1980 October 14

[HADJIANASTASSIOU, A. LOIZOU AND DEMETRIADES, JJ.]

NICOS XENOPHONTOS AND ANOTHER,

Appellants-Defendants,

v.

GEORGE ANASTASSIOU,

Respondent-Plaintiff.

(*Civil Appeal No.* 6072).

Negligence—Contributory negligence—Principles applicable—Road accident—Collision at cross-roads between vehicles coming from opposite directions—Appellant suddenly moving from left to the right side of the road and blocking way of respondent—Such sudden blocking could not have been reasonably anticipated because of the short distance—Respondent had no time to foresee the negligence of the appellant—Sole cause of the accident the negligence of the appellant.

Damages—General damages—Personal injuries—51 years old manual worker sustaining fracture of both wrists—Unconscious for 5-6 days—In hospital for a month—Both hands in plaster for 3 months—Fair amount of pain and suffering—Would find it difficult to engage in heavy manual work and could not pursue his pre-accident work employing the same methods and with same economic margins—Award of £4,000 *sustained.*

Whilst the respondent-plaintiff was driving his motor-cycle along Makarios III street in Engomi, Nicosia, on his way towards Metochiou street, which forms an extension and continuation of the former street, he collided at the intersection of the said two streets, with a car driven by appellant-defendant 1 ("the appellant"), from the opposite direction along Metochiou street. In an action for damages by the respondent the trial Court found that at a certain time the appellant suddenly moved from the left to the right side of the road and parked his car there; that by this sudden and unorthodox manoeuvre he blocked the way of the respondent within such a short period of time

so that the respondent was deprived of every reasonable opportunity of either foreseeing the intention of the appellant or for taking avoiding action; that the sudden stopping of the appellant was something that could not have been reasonably anticipated by any person and for these reasons the respondent was no at all to blame for the accident, the sole cause of which being the negligence of the appellant.

The respondent, who was 51 years old sustained fractures of both wrists and the two phalanges of the right hand; as a result of the accident he remained unconscious for 5–6 days; he stayed in hospital for a period of one month and had both hands in plaster for three months. He had to put up with a fair amount of pain and suffering for several weeks with both forearms immobilised. The fractures consolidated with some deformity and resulted in moderate stiffness of both wrists and of weakness of the grip of both hands. As a consequence of these injuries he could experience pain and discomfort after overloading the joints injured and would find it very difficult to engage in heavy manual work. The respondent was a manual worker, he was making "lacmajou". The trial Court having arrived at the conclusion that he could not pursue his pre-accident work by employing the same methods and within the same economic margins as before, held that an amount of £35 per month would be a fair estimate of the diminution of his earnings which in a way represented a fair and reasonable estimate of the services of a part-time assistant; and having taken into consideration that he was over 50 years of age and apart from the unforeseen contingencies of life, he had 12 years of profitable work assessed the general damages at £4,000.

Upon appeal by the defendants it was mainly contended:

(a) That the trial Judges were wrong in acquitting the respondent of contributory negligence;

(b) that the damages were excessive having regard to the age of the respondent and all the other surrounding circumstances.

Held, (after stating the principles governing contributory negligence—vide p. 528 *post*).

(1) That this Court, fully aware that the trial Court, in weighing fully the facts, had reached the conclusion that the sudden

blocking of the way of the respondent was something that could not have been reasonably anticipated by any person because of the short distance, and/or for taking avoiding action, is not prepared to take a different stand, because it is of the view that, in the particular circumstances of this case, the respondent had no time to foresee the negligence of the appellant in manoeuvring so suddenly and in blocking his way; that the sole cause of the accident was the negligence and the inconsiderate driving of the appellant; accordingly the judgment of the trial Court must be affirmed.

(2) That once the trial Court has taken into consideration all the evidence before it, including the medical evidence, and because the Court correctly approached the whole matter, there is no room for interfering with the amount awarded in the present case; that though this Court is aware of the principle that the compensation to be awarded should be a fair and reasonable compensation, and that the Court should not attempt to give damages of the full amount or a perfect compensation in money, having given the matter its best consideration this Court is not convinced either that the trial Court acted upon some wrong principle of law or that the amount awarded was so very high as to make it, in the judgment of this Court, an entirely erroneous estimate of the damages to which the respondent is entitled (see *Flint* v. *Lovell*, [1975] 1 K.B. 354 at p. 360); and that, in any event, the amount awarded is not in the high side; accordingly the appeal must fail.

Appeal dismissed.

Cases referred to:

Jones v. *Livox Quarries Ltd.* [1952] 2 Q.B. 608 at p. 615;

Flint v. *Lovell* [1975] 1 K.B. 354 at p. 360.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C. and Orphanides, S.D.J.) dated the 31st January, 1980 (Action No. 1221/78) whereby they were ordered to pay to the plaintiff the sum of £4,750.—as damages for injuries sustained by him in a traffic accident.

X. Xenopoullos, for the appellant.

A. Danos, for the respondent.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment of the Court. This is an appeal by the defendants Nicos Xenofontos and Takis Xenofontos from the judgment of the Full Court of Nicosia dated 1st January, 1980, in an action by the plaintiff George Anastassiou, claiming damages for injury sustained by him when his own motor-cycle under registration No. CG176 was in collision with the defendant's motorcar on 16th January 1978 at Engomi, Nicosia. The Court found that the defendants were solely to blame for the accident, and dismissed also the counter-claim of the defendants.

THE FACTS:

The relevant facts can be shortly stated. On 16th January, 1978, the plaintiff was riding his motor-cycle along Makarios III Street at Engomi, on his way towards Metochiou Street which forms an extension and continuation of the former street. The accident occurred at an intersection of the aforesaid two streets with Delphon Street. At that time, the defendant was also driving the motor vehicle under registration No. HD661 along Metochiou Street, in an opposite direction to that of the plaintiff. At a certain point of time, the defendant moved from his left to the right side of the road and parked his car there. In view of that manoeuvre, the plaintiff found his way suddenly blocked, and collided with the vehicle in question. The police arrived at the scene shortly after the accident, and having taken all the necessary measurements, P.C. Andreas Demetriou prepared a sketch of the scene showing the layout of the crossing, the resultant position of the vehicles, and various material distances.

According to the evidence of that police constable, on 16th January, 1978, at 10.30 hrs., he visited the scene of a traffic accident which occurred at the junction of Metochiou Street, Delphon Street, Ayios Procopios and Archbishop Makarios Streets. At the scene of the accident he found the van, the property of the defendants, and the motor cycle of the plaintiff. The driver of the car in question was present, but the defendant having been injured, had been removed to the hospital.

In cross-examination, this policeman told the Court that the point of impact was on the asphalt. According to P.S. 1560, Aristos Demosthenous, during the accident on that date he was at the kiosk of his father which is situated at the cross-roads

Metochiou and Delphon. He was outside the kiosk and noticed a motor-cycle which was coming from the direction of Engomi towards Nicosia, and the driver was keeping the left side of the road. At the same time, he saw a van which was proceeding from Nicosia towards Engomi. Then the driver of the van, just before he reached the cross-road, turned to his right in order to enter Delphon Street, and at the same time, the motor-cyclist collided with the van in question when the two vehicles were in motion. In addition, the witness stated that when the motor van started turning, he was 5-6 meters away from the motor-cyclist, and his speed as well as that of the driver was slow.

In cross-examination by counsel for the defendants he said that the driver of the motor-cycle was keeping the centre of the road and was proceeding towards Metochiou Street. When he saw the van, he was 6 meters away, and the road was free from traffic, although from the side of the driver of the van, various vehicles were passing.

According to the evidence of the plaintiff, the defendant driver was guilty of negligent driving. He further said that on that date he was coming from Ayios Dhometios and was keeping his left side of the road when he was struck. He was riding his motor-cycle at a slow speed, 10-15 m.p.h. When he was knocked down, he lost his senses and he could not remember what happened after that. He was removed to the hospital and he remained unconscious for 5-6 days. He remained in the hospital for a period of one month, and had both hands in plaster for three months, but finally his right hand became useless. He further told the Court that before he was injured, he was making lacmajou and he was selling them for two shillings each. Sometime in August, 1978, he tried once again to prepare the dough for the lacmajou, but because his fingers had no strength he was unable to do so. Because of the accident he was considered that he was unable to work, and his incapacity was rated at 75-80 per cent. In the light of his inability to work, he was granted a disability allowance of £33.16.0 per month for a period of one year.

In cross-examination, he said that the road was free from cars and he did not see a car coming from the opposite direction. Pressed further, he said that he was keeping the left-hand side

of the road and he did not see the van which was coming from the other side and that it turned towards the kiosk.

Questioned further by Court, he said that before his accident he could prepare about 200–400 lacmajou per day, and in an average, 200, 170 or 150 per day. Questioned further about his income he said that he was not earning less than £8, and maximum £10 per day.

On the contrary, the driver of the van Nicos Xenofontos, tried to throw the blame on the plaintiff and told the Court that on that date when he was approaching the cross-road of Metochiou and Delphon Streets, he saw a kiosk and stopped his car at the right hand side of the road in order to buy cigarettes. He noticed the motor cycle coming from the opposite road of Engomi. As he was carrying two bags and was ready to get into his car, the motorcycle came from the left and hit the side of his car. He alighted, and saw the cyclist thrown in front of his car. At that time, he added, someone else who was passing from there took him to the hospital.

Questioned further, he said that when the plaintiff hit his car it was already parked. In cross-examination, he alleged that when he turned towards the kiosk, the defendant was 20 ft. away from the cross-road. Questioned further, he said that he did not agree that he turned abruptly and that he did not see the motorcyclist who was coming from the other side.

FINDINGS OF THE TRIAL COURT:

The trial Court, having weighed the evidence before them, accepted the evidence of the plaintiff, and found that the true facts were stated by the independent eye witness Aristos Demosthenous, and had this to say:-

> "We further find that the defendant by his sudden and unorthodox manoeuvre, blocked the way of the plaintiff within such a short period of time so that the plaintiff was deprived of every reasonable opportunity of either foreseeing the intention of the defendant or for taking avoiding action if any avoiding action at all on his part could, in the circumstances of the case be effected. In fact, we may observe that the manoeuvre of the defendant could easily be misinterpreted as an intention to turn right into the side street (Delphon Street) and perhaps if he did just

that, the plaintiff might have had time to safely proceed on his way without having to take any avoiding action. However, the sudden stopping of the defendant was something that could not have been reasonably anticipated by any person and, therefore, the plaintiff cannot be found guilty of any negligence at all.

For all the above reasons, we find that the plaintiff is not at all to blame for the accident, the sole cause of which being the negligence, in fact reckless and inconsiderate driving of the defendant".

Finally, the trial Court, having considered the medical evidence before them, awarded to the plaintiff the sum of £4.750 damages with interest thereon at 4 per cent per annum as from 31st January, 1980, to the date of payment.

GROUNDS OF LAW ON APPEAL:

The notice of appeal raised two points: (1) that the learned trial Judges were wrong in acquitting the plaintiff of contributory negligence; (2) that the damages awarded were excessive in the circumstances.

Although the trial Court found that the plaintiff had in no way contributed to the accident, nevertheless, counsel argued that because the plaintiff had failed to take avoiding action, he became contributory to the accident once he ought reasonably to have foreseen that he would be hurt. The first question is whether the plaintiff was guilty of contributory negligence. Time and again it has been said in a number of cases that where the defendant is negligent and the plaintiff is alleged to have been guilty of contributory negligence, the test to be applied is whether the defendant's negligence was, nevertheless, a direct and effective cause of the misfortune. The existence of contributory negligence does not depend on any duty owed by the injured party to the parties sued, and all that is necessary to establish a plea of contributory negligence is to prove that that injured party did not in his own interest take reasonable care of himself and contributed by his want of care to his own injury.

The principle involved is that, where a man is part author of his own wrong, he cannot call on the other party to

compensate him in full. The standard of care depends upon foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that if he did not act as a reasonably prudent man he might hurt himself. The plaintiff is not usually bound to foresee that another person may be negligent, unless experience shows a particular form of negligence to be common in the circumstances.

In *Jones* v. *Livox Quarries Ltd.*, [1952] 2 Q.B. 608, Denning, L.J. as he then was, dealing with this very same point, said at p. 615:-

> "Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence is he ought reasonably to have foreseen that, if he did not act as a reasonable prudent man, he might be hurt himself; and in his reckoning he must take into account the possibility of others being careless".

With this in mind, and fully aware that the trial Court in weighing fully the facts, had reached the conclusion that the sudden blocking of the way of the plaintiff was something that could not have been reasonably anticipated by any person because of the short distance, and/or for taking avoiding action, we are not prepared to take a different stand, because we are of the view that, in the particular circumstances of this case, the plaintiff had no time to foresee the negligence of the defendant in manoeuvring so suddenly and in blocking his way. Indeed, we agree with the trial Court that the sole cause of the accident was the negligence and the inconsiderate driving of the defendant, and we would affirm the judgment of the Court.

MEDICAL EVIDENCE:

Turning now to the medical evidence, the plaintiff has been attended to by Dr. Papasavvas, Dr. Loizos Pavlou and Dr. Tornaritis, and all the reports were before the trial Court. Dr. Tornaritis had this to say:-

"This patient sustained *inter alia* fractures of both wrists and two phalanges of the right hand in a traffic accident, 13 months ago. He had to put up with a fair amount of pain and suffering for several weeks with both forearms immobilised. The fractures consolidated with some deformity and resulted in moderate stiffness of both wrists, particularly the right one and two of the fingers of the right hand, and of weakness of the grip of both hands, again more pronounced on the right. As a consequence of these injuries he may experience pain and discomfort after over loading the joints injured and will find it very difficult to engage in heavy manual work."

There is no doubt that the plaintiff is a manual worker, as we have said earlier, inasmuch as he has to make with his own hands the goods he vends to the public; and that an additional handicap in re-adjusting his activities is his lack of adequate education associated with the age factor, not at all contributory to an effective change of occupation. Indeed, the plaintiff was asked whether he could substitute the manual effort in the making of his specialties with a mechanical mixer, but his answer, which the trial Court found to be reasonable and undisputable, was that his work is not confined only to the making of the various ingredients, but covers also many other forms of manual work which cannot be performed with mechanical devices.

The trial Court, having dealt with the facts of this case, and fully aware from the medical evidence that the injury to the plaintiff's hand will remain permanent, and is such as to render the plaintiff incapable of doing manual work, had this to say:-

"We have given serious consideration to the predicament of the plaintiff, and having taken everything into account, we arrived at the conclusion that the plaintiff cannot pursue his pre-accident work employing the same methods and within the same economic margins as before. We cannot say that the plaintiff is an invalid incapable of doing any kind of work, as he tried to impress us, but whatever he may do in future employing all his residual capabilities cannot be as rewarding as the work he was doing before the accident, always, of course within the limits of his restricted education and skill".

Finally, the Court, in the light of all the facts and circumstances, came to the conclusion that an amount of £35 per month would be a fair estimate of the diminution of the plaintiff's earnings which in a way represents a fair and reasonable estimate of the services of a part time assistant. In addition, the Court took into consideration that the plaintiff is over 50 years of age and apart from unforeseen contingencies of life, he had 12 years of profitable work to do and assessed the damages at £4,000.

Damages:

Counsel for the appellant, in a strong and able argument, complained that the amount awarded was excessive having regard to the age of the respondent and all the other surrounding circumstances of the case, and invited this Court that in the particular circumstances of this case, the proper amount of damages should not exceed the sum of £2,500.

We have considered very carefully the complaint of counsel, but once the trial Court has taken into consideration all the evidence before them, including the medical evidence, and because the Court correctly, in our view, approached the whole matter, there is no room for interfering with the amount awarded in the present case. We are aware, of course, of the principle that the compensation to be awarded should be a fair and reasonable compensation, and that the Court should not attempt to give damages of the full amount or a perfect compensation in money. Indeed, we would reiterate that having given the matter our best consideration, we are not convinced either that the trial Court acted upon some wrong principle of law or that the amount awarded was so very high as to make it, in the judgment of this Court, an entirely erroneous estimate of the damages to which the plaintiff is entitled. (See *Flint* v. *Lovell*, [1975] 1 K.B. 354 at p. 360).

For all these reasons, we think we would not be justified in distrurbing the finding of the trial Court as to the amount of damages. In any event, we do not think that the amount awarded on the basis of the full liability is on the high side.

In the result, the appeal is dismissed with costs.

Appeal dismissed with costs.