1977 June 29

[TRIANTAFYLLIDES, P., STAVRINIDES, MALACHTOS, JJ.]

GENERAL CONSTRUCTIONS COMPANY,

Appellants-Defendants,

v.

THEOTOU HJIGEORGHIOU,

Respondent-Plaintiff.

(*Civil Appeal No.* 5445).

Damages—General Damages—Woman-labourer 37 *years old sustaining linear fracture of the left parietal region of the skull—Post-concussional syndrome—Small risk of developing epilepsy—Neurotic dysphonia—Traumatic neurosis—Law applicable—Dizziness the main feature of the said syndrome adequately controllable by medication so that employability has hardly been prejudiced—Award of* C£1700 *so very high that Court of Appeal should intervene in order to reduce it to* C£1,250.

The respondent-plaintiff, a 37 years' old labourer, was injured in an industrial accident, while in the employment of the appellants-defendants and sustained a linear fracture of the left parietal region of the skull.

She developed a post-concussional syndrome and was unable to work from 13.7.1972 to 1.1.1973. There was a possibility of up to 5% of her developing post-traumatic epilepsy. She also suffered from neurotic dysphonia which, though pre-existing, has been precipitated by the accident.

The trial Court awarded C£1700 as general damages.

On appeal against the said award Counsel for the appellants mainly argued that the dizziness, which was the principal symptom of the post-concussional syndrome of which the respondent was suffering, was controllable adequately by medication, so that, as found by the trial Court, she was not unemployable.

Held, (after stating the law relating to traumatic neurosis—

vide pp. 406–12 *post*). That, though this Court has not underestimated the factor of her neurotic dysphonia and has not lost sight of the fact that she did suffer injury to the brain and there is a small risk of epilepsy, it thinks that the trial Court erred in not taking sufficiently into account that her dizziness, which is the main feature of the post-concussional syndrome of which she is suffering, is adequately controllable by medication and that her employability has hardly been prejudiced; and that, accordingly, the amount of general damages which was awarded is so very high that this Court should intervene in favour of the appellants in order to reduce it to C£1,250.

Appeal allowed.

Cases referred to:

Mesimeris v. *Kakoullis* (1973) 1 C.L.R. 138;

Iacovou v. *HjiNicolaou* (1974) 1 C.L.R. 11;

James v. *Woodall Duckham Construction Co. Ltd.*, [1969] 1 W.L.R. 903 at p. 908;

Griffiths v *R. & H. Green & Silley Weir, Ltd.*, [1948] 81 Ll. L. Rep. 378 at pp. 380–382;

Tuckey v. *R. & H. Green and Silley Weir, Ltd.*, [1955] 2 Lloyd's Rep. 619 at pp. 630–631;

Pattichis v. *Zenonos* (1975) 1 C.L.R. 343 at pp. 346–347.

Appeal.

Appeal by defendants against the judgment of the District Court of Limassol (Stylianides, P.D.C. and Hadjitsangaris, S.D.J.) dated the 19th April, 1975, (Action No. 3315/72) whereby the sum of £1,700.– was awarded to the plaintiff as general damages in relation to injuries she received in an industrial accident while in the employment of the defendants.

Gl. Talianos, for the appellants.

B. Vassiliades, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. In this case the appellants complain that the amount of C£1700 which was awarded as general damages to the respondent — as the plaintiff in an action against the appellants as the defendants — in relation to injuries which she received in an industrial accident, while in the employment of the appellants, is excessive.

The liability of the appellants to compensate the respondent has not been disputed in this appeal.

The relevant findings of the trial Court, and its reasons for the assessment of the damages, are as follows:-

"The medical evidence before us is hardly in conflict. We accept fully the evidence of Dr. Mikellides who was the first doctor to examine and follow up the plaintiff and who had the opportunity of observing all her E.E.G. results. We are of the opinion that this unfortunate plaintiff, a 37 year old labourer, was suffering from an emotional stress, due to her family difficulties, and the desertion of her husband who left her with an infant child one year old. She sustained, due to the accident of 13/7/72, the injuries described in Exh. 2, including a linear fracture of the skull tissue and developed a post-concussional syndrome and she was unable to work from 13/7/72 until the 1/1/73. The first two E.E.Gs. performed showed some brain damage and there was a possibility of up to 5% of her developing post traumatic epilepsy.

Her present condition however has deteriorated by the dysphonia she developed due to the pre-existing causes but was precipitated by the accident. This is of neurotic nature.

It is very possible that the determination of her case by the Court will somehow improve her condition but the fact remains that this woman will be to some degree handicapped to work in the future in noisy or high places of work.

.....

The question of general damages caused us some real concern. The plaintiff is a manual labourer and not a singer; the dysphonia will cause her discomfort but will not affect her future earnings, having regard to the fact that as from 1/1/73 and until a few days before she gave evidence before us, she was continuously employed, we are of the opinion that she will not suffer future loss of earnings, though her employability in the open labour market, when there is competition, will be adversely affected."

Counsel for the appellants has stressed, m inly, that the dizziness, which is the principal symptom of the post-concussional syndrome of which the respondent is suffering, is controllable adequately by medication, so that, as found by the trial Court, she is not unemployable. He has, also, argued that undue weight was given to the dysphonia of which the respondent complains, because, though initially this was attributed to organic damage which she suffered as a result of the accident, it was eventually found, and rightly so, by the trial Court, that it is due to pre-existing meurotic causes and that it was only precipitated by the accident.

He has referred us, by way of comparable awards, to two cases which were decided by this Court, namely *Mesimeris* v. *Kakoullis*, (1973) 1 C.L.R. 138 and *Iacovou* v. *HjiNicolaou*, (1974) 1 C.L.R. 11.

But, as often pointed out, each case has to be determined on its own merits, and a comparison with awards in other cases can be helpful to a certain extent, but never decisive, unless it so happens, which is very rare, that two cases are practically identical.

It does appear that the aspect of the neurotic dysphonia has caused some difficulty to the trial Court in its task of assessing the general damages and so we propose to deal at some length with such aspect:

In relation to traumatic neurosis the following appear in *Kemp* and *Kemp* on the Quantum of Damages (1976), Vol. 2, paragraph 11-251:-

> "All assessments of damages in cases of serious personal injury involve an element of uncertainty and speculation. But in no case are these elements more prominent than in cases of alleged traumatic neurosis. When a man loses his legs or his sight, his future may be a subject of speculation, whether he will obtain any work and at what wages, what will happen to him in times of unemployment, etc. But at least the court knows for certain that he has lost his legs or his sight for ever. In cases of neurosis the Court has first to decide whether the plaintiff's complaint is genuine or not. The medical evidence will usually be able to satisfy the Court on this point, but if there is a conflict

of medical evidence, all may turn upon the impression made by the man himself. Then there is the question whether the neurosis is caused by the trauma or by some other matter. Finally, there is the difficult question: How long will the nervous condition last? In cases of neurosis so much depends upon the circumstances of the particular case that it is almost impossible to make any valid comparison with another case."

In *James* v. *Woodall Duckham Construction Co. Ltd.*, [1969] 1 W.L.R. 903, Winn L.J. said (at p. 908):-

"..... whilst not daring to venture upon the uncharted seas of psychiatric diagnosis and terminology, I would enter a plea for the utmost possible simplification of the terms which these gentlemen learned in that science see fit to use. I would have ventured to think that no neurosis can properly be called a 'traumatic' neurosis unless there is a continuous chain of causation between the trauma and the neurosis. The fact that a neurosis has occurred post an accident certainly does not prove that it has occurred propter the accident. That proposition is too simple to be expressed in a context related to psychiatry, and yet one finds, very much to one's embarrassment, that psychiatrists appear to talk of 'traumatic' neurosis and 'post-traumatic' neurosis virtually as though those two terms were synonyms."

It is, we think, helpful to refer to two more English cases, which illustrate the difficulty of assessing damages in a situation where there is a neurotic condition:

In *Griffiths* v. *R. & H. Green & Silley Weir Ltd.* [1948] 81 Ll. L. Rep. 378, where a boilerman sustained concussion followed by functional nervous disturbance, Birkett J. said the following (at pp. 380-382):-

" May I just say this, that I quite recognize that when we are in this field it is a very difficult field for laymen quite to understand. When witnesses speak about a man suffering from an anxiety neurosis — and I suppose that there is none of us quite immune from anxiety of one kind and another in these days — but when people speak of anxiety neurosis when a man is not suffering organically

but has hysteria, the ordinary sound, healthy man is apt to look upon that with a little disdain or a little suspicion and to treat it sometimes rather lightly and to say: 'Well, if you have a little courage or determination you can overcome it. If you have a little will-power to go back to work and confront the difficulty, that would overcome it. I say it is comparatively easy for healthy people to think and to speak like that, but nobody who has undergone a very severe illness, or, indeed, a slight illness, can forget that people who are not in that happy state frequently look upon small matters as very important. They are fearful and nervous and apprehensive, and the duty of people like Lord Uvedale and the medical man is to ascertain their condition and to do their best to cure it. Therefore, for this reason, I want to say that, in my view, examining the plaintiff as best I can as a layman sitting here and watching him for some little time, I am satisfied that he was not malingering at all — I do not think it was really suggested that he was — but his complaints were genuine complaints, and that he was really suffering a serious functional disturbance.

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.....

That being the position, what of the future? Everybody seems to be agreed that there will be some period in which he will not be able to do boiler work, but only suitable light work. It may be three months, but that, of course, is the merest estimate, but some estimate must be made. The same kind of difficulties may arise; I do not know. I am very anxious in a case of this kind, where a man makes his claim once and for all, not to treat the matter lightly at another's expense, and certainly not to penalize employers, because the matter is so precarious. I am inclined to think that three months is too short, and that something like six months would be a better period.

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In addition to that, I must assess a sum for pain and suffering. In a case where a man loses a leg or suffers some obviously terribly painful injury, this assessment of damages for pain and suffering becomes apparent, but the

view I take in this case is that I can conceive of very few things so painful as to be continually unwell; to lose the savour and zest for life; to have no zest for work; to be at times inflicted by these violent headaches—which are so painful at times that it is impossible to travel on the underground even; and to have these fits of giddiness, which make you a little afraid for yourself. As the plaintiff said: 'When I was left alone on the night-watchman's job I was afraid I might fall in one of these fits of giddiness and be left there quite unattended.' I think I must award a fairly substantial sum on that aspect of the matter.

Finally, we come to the other element in the damages. Mr. Edgedale put it to me in an expressive way. He said that I must award him a premium, or assess some sum as a kind of premium against the future. I am not too sure what that amounts to, but if it means that Lord Uvedale is right and that he never will become a boilermaker again, a small sum as compensation would be a great injustice. Here is a man who could earn £9 a week but for this accident, and if Lord Uvedale is right he can never do it again and throughout all his life there will be a monetary loss. Mr. Edgedale said, 'That is a factor you must protect the plaintiff against.' On the other hand, Mr. Everett says: 'When this claim is settled and three months is past all will be well, and the sum to be awarded in reality should be a very small sum.' Balancing all these factors to the best of my ability, I have come to the conclusion that I will do justice in this case by awarding a sum to the plaintiff of £1500,. and, accordingly, I enter judgment for the plaintiff for the sum of £1500, with costs in the action."

In *Tuckey* v. *R. & H. Green and Silley Weir Ltd.*, [1955] 2 Lloyd's Rep. 619,where it seemed that post-traumatic neurosis precipitated an already existing psychological upset, Pearson J. said (at pp. 630-631):-

"The real trouble in assessing damages in this case—I will say it quite frankly—is this: it is very easy to be very wrong either way. If one gives a very large sum the man may recover in a very short time and go back to full work. On the other hand, if one gives a very small sum the man may not recover and will lose a great deal of future wages,

and suffer a great deal of pain and suffering, and the sum may be much too small. So in those circumstances one can only do one's best.

I think it has already appeared that I find, surprising as it may seem, that this neurosis did result from that accident, a rather small accident, but the neurosis did flow from it. I do not think that there was any such unreasonable behaviour on the plaintiff's part as could amount to a breaking of the chain of causation or interruption of the flow of results from his accident. I am not satisfied it is possible to find any interruption of the flow of causation in this case, so it was a result of the accident that this man, who must have been in a weak nervous condition before—and it was the result of this accident as a precipitating cause—became a neurotic in 1952. His neurosis increased in 1953 and the first half of 1954, but after he had rested off work it has improved somewhat. Of course, he will never fully recover until he starts work.

I find, I must find on the evidence, that the settlement of this claim will have a very important beneficial effect on his nervous state. One does have a tendency to feel a little impatient with this kind of claim based on a mere neurosis, when in the ordinary simple sense there is nothing wrong with him. But on the evidence in this case, as in many previous cases, one is bound to find that there is such a thing as post traumatic neurosis which is a genuine illness, and which affects a patient, causing pain and suffering to the same extent as a broken leg or injured arm. It is an actual illness; one has to accept that.

.....

Now we come to the extremely difficult part of this case, which is the pain and suffering and the future loss of wages; one has to evaluate different factors. There is no doubt that there has been pain and suffering, no doubt quite a lot. He has led an unhappy life for 3 1/2 years, for more than 3 1/2 years. As to the future there are various chances. One has to leave them as chances; it is no good saying one can come to a firm finding in this case.

One chance is that he will achieve complete recovery soon after the claim is settled; there is quite a substantial

chance of that. On the other hand, there is a middle view that in not so short a period, but certainly in a year or so, there will be sufficient recovery to do light work. That leaves either complete recovery or, at any rate, a very substantial degree of recovery, so that he can go back to his job as a fitter's mate and work again under Mr. Vass; Mr. Vass said he would be willing to have him back if he was fit enough; or, possibly, not quite such a good recovery as that, but sufficient to do other heavy work, or reasonably heavy work.

The other possibility is no recovery at all, or approximate recovery at all. I think one has to take all those into account.

My feeling is that most probably it will be the first; that when this claim is out of the way he probably will achieve very substantial recovery. But that is not certain and one has to take into account the other potentialities. He is 55 years old, which militates against the chance of complete recovery. On the other hand, he has not lost so much of his working life as if he had been a younger man and had been overtaken with this misfortune. The other factor is that he was not a robust personality to start with, so the element of injury is not so great as if he had been an entirely fit, robust and nervously strong personality to start with.

Having regard to those factors, taking into account the element of pain and suffering, the probable loss of future earnings, the best estimate I can make of the proper figure of general damage is £1350 to be added to the special damage."

Lastly, in *Pattichis* v. *Zenonos*, (1975) 1 C.L.R. 343, it was held by our Supreme Court that it was rightly found by the trial Court that concussion and shock had precipitated a pre-existing mental abnormality which manifested itself after the accident in the form of schizophrenia; in that case there were stated, *inter alia*, the following (at pp. 346–347):–

"The accident occurred when a vehicle driven by the appellant collided with one driven by the respondent, with the result that the head of the respondent struck the inside

of his car; though he did not suffer any visible external injuries, he felt dizzy, and by the time he had reached Morphou hospital he was found to be unconscious. His condition was diagnosed as one of cerebral concussion, which, though it improved considerably with treatment, left him, in the end, with the usual symptoms of a post-concussional condition.

.....

As found by the trial Court, on the basis of expert evidence adduced at the trial (and we might add that there is not really much difference in its essential elements between the expert evidence adduced by the two sides), the respondent was, at the time of the accident, a person with a psychopathic personality, who was bound, sooner or later, at a future time which could not be forecasted with any certainty, to develop a mental illness in the nature of schizophrenia. As a matter of fact he did develop such an illness after the accident, and though it could not be attributed to the cerebral concussion which he had suffered as a result of the accident, it appeared, nevertheless to have been triggered by the psychological shock which was caused to him by his having been involved in the accident; it could, of course, have been 'triggered', that is to say, accelerated, by any other kind of shock.

The trial Court found as a fact, on the basis of all the evidence before it, that there was no doubt that the disability of the respondent, resulting from his schizophrenic condition, would have come about in any event, but that the traffic accident in question accelerated its onset, in that it advanced the date of its appearance, and that, therefore, damages had to be awarded to the respondent in respect of 'the period of acceleration'."

We have approached, in the light of the foregoing, the assessment of general damages in the present case.

We have not lost sight of the fact that, as was pointed out by counsel for the respondent, she did suffer injury to the brain and that there is a small risk that she may develop epilepsy. Nor do we underestimate the factor of her neurotic dysphonia.

Bearing, however, in mind all relevant considerations, we

think that the trial Court erred in not taking sufficiently into account that her dizziness, which is the main feature of the post-concussional syndrome of which the respondent is suffering, is adequately controllable by medication and that her employability has hardly been prejudiced.

We, therefore, are of the opinion that the amount of general damages which was awarded is so very high that we should intervene in favour of the appellants in order to reduce it to C£1,250.

Consequently, we allow this appeal and we vary accordingly the judgment of the trial Court.

The respondent should pay the appellants' costs of this appeal.

Appeal allowed.