

to in Kemp & Kemp the Quantum of Damages, 4th ed. vol 2, para. 6-314);

Shaw v. Morgan Construction Co. (referred to in Kemp & Kemp, *supra*, para. 6-418);

Ahmed v. Falkers (referred to in Kemp & Kemp, *supra*, para. 6-423); 5

Fennings v. St. George's Tavern (referred to in Kemp & Kemp, *supra*, para. 6-428);

Asprou and Another v. Samaras and Another (1975) 1 C.L.R. 223; 10

Ioannou v. Howard (1965) 1 C.L.R. 45;

Karavallis v. Economides (1970) 1 C.L.R. 271;

Walker v. John McLean & Sons Ltd., [1979] 2 All E.R. 965.

Admiralty Action.

Admiralty action for damages for personal injuries suffered by plaintiff in an accident, as a result of the negligence of the defendants, in the course of loading a ship. 15

P. Pavlou, for the plaintiff.

R. Michaelides, for the defendants.

Cur. adv. vult. 20

SAVVIDES J. read the following judgment. The plaintiff's claim in this action is for damages for personal injuries alleged as having been suffered by him in an accident, as a result of the negligence of the defendants.

The accident which gave cause to this action, occurred on 29.6.1977 whilst the plaintiff with other porters, were engaged by the defendants in the loading of cement on ship "ELLI II" in the Limassol port. The accident happened whilst the plaintiff was working in the hold of the said ship piling up cement bags. Whilst a number of cement bags was being lowered into the hold, the rope holding the bags got loose and the cement bags fell off. In his effort to avoid the falling bags, plaintiff fell down and as a result, he sustained his injuries. 25 30

I need not go into more detail as to the circumstances of the accident and the alleged negligence of the defendants because the defendants, through their advocate, admitted full liability for the accident. The question also of special damages was agreed at £585.- and the costs of the action at £200.-. The 35

only issue which was left for determination by the Court is as to the quantum of general damages.

Plaintiff at the material time was 29 years old and was employed as a porter in the Limassol port. On the date of the hearing, counsel agreed and produced by consent as *exhibits* three medical reports (*exhibits* 1-3) on the contents of which the Court was invited to make the assessment of general damages. No oral evidence was adduced by either party. The three reports are:-

- 10 (a) A report of Dr. Tornaritis, a general surgical and orthopaedic surgeon, dated the 20th February, 1980 who examined the plaintiff on the 17th February, 1980 (*exhibit* 1).
- 15 (b) A report of Dr. Kyriacos Papageorghiou Andreou, a specialist orthopaedic surgeon, dated the 13th September, 1977 (*exhibit* 2) who examined the plaintiff and kept him under medical observation from 5.7.1977 to 6.9.1977.
- 20 (c) A report of Thrasos Georghiades, a physiotherapist (*exhibit* 3) dated 3.10.1977 as to the physiotherapy treatment he rendered to the plaintiff.

According to the medical report of Dr. Andreou (*exhibit* 2) who was the first doctor who examined the plaintiff on 5.7.1977, plaintiff, six days after the accident, complained of severe pain and stiffness of his lumbar spine. Examination revealed tenderness over the lumbo-sacral region and movements were very painful and grossly restricted. He was standing with skoliosis of the spine and there was severe muscle spasm of the lumbar spine. Radiological examination showed no bony injury. Neurological examination revealed straight leg raising grossly diminished on both sides and numbness over the outer aspect of the left leg. He was given analgesic tablets and advised bed rest and he was sent for physiotherapy. Following the course of physiotherapy he made good progress. A final assessment of his condition two months later, on the 6th September, 1977, revealed, good progress but plaintiff was still complaining of pain and stiffness of the lumbar spine, becoming worse after bending and lifting and in cold weather. Examination revealed good range of movements of his lumbar spine; no

skoliosis or muscle spasm. Neurological examination appeared normal, there was only deep tenderness over the lumbosacral region. The final opinion of the doctor as a result of the last examination on 6.9.1977 is as follows:

“This patient sustained a prolapsed intervertebrae disc of the L5 and S1 lumbar vertebrae. 5

These entail severe amount of pain and suffering initially subsiding slowly.

Following the treatment he is making good progress.

His present condition will improve with time and more physiotherapy, but re-current attacks are inevitable especially after doing manual work which involves bending and heavy lifting; therefore he should avoid work which involves repetitive bending and heavy lifting. 10

If he has re-current episodes very often he must have a laminectomy. 15

He was granted sick leave as from 29.6.1977—29.8.1977”.

This was the last occasion that he was seen and treated by Dr. Andreou.

The report of the physiotherapist dated 3.10.1977 reads as follows: 20

“Βεβαιούται ὅτι ὁ κ. Θεόδωρος Καρκαλῆς, ἐκ Λεμεσοῦ, ἑτῶν 29, μέ ἐπεσκέφθην στίς 25/7/77, παρουσιάζων κακώσεις, δυσκαμψία καί ὀδυνηροῦς πόνους στήν ὀσφυϊκήν μοίρα κατόπιν ἀτυχήματος. 25

Ἀφοῦ τοῦ ἐγίνε ἡ ἐνδεδειγμένη φυσιοθεραπευτική ἀγωγή διά τήν περίπτωση του οἱ ὀσφυϊκοί μῦες ἐπανέκτησαν τήν δύναμιν των καί ἐπανεῦραν τήν φυσιολογική των εὐκαμψίαν.

Τοῦ ἐγιναν ἐν ὄλῳ 45 θεραπείες.”

(“It is certified that Mr. Theodoros Karkallis, of Limassol, aged 29, visited me on 25.7.77, presenting signs of injuries stiffness and severe pains in the lumbar spine after an accident. 30

After he had undergone the proper, in his case, physiotherapy treatment the lumbar muscles regained their strength and found their physiological flexibility. 35

He had undergone in all 45 treatments”).

The last report which is dated 20.2.1980 is that of Dr. Tornaritis which describes the condition of the plaintiff as on the 19th February, 1980 as follows:

- “1. No deformity of the back on inspection.
- 5 2. Movements of the dorso-lumbar spine are within normal limits.
3. No neurological findings.

10 *Opinion:* This patient sustained a back injury in an accident at work over two and a half years ago. He had to put up with a fair amount of pain and suffering initially, gradually subsiding. He made good progress from the injury sustained, but recurrences are possible in this type of injury and these are more likely to occur after overloading of the back.”

15 It is clear from the last medical report that plaintiff had fully recovered from his injuries with only a possibility in such type of injury, of recurrences of the pain in the future after overloading of the back. According to the opinion of Dr. Kyriacos Papageorghiou Andreou who examined him for the

20 last time on 6.9.1977, his condition would improve with time and more physiotherapy but there was a possibility of recurrent attacks especially after doing manual work involving bending and heavy lifting. After he was examined, however, two and a half years later by Dr. Tornaritis, there was no complaint

25 that during the period of 2 1/2 years that elapsed since he was seen for the last time by Dr. Andreou, he did have any attacks whilst doing his manual work which was the same as before. Furthermore, according to the report of Dr. Tornaritis, all movements of the dorso-lumbar spine were within normal

30 limits with no neurological findings. It is also clear from the report of the physiotherapist that after plaintiff had physiotherapy treatment for about two months all the lumbar muscles recovered fully their strength and their physical bending and movement and after the 3rd October, 1977 no other physio-

35 therapy treatment was deemed necessary.

Counsel for plaintiff submitted that the reasonable amount of compensation which should be awarded in this case should be in the range of £3,000 and in support of his submission he

referred to *McGown v. Duncan Watson (Electrical Engineers) Ltd.* which is referred to in *Kemp & Kemp the Quantum of Damages*, 4th ed. vol. 2, Personal Injuries Reports, under para. 6-314, and in which a sum of £2,750.- was awarded in 1969, which, in the submission of counsel for the plaintiff should be readjusted, taking into consideration the devaluation of the Pound as from 1969 till today. 5

Counsel for the defendant, on the other hand, submitted that this is not the type of injury where a high award should be made and he referred the Court to some awards referred to in the same edition of *Kemp & Kemp* where damages of £300 were awarded in similar cases. 10

The case referred to by counsel for the plaintiff cannot be compared with the present one. In that case the injuries were very serious with permanent incapacity and inability to resume his pre-accident activities, whereas in the present case according to the medical reports, especially the report of Dr. Tornaritis which is a more recent one, it is clear that the injury suffered by the plaintiff cannot be considered as of such a serious nature. 15

Damages for injuries to the spine vary according to the nature of the injury and its after or permanent effects. One can see examples in *Kemp & Kemp (supra)* in cases of injuries more serious than the present one where the awards range from £500.- to £1,000.-. 20

In the case of *Show v. Morgan Construction Co.*, a 1970 case, mentioned in paragraph 6-418 in *Kemp & Kemp*, where the plaintiff suffered compression fracture of the twelfth thoracic vertebra with slight lower back pain aggravated by twisting and bending, and plaintiff resumed pre-accident work, a sum of £850.- was awarded. 25 30

In *Ahmed & Falkers* under paragraph 6-423, also a 1970 case, a male, aged 34, who, as a result of an accident had suffered with strained back and was suffering with good deal of pain at first but gradually lessened and disappeared within 12 months and then he was fit for light work, a sum of £750.- was awarded. 35

In *Fennings v. St. George's Tavern*, referred to in paragraph 6-428, a 1971 case, a female, aged 26, former barmaid suffered low back strain and injury to right thigh. Wore corset for

two years, had back pain on and off for about 21 months. Pain disappeared during following years, except when she lifted anything heavy. Remaining symptoms would disappear and she would feel better once litigation over. Judge found that
5 she could have resumed light work after 44 weeks. General damages, £500.-.

A number of other cases of back injuries are also mentioned in Kemp & Kemp (the same edition) under the heading of minor injuries, in which awards vary between £100 and £250.

10 In the case of *Asprou and another v. Samaras and another* (1975) 1 C.L.R. p. 223 in which a driver sustained head injuries with serious concussion disabling him for work for a period of two years and sprain of the spine which left him with pain in the spine after prolonged standing or walking or hard work
15 or weather changes; this Court on appeal refused to interfere with an award of £1,100 general damages for the head injuries and £300 for the spine injury.

I agree with counsel for the plaintiff that due to devaluation of the currency during the period that elapsed since the time of
20 such awards till today and the gradual fall in the value of money between those years and to-day and that what may have been considered as sufficient compensation ten or fifteen years ago in certain conditions, may be inadequate under similar conditions, are factors which must be taken into consideration in
25 assessing damages. (*Ioannou v. Howard* (1965) 1 C.L.R. 45, *Karavallis v. Economides* (1970) 1 C.L.R., 271 *Walker v. John McLean & Sons Ltd.* [1979] 2 All E.R. 965).

Having taken into account the contents of the medical reports before me, I find that a fair and reasonable award in the present
30 case for pain, suffering, discomfort that the plaintiff suffered and the possibility of recurrences in this type of injury, especially when doing very heavy manual work, is £600.-. Adding to that amount a sum of £585.- as special damages, I give judgment for the plaintiff against the defendant for £1,185.- with £200.-
35 agreed costs.

*Judgment and order for costs
as above.*