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

NICOS KARAOLIS AND ANOTHER,

Appellants-Defendants,

v.

IOANNIS CHARALAMBOUS,

Respondent-Plaintiff.

(*Civil Appeal No.* 5470).

Negligence—Contributory negligence—Road Accident—Collision on main road between defendant 1 *and defendant* 3 *after the latter emerged from a side road—Long line of traffic on main road—Defendant* 1 *queue jumping and driving on the wrong side of the road—A prudent driver could not reasonably anticipate that he would find defendant's* 1 *car at that part of the road—And one cannot be considered negligent if he does not take extraordinary precautions—In driving in the way he did, defendant* 1 *was doing something dangerous in the circumstances—On the facts he could properly be found solely to blame for the accident*—Panayiotou *v.* Mavrou (1970) 1 *C.L.R.* 215 followed.

Damages—General damages—Personal injuries—Appeal against award of general damages—Principles on which Court of Appeal intervenes—Thirty-two years old house painter sustaining severe head injuries—Semi-conscious for 48 *hours—In hospital for* 18 *days—Developing severe headaches and oedema of the papilla of the eyes during his stay in hospital—Post-concussional symptoms—* 30% *permanent impairment in hearing of right ear—Impairment of smell—Unable to carry his trade—Award of* £3,500 *for pain and suffering etc. and* £5,000 *for loss of future earnings—Amount awarded, though on the high side, not excessively high or inadequate and the method used in arriving at it not wrong in principle—Appeal and cross-appeal dismissed.*

Costs—"Sanderson Order"—Action against three defendants—Plaintiff succeeding against two—Dismissal of his action against the third defendant with no order as to costs—Circumstances of the case—Unsuccessful defendants throwing blame on successful defendant—Proper case for Court to have ordered the unsuccessful defendants to pay the successful defendant's costs—Sanderson *v.* Blyth Theatre Company [1903] 2 K.B. 533.

Costs—Appeal—Against quantum of damages and apportionment of liability—Cross-appeal against against quantum of damages—Both unsuccessful—Respondent deprived of one-third of the costs of appeal.

Three vehicles were involved in an accident at Stasinou Avenue Nicosia which is 45 ft. wide and is divided into four lanes; two of these lanes are for vehicular traffic travelling towards Metaxas square and the other two for traffic proceeding to the opposite direction. It is divided in the middle by a continuous white line which indicates that there should be no overtaking at that particular place utilizing part of the avenue beyond that line.

The plaintiff was riding his motor-cycle along Stasinou Avenue from the direction of Metaxas square and defendant 1 was driving his car to the opposite direction. It is not in dispute that the first lane on his left side was not usable, because there were parked cars on the curb and also workmen repairing the road. Because of this, the line of cars ahead of him was using the second lane. At one time those cars came to a standstill and they stayed so for quite some time. At that time, motor car CG 1 driven by witness 1 for defendant No. 3, was by the junction of the avenue with Aphrodite street. When the cars in front of him started moving, he noticed car EA 394 driven by defendant 3, emerging from this side road on his left, proceeding at a very slow speed. At the same time defendant No. 1 started overtaking the line of vehicles that came to a standstill in front of him. When he was side by side with motor-car CG1 and when part of the car of defendant 3 passed beyond the right side of the car CG1, a collision occurred between the cars of defendant 1 and defendant 3. After the two cars came into collision, the car of defendant No. 1 went and hit the motor-cycle of the plaintiff.

The trial Court found that defendant 1 was solely to blame for the accident and awarded an amount of £8,500 general damages to the plaintiff (£3,500 for pain and suffering and £5,000 for loss of future earnings).

Defendant 1 appealed against the finding of the trial Court as regards liability and against the award of general damages contending that it was wrong in law as being manifestly excessive.

Plaintiff cross-appealed against the award of general damages on the ground that they were manifestly inadequate having in

mind the totality of the evidence. There was,a lso, a cross-appeal by defendant 3, regarding the dismissal of the action against him, with no order as to costs, against the unsuccessful defendants 1 and 2 and/or against the respondent-plaintiff.

The factual position regarding the general damages was as follows:

The plaintiff, a house-painter, was 32 years of age at the time of the accident and married with four minor children. On admission to the hospital he was found to be semi-conscious reacting to stimuli only. He was bleeding from the right ear and was restless and irritable, and had fractures of the right occipital bone, the neck of the right scapula and the right petrous bone. He was semi-conscious for 48 hours and was gradually becoming irritable and aggressive. During the time he was in hospital he developed severe headaches and oedema of the papilla of the eyes. He remained in hospital for about 18 days still complaining of headaches. At the time of the trial he was found to have a 30 per cent impairment of hearing in the right ear; he was complaining for some anosmia and also of attacks of dysosmia. He was found by the trial Court to be no longer able to carry his trade.

Held, (1) with regard to the appeal against apportionment of liability:

(1) If one considers that the distance between motor-car CG1 and the white line was only 5'6" and the fact that the width of the car of the appellant was 5 ft. coupled with the fact that a clear level of not less than two to three feet is a normal distance to be left on the nearside of a car and the next car, there is no doubt that appellant 1 was at the time queue jumping and driving on the wrong side of the road which he was not entitled to do.

(2) A prudent driver could not reasonably anticipate that he would find such a car at that part of the road, particularly so, in view of the long line of waiting traffic, and one cannot be considered negligent if he does not take extraordinary precautions. (See *Panayiotou* v. *Mavrou* (1970) 1 C.L.R. 215).

(3) The appellant in driving in the way he did, was doing something dangerous in the circumstances and on the facts he could properly be found solely to blame for the accident.

Held, (II) with regard to the appeal and cross-appeal against the award of general damages:

(1) An appellate Court is particularly reluctant to interfere with a finding on damages, being an exercise of discretion (see, *inter alia, Asprou and Another* v. *Samaras and Another* (1975) 1 C.L.R. 223, at p. 231, *Hassan & Others* v. *Neophytou* (1973) 1 C.L.R. 147 at pp. 152-153 and *Davies and Another* v. *Powell Duffryn Associated Collieries Ltd.* ([1942] 1 All E.R. 657, 664); and before it interferes with an award of damages, an appellate Court should be satisfied that the trial Court has acted upon a wrong principle of law or has made a wholly erroneous estimate of the damage suffered.

(2) Guided by the above principles we have come to the conclusion that we should not interfere, as the amount of damages awarded, though on the high side, is not excessively high, and it goes without saying that it is not inadequate, nor is the method used in arriving at this amount wrong in principle. Therefore, both the appeal and the cross-appeal fail.

Held, (III) with regard to the cross-appeal of defendant 3 concerning the non-making of an order as to costs:

Having considered all the circumstances of the case and in particular the throwing of the blame by defendants 1 and 2 on defendant 3 and all other relevant matters that should have been taken into consideration in the exercise of the Court's discretion as to the proper order of costs to be made, we have come to the conclusion that the cross-appeal of respondent-defendant 3 should succeed and we make an order that his costs in the Court below should be borne by appellants-defendants 1 and 2.

Held, (IV) with regard to the costs of the Appeal:

Having considered that the plaintiff has been unsuccessful in his cross-appeal as to the quantum, there will be an order that the appellants should pay two-thirds of the costs of this appeal to respondent-plaintiff and the full costs of respondent-defendant 3.

Appeal dismissed. Cross-appeal of plaintiff dismissed. Cross-appeal of defendant 3 allowed.

Cases referred to:

Panayiotou v. *Mavrou* (1970) 1 C.L.R. 215;

Asprou and Another v. *Samaras and Another* (1975) 1 C.L.R. 223, at p. 231;

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

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

Hassan and Others v. *Neophytou* (1973) 1 C.L.R. 147, at pp. 152–153;

Davies and Another v. *Powell Duffryn Associated Collieries Ltd.* [1942] 1 All E.R. 657, 664;

Bullock v. *London General Omnibus Company* [1907] 1 K.B. 264 C.A.;

Sanderson v. *Blyth Theatre Company* [1903] 2 K.B. 533 C.A.

Appeal and Cross-appeals.

Appeal by defendants 1 and 2 and cross-appeals by plaintiff and defendant 3 against the judgment of the District Court of Nicosia (Demetriades, P.D.C. and Evangelides, Ag. D.J.) dated the 28th June, 1975, (Action No. 8095/73) whereby defendants 1 and 2 were ordered to pay to the plaintiff the sum of £10,500.– as damages for injuries sustained by him in a traffic accident and plaintiffs claim against defendant 3 was dismissed with no order as to costs.

G. Koumas, for appellants-defendants 1 and 2.

M. Zamakidou (Miss), for respondent-defendant 3.

D. Papachrysostomou with *A. Skordis*, for respondent-plaintiff.

Cur. adv. vult.

L. LOIZOU, J.: The judgment of the Court will be delivered by His Honour Judge A. Loizou.

A. LOIZOU, J.: This is an appeal by defendants Nos. 1 and 2 from the judgment in an action for personal injuries whereby defendant No. 1, driver of motor-vehicle DV556 as agent of and on behalf and with the consent of defendant 2 was found solely to blame and both adjudged to pay £10,500.– with costs in favour of the plaintiff who has also filed a cross-appeal against the amount of general damages awarded to him.

In the course of the trial the special damages were agreed at £2,000 and the issues for determination by the trial Court were those of liability and general damages.

The facts of the case are simple. Three vehicles were involved in an accident at Stasinou Avenue which is 45 ft. wide and is

divided into four lanes; two of these lanes are for vehicular traffic travelling towards Metaxas square and the other two for traffic proceeding to the opposite direction. It is divided in the middle by a continuous white line which indicates that there should be no overtaking at that particular place utilising part of the avenue beyond that line.

The plaintiff was riding his motor-vehicle along Stasinou Avenue from the direction of Metaxas square and defendant No. 1 was driving his car to the opposite direction. It is not in dispute that the first lane on his left side was not usable, because there were parked cars on the curb and also workmen repairing the road. Because of this, the line of cars ahead of him was using the second lane. At one time those cars came to a standstill. They stayed so for quite some time. At that time, motor-car CG1 driven by one Alexandros Theodossiou, witness 1 for defendant No. 3, was by the junction of the avenue with Aphrodite street. When the cars in front of him started moving, he noticed car EA394 driven by defendant 3, emerging from this side road on his left, proceeding at a very slow speed. He waited for him to enter the avenue, cross his path and reach the crown of the road in an effort to turn right. At the same time defendant No. 1 started overtaking the line of vehicles that came to a standstill in front of him. When he was side by side with motor-car CG 1 and when part of the car of defendant 3 passed beyond the right side of the car CG 1, a collision occurred between the cars of defendant 1 and defendant 3.

The point of impact as indicated by the two drivers was about one foot beyond the continuous white line that divides the avenue into two on the side used by cars that travel from Metaxas square.

The part of the car of defendant 3 that was damaged was the front right corner, the front right headlamp and slightly the front bumper having come into collision with the front nearside wheel of the car of defendant 1. Defendant No. 1 on seeing the car of defendant 3 emerge, swerved to his right to avoid the collision, but unsuccessfully. After the two cars came into collision, the car of defendant No. 1 went and hit the motor-cycle of the plaintiff which was driven on the left side of the road from Metaxas square.

The point of impact was 5 ft. from the curb of the road on that side and its distance from the point of impact of the two cars was 44 ft.

The police was called to the scene and measurements were taken and a plan to scale was prepared and produced before the trial Court as *Exhibit* 1. According to the evidence of Police Constable Michael, a traffic investigator since 1961, the distance of the right side of motor-car CG 1 from the continuous white line separating the avenue into two directions of traffic, was 5' 6" and the width of motor-car DV 556 driven by defendant 1 was 5 ft.

The trial Court arrived at the following conclusion:

> " Considering the evidence of P.C. Michael and the evidence of Alexandros Theodossiou, we find that at the time the collision occurred between the two cars, motor-car Reg. No. DV 556 was completely beyond the crown of the road, in the side that is used by vehicles that proceed from Metaxas square towards Ayios Antonios; that motor-car Reg. No. EA 394 was stationary and that motor-car DV 556 ran into motor-car Reg. No. EA 394.
>
> In view of our finding and having in mind that at the time the collision occurred, defendant No. 1 was not legitimately where he was, that the driver of motor-car EA 394 intended to turn right into the side of the road that was used by cars that came from Metaxas Square and that this side of the road was free from vehicular traffic, that the driver of EA 394 emerged from the side-road at a very slow speed and that when he entered the other side of the road by one foot, he stopped, we find that he took every reasonable precaution before he proceeded to enter the avenue and that he is not to blame at all for the collision.
>
> It is clear to us that the only cause of the two collisions lies with defendant No. 1 who chose not only to overtake the stationary cars but to do so after crossing over the crown of the road and after travelling in the side of the road which he was not entitled to use."

It has been the contention on behalf of appellants 1 and 2 that there was room for defendant No. 1 to overtake the line of traffic in front of him without driving over the white line on the wrong side of the road and that he only crossed over as a result of being confronted by the car of defendant No. 2 in its attempt to cross over the crown of the road into the part of the avenue where the direction of the traffic was away from Metaxas Square.

The question regarding this issue of liability before us is whether the appellant-defendant 1 was entitled to overtake on the outside of a temporarily stationary queue towards his destination or whether he was queue jumping and was driving on a part of the road which was not available to him.

If one considers that the distance between motorcar CG 1 and the white line was only 5' 6" and the fact that the width of the car of the appellant was 5 ft. coupled with the fact that a clear berth of not less than two to three feet is a normal distance to be left on the nearside of a car and the next car, there is no doubt that the appellant 1 was at the time queue jumping and driving on the wrong side of the road which he was not entitled to do and a prudent driver could not reasonably anticipate that he would find such a car at that part of the road, particularly so, in view of the long line of waiting traffic, and one cannot be considered negligent if he does not take extraordinary precautions (see *Panayiotou* v. *Mavrou* (1970) 1 C.L.R. p. 215). The appellant in driving in the way he did, was doing something dangerous in the circumstances and on the facts he could properly be found solely to blame for the accident.

It has to be examined next, therefore, whether the award of £8,500 by way of general damages was wrong in law as being manifestly excessive.

In considering this ground of appeal it will be convenient also to deal with the cross-appeal of the plaintiff which is to the effect that the general damages are manifestly inadequate having in mind the totality of the evidence. The plaintiff, a house decorator, was, at the time of the accident, 32 years of age, married with four minor children. As a result of the collision he was injured and taken to the Nicosia General Hospital where, on admission, he was found to be semi-conscious reacting to stimuli only. He was bleeding from the right ear and was restless and irritable, and had fractures of the right occipital bone, the neck of the right scapula and right petrous bone. He was semi-conscious for 48 hours and was gradually becoming irritable and aggressive. During the time he was in hospital he developed severe headaches and oedema of the papilla of the eyes. There was blood in the right external canal from a tear of the tympanic membrane of the postero-superior quadrant, which is usually caused by fracture of the temporal bone. He remained in hospital for about 18 days still complaining of headaches. The condition of the plaintiff

was described by Dr. Nicolas Neophytou, specialist in neurology and psychiatry at the Mental Hospital who examined the plaintiff for the first time on the 28th May, 1973 at the out-patients clinic of the Psychiatric wing and thereafter when attending the out-patients clinic. He was treated for his post-concussional symptoms by Dr. Neophytou and was also examined on behalf of the defendants by Dr. N. C. Spanos a neuro-surgeon. As far as the E.N.T. specialist, Dr. Kourris, is concerned, the right tympanic membrane healed well without perforation that the hearing of the left ear was normal and that the right ear could hear whisper voice from a distance of about 3 ft., quiet voice from 8 ft. and conversational voice from 15 ft. Audiometry revealed that there was a loss of hearing by air and by bone of 45 dbs. in the right ear which corresponds to 30 per cent impairment in hearing, which should be considered as permanent. In a later report of Dr. Kourris the plaintiff is reported to have been complaining for some anosmia and also of attacks of dysosmia; that although he can now recognise some strong smells, he is unable to smell delicate ones. This is probably the doctor says, due to injury of part of the olfactory fibres on account of the head injury. As regards the dysosmia the doctor stated that was an epileptic aura due to injury of the temporal area of the brain where the center of smell is situated. This dysosmia could be the result of partial recovery which is abnormal and shows aberrations of an unpleasant kind.

The findings of Dr. Spanos which the trial Court quoted in their judgment in full, are as follows:

> " He had been complaining of headaches, 'attacks of bad smell', irritability and easy fatigue, difficulties with his memory and concentration, loss of smell and impairment of hearing in his right ear.
>
> The above complaints he presented also when examined by me. His headaches, he says, occur in the occipital region and on top of the head and they are worse when he is in noisy places.
>
> The attacks of bad smell, he said, occur frequently and last for a few seconds.
>
> On clinical neurological examination I noted the impairment of the sense of smell and also the impairment of hearing in the right ear. No other abnormal neurological signs were noted.

The Electroencephalogram which he had in the Hospital on the 6.8.1973 was reported as showing mild abnormalities in the right temporal area in overbreathing and on the 5.4.1974 was reported as showing mild abnormalities in temporo-occipital areas. The E.E.G. was repeated on the 4.4.1975 Similar mild changes were noted.

Opinion: Mr Charalambous sustained severe head injuries on the accident he was involved on the 5.4.1973 He was concussed and injured his right ear and because of this injury, as the E.N.T. Surgeon reports, he has impairment of his hearing in the right ear

The attacks of bad smell which he says started occurring about one week he left the hospital, it is possible to be the olfactory hallucinations which are symptoms of temporal lobe epilepsy. But this possibility is not confirmed by the E E.G. which are not characteristic though give rise to a degree of doubt

The impairment of smell which is considered as a result of injury to the olfactory nerve is the result of the injury and the attack of bad smell could be related to aberrations of partial recovery of the nerve

His complaints of irritability, memory difficulties, etc are part of a post-traumatic syndrome "

The evidence of Dr Neophytou is

" When the plaintiff first visited him, he was complaining of headaches, attacks of bad smell every one or two hours lasting for seconds, disturbance of sleep, irritability, nervousness, fatigability on exertion, lack of concentration, visual difficulties and impaired hearing from the right ear The doctor said that neurologically there is nothing abnormal with the plaintiff but the subjective complaints of the plaintiff are confirmed by his (the doctor's) clinical opinion and diagnosis and E E.G tests In his opinion, from the symptomatology and especially the attacks of bad smelling and the disturbances of affect that the plaintiff presents, that is to say, the lack of initiative and apathy, he is of the opinion that this is due to a post-traumatic lesion in the temporal lobe The doctor has been treating the plaintiff with mild tranquillizers plus anti-epileptic drugs. In the first interview the doctor had with the plaintiff, the

plaintiff told him that he had no fainting attacks but very recently the plaintiff informed him that he had two fainting attacks whilst he was at home. The doctor is not convinced that what happened to the plaintiff was a fainting attack. He believed that the other symptoms of the plaintiff, that is to say, dizziness, headaches, bad smell, etc., are genuine.

His prognosis is that there is chance for improvement but it was difficult, he said, for him to express an opinion as to the extent of this improvement. The doctor was asked if there was risk of major epilepsy and his reply was that although there is such a risk, it must be a very minimal one. He believed, the doctor said, that the condition of the plaintiff is not going to deteriorate."

The findings of the trial Court are as follows:

"The plaintiff was at the time of the accident 32 years old; he was married and was a house-painter. He complains that because of his condition, he cannot any longer carry out his trade. Dr. Neophytou confirms this and said that it would be dangerous for the plaintiff to climb ladders. It is well known that house-painters do have to climb ladders, stoop down, get up, etc. We accept that the plaintiff is not, in view of the symptoms he complains of and are verified by Drs. Neophytou and Spanos, any longer able to carry out his trade. Dr. Neophytou told us that both he and other colleagues have tried to convince the plaintiff to resume his duties with instructions not to expose himself to heights but the plaintiff returned to them saying that he was unable to work due to fatigability and dizziness. The plaintiff, the doctor said, could do other types of job six months to one year after the accident and this would have helped the plaintiff to regain his confidence and to increase his initiative."

Then the trial Court made the following findings:

" In the light of the medical evidence before us and having in mind the pain and suffering that the plaintiff has suffered and he is going to suffer in the future, his inconvenience in life, the loss of amenities as well as his present condition, we find that he is entitled to the sum of £3,500.– as general damages.

Considering now the age of the plaintiff and that he will not be able to carry out his trade, the minimum weekly wage of which would, according to Georghios Stylianou (P.W.3), be around £20.–, provided that he could secure a job under the present circumstances of the country, we find that the plaintiff is entitled to the sum of £5,000.– for loss of future earnings. In reaching this figure, we have taken as multiplier 10 years at £500.– annual loss."

It has been the case for the appellants that the amount of general damages awarded is manifestly excessive, bearing in mind the nature of the injuries and the permanent incapacity of the respondent-plaintiff and also the fact that its cash value and adjustments for contingencies and income tax, were not taken into consideration. For that purpose and of course connected with the issues raised by this ground, is the cross-appeal of the respondent-plaintiff, that the damages awarded are manifestly inadequate. We have been referred, on this issue, to a number of decided cases in which the awards of general damages are claimed by either side to be comparable to the case in hand, and invited us to increase or decrease accordingly.

The principle upon which this Court acts in considering appeals against awards of general damages, have been repeatedly set out in numerous cases. We need only refer to two of them, namely, *Asprou and Another* v. *Samaras and Another* (1975) 1 C.L.R. 223, at p. 231, where reference is made to the case of *Kerry* v. *Carter* [1969] 3 All E.R. 723 which was also adopted in *Ekrem* v. *McLean* (1971) 1 C.L.R. 391, and the case of *Hassan and Others* v. *Neophytou* (1973) 1 C.L.R. 147, at pp. 152–153 et seq. where reference is made to the case of *Davies and Another* v. *Powell Duffryn Associated Collieries Ltd.*, [1942] 1 All E.R. 657, 664, the gist of which is that an appellate Court is particularly reluctant to interfere with a finding on damages, being an exercise of discretion; and before it interferes with an award of damages, an appellate Court should be satisfied that the trial Court has acted upon a wrong principle of law or has made a wholly erroneous estimate of the damage suffered. Guided by this principle we have considered everything said in respect of the quantum of damages by either side, and we have come to the conclusion that we should not interfere, as the amount of damages awarded, though on the high side, is not excessively high, and it goes without saying that it is not inadequate, nor is the method used in arriving at this amount

wrong in principle. Therefore, both the appeal and the cross-appeal, on the quantum of damages, fail.

Before concluding, we have to deal with the cross-appeal of respondent-defendant 3 regarding the dismissal of the action, with no order as to costs, against the unsuccessful appellants-defendants 1 and 2 and/or against the respondent-plaintiff.

The Court in making the said order as to costs, gave no reasons for doing so, and it does not transpire from the record as to why this course was followed with regard to this successful defendant.

It has been urged that it might be a proper case for the Court to have ordered the unsuccessful defendants to pay the successful defendants' costs, which is commonly known as a "Bullock Order" (from *Bullock* v. *London General Omnibus Company*, [1907] 1 K.B. 264 C.A.), or more accurately called a "Sanderson Order" (from *Sanderson* v. *Blyth Theatre Company* [1903] 2 K.B. 533 C.A.).

Having considered all the circumstances of the case and in particular the throwing of the blame by defendants 1 and 2 on defendant 3 and all other relevant matters that should have been taken into consideration in the exercise of the Court's discretion as to the proper order of costs to be made, we have come to the conclusion that the cross-appeal of respondent-defendant 3 should succeed and we make an order that his costs in the Court below should be borne by appellants-defendants 1 and 2.

With regard to the costs in this appeal and having considered that the respondent-plaintiff has been unsuccessful on his cross-appeal as to the quantum, there will be an order that the appellants should pay two-thirds of the costs of this appeal to respondent-plaintiff and the full costs of respondent-defendant 3.

Appeal dismissed. Cross-appeal of plaintiff dismissed. Cross-appeal of defendant 3 allowed. Order for costs as above.