examination he said that when he saw the small car keeping his side of the road he pulled the lorry to the left as much as he could, because he could not go further as there were cypress trees and also a culvert. To a further question as to whether he went into the ditch, the witness answered in the affirmative.

There was further supporting evidence by Christoforos Petrou, a driver, who said that whilst he was driving a bus belonging to KEM, he stopped at the halt sign in order to enter into the main road leading to Xeros - Nicosia. Whilst there he saw both a lorry coming from Xeros proceeding towards Nicosia at a speed of 25 - 30 m.p.h. and a Wolkswagen car coming from the opposite direction at a very fast speed. The lorry was keeping its proper side of the road, but the other car was pro-

ceeding on its wrong side. Although the driver of the small car when he saw the lorry he managed to turn it to his proper side of the road, nevertheless, he automatically turned again to the right and collided with the lorry. In cross-examination, he said that the lorry driver applied his brakes in order to avoid the accident and took the extreme left hand side of the road.

According to Nicos Johnis of Prastio village, who was in the bus of this witness, he saw the two motor vehicles, the one proceeding on its proper side and the small car on the wrong side of the road. The lorry was speeding at 25 - 30 m.p.h. and the small car was driven at a speed of over 60 m.p.h. The lorry driver, in seeing that the small car was keeping the wrong side of the road, applied his brakes, pulled to the left, and the left wheels had gone on to the berm. On the contrary, the driver of the small car, although he tried to pull to his proper side of the road, he did not manage to do so, and the collision occurred.

There was further evidence by P.C. Ktoros, who visited the scene shortly after the accident and prepared a sketch plan (*exhibit* 1) before the trial Court. Point 'A' is the point of impact shown to the witness by the driver of the lorry. The asphalted part of the road is 19' 8'', and the sketch plan also shows that just before the accident occurred, the lorry was on its right side of the road and that its left wheels were on the edge of the berm. Both vehicles left brake marks at the scene of the accident.

The trial Court, having weighed the evidence before it as to how the accident occurred, accepted the version of the lorry driver, which was corroborated by the other evidence, and came to the conclusion that the deceased driver was in breach of his duty to take the necessary precautions, and found him entirely to blame for the collision. Then, quite rightly, in our view, although no rebutting evidence was adduced, the Court examined the allegation of the defendants in the statement of defence as to whether the lorry driver was guilty of contributory negligence, and after taking into consideration both the causative potency of the acts or omissions of both drivers and relative blameworthiness, particularly that the lorry

driver pulled to the left as much as he could and that there was ample space for the deceased driver to pass, came to the conclusion that the driver of the lorry was not guilty of contributory negligence; and that the defendants have failed to prove that the injured party did not in his own interest take reasonable care of himself and contributed to the accident.

Counsel on behalf of the appellants, in attacking the findings of fact that the deceased driver was entirely to blame for the accident, urged upon us that once the driver of the lorry in cross-examination admitted that in order to avoid the accident he had to pull into the ditch, the Court was wrong in not finding him guilty of contributory negligence because what he did was simply to pull the lorry to the left without going further into the ditch. We have considered this contention of counsel and we do not really see that the plaintiff could rightly be held, in the circumstances of this case, to have contributed to this accident. Furthermore, we do not see that the defendants on whom the burden rests—have established that the lorry driver, had he pulled the lorry before the collision occurred nearer to the ditch, the accident might have been avoided. Certainly we are not prepared to say that the prudent lorry driver could, in the circumstances, have done anymore to avoid the accident. In any event, the Court was aware of the answer of the plaintiff that he went into the ditch, and having rejected this came to the conclusion that the plaintiff's act did not contribute in any degree to this accident, and we are not prepared to interfere with the findings of the trial Court. We would, therefore, dismiss the appeal on this ground. (*Charalambides* v. *Michaelides* (1973) 1 C.L.R. 66, at p. 73, adopted and followed in *Christofi* v. *Nicolaou*, (1973) 1 C.L.R. 170, at pp. 174 - 175).

As to the second ground, that the general damages awarded were inordinately high, both for the head and spinal injuries, counsel submitted that in view of the recovery of the plaintiff, the proper amount of compensation would be in the region of £600 for the head injury and concussion and not the amount of £1,100, and that of £100 and not of £300 for the spinal injuries. As we said earlier, as a result of that accident the plaintiff was injured and was treated by Dr. Papasavvas for

(a) concussion and (b) sprain of the spine. The X-rays revealed no bone injuries and what now remains is the pain in the spine after prolonged standing or walking or hard work or weather changes. He was also treated by Dr. Neophytou for headaches, dizziness, having difficulty in sleep and for various somatic pains and attacks of blackouts. The patient showed considerable improvement, his case being that of post-concussional syndrome, developed into a phobic anxiety state as far as driving was concerned. In the opinion of Dr. Neophytou, optimal period to resume work was about two years. Finally, he said that the delay in his recovery was due to the present situation in Cyprus—being a refugee—and because the patient developed also a compensation neurosis and as soon as his case would be completed his psychological condition would improve.

On the contrary, Dr. Matsas who examined the patient on behalf of the defendants on February 29, 1972, said that he was suffering from mild symptoms and expected an early subsidence of the symptoms. But one year later the patient when examined by him, he was complaining that the dizziness was still interfering with his work. Dr. Matsas on being questioned in Court whether in view of his predisposition or his general condition the plaintiff might have been unable to drive for a period of 2 years, said that had he been his treating doctor he would suggest to him to go back to his work within 3 or 4 months after the accident. Questioned further as to the plaintiff's phobic anxiety state to drive, he explained that the difficulty was not within the context of post-concussional syndrome, but was purely psychological and had nothing to do with the organic damage. He then added that in a reasonable time after the accident 4 - 6 months, had he noticed that his psychological structure and background would have prevented him from going back to his work, he would have suggested to him to change his job.

The trial Court, having weighed the medical evidence before it, came to the conclusion that there was not a very serious difference between the two doctors and awarded the amount of £1,100 to the plaintiff for the head injury and concussion, taking also into consideration pain and suffering, loss of amenities in life and "for

some disability to perform his work even after the lapse of a year".

It was said by counsel on behalf of the plaintiff that in spite of the fact that the Court, in awarding that sum took into consideration that the plaintiff would have some disabiliy to perform his work even after the lapse of a year, nevertheless, he argued, the award was an adequate compensation for the injuries sustained.

We have considered the contentions of both counsel on the quantum of damages and bearing in mind those authorities of our Court in relation to interference regarding the award of damages, as well as the judgment of Lord Denning M.R. in *Kerry* v. *Carter* [1969] 3 All E.R. 723 to the effect that the apportionment of damages stands on the same basis as damages themselves, in other words, that if this Court thinks that they are radically wrong then it ought to interfere even though the error cannot be pin-pointed, we have decided that although the damages are on the high side, yet we do not interfere because we do not think that they are radically wrong or inordinately high. We would, therefore, dismiss this contention of counsel regarding the general damages. See also *Ekrem* v. *McLean* (1971) 1 C.L.R. 391, where *Kerry* v. *Carter* (*supra*) was adopted and followed.

Regarding the award of special damages amounting to £720, it was said by counsel on behalf of the defendants that the sum was inordinately high, because according to Dr. Matsas, if the plaintiff had tried to change his job, he would have found another job in order to minimize his losses. We have given consideration to this contention of counsel, but we think that it is untenable, because apart from what Dr. Matsas said, no evidence at all was adduced by the defendants to show or indicate to the Court that the plaintiff was in a position to secure a lighter type of job, and we, therefore, affirm the judgment of the Court regarding this award that that amount is an adequate compensation to him for staying out of work to drive a lorry for a period of one year.

We would, therefore, dismiss the appeal with costs.

Appeal dismissed with costs.