1982 December 3

[HADJIANASTASSIOU, DEMETRIADES, PIKIS, JJ.]

IOANNOU AND PARASKEVAIDES (OVERSEAS) LTD., AND ANOTHER,

Appellants-Defendants,

v.

CHRISTOFIS P. CHRISTOFIS,

Respondent-Plaintiff.

(*Civil Appeal No.* 6289).

Damages—General damages—Personal injuries—Loss of future earnings—Principles applicable—Plaintiff aged 27 *at the time of judgment—Multiplier of* 15 *upheld.*

Damages—General damages—Personal injuries—Principles applicable—Steady tendency to liberalise awards by awarding greater amounts compared with past awards—Based on value of money at date of hearing—A higher premium is placed on human pain and the agonies of disability—Carpenter aged 27 *sustaining crushing injuries on the left hand—Award of* £3,000 *upheld.*

The respondent, a carpenter aged 27 sustained crushing injuries on the left hand whilst in the employment of the appellants in Libya. His injuries necessitated amputation of the distant phalanxes of the thumb and index finger of the left hand. His middle finger of the left hand was also injured; there was a crushing comminuted compound fracture of the middle phalanx of the finger. The amputation operation was performed in Libya but on arrival in Cyprus the middle finger was infected and he remained hospitalized from December 6 to December 23, 1977 and for five days in January, 1978. The injuries left the respondent with grave incapacitation which had grave repercussions on his working capacity. The trial Court awarded to the respondent (a) £9,360 for future losses of earnings arrived at by multiplying annual loss at the date of hearing, estimated

at £624.– by 15, the multiplier chosen to establish future losses and (b) £3,000.– general damages.

Upon appeal by the employers which was solely directed against the multiplier chosen and the quantum of general damages:

Held, (1) that no hard and fast rules can be established giving a uniform answer to the choice of a multiplier in every case and as it emerges from the study of the English and Cyprus Case Law there is considerable flexibility in the choice of the multiplier, the choice resting in the first place with the trial Court; that the prevalent trend reflecting judicial approach is that a multiplier in the region of 15 may be adopted in cases where the plaintiff is in his 20's or younger and that generally a smaller multiplier is warranted in the case of elder persons; that had this Court been concerned at first instance to assess future loss likely to be suffered by the respondent it might opt for a smaller multiplier in view of the none too settled work habits of the respondent but that is far from saying there is any room for interfering with the award of the trial Court; that in the absence of a misdirection, and there is none here, this Court would only be entitled to interfere with an award of damages if it is either inordinately high or inordinately low; that the award in the present case for future loss is neither too high nor too low; and that, therefore, this Court will refrain from in any way interfering with the conclusions of the trial Court; that the trial Court was right in making a substantial award of general damages rightly based so far as it may be gathered on the value of money at the date of hearing; that the respondent suffered an awful lot on account of his injuries and, worse still, found himself as a result crippled while a young man something that is bound to have grave repercussions on his capacity for the enjoyment of life as well as the lingering sense of disability; that as Hadjianastassiou, J. pointed out in the course of argument there is a steady tendency to liberalize awards for damages by awarding greater amounts compared to what was regarded as the norm in days past; that a higher premium is placed on human pain and the agonies of disability; that the amount of £3,000 was reasonable; accordingly the appeal must fail.

Appeal dismissed.

Cases referred to:

Joyce v. *Yeomans* [1891] 2 All E.R. 21 (C.A.);

C.R. Taylor (Wholesale) Limited v. *Hepworths* [1977] 2 All E.R. 784;

Fletcher v. *Autocar Transporters Ltd.* [1968] 1 All E.R. 726;

Constantinou v. *Salachouris* (1969) 1 C.L.R. 416;

Service Europe Atlantique v. *Stockholmes* [1978] 2 All E.R. 764;

Taylor v. *O'Connor* [1971] 1 All E.R. 365 (H.L.);

Gavin v. *Wilmot Breeden Ltd.* [1973] 3 All E.R. 935 (C.A.);

Poullou v. *Constantinou* (1973) 1 C.L.R. 177;

Djiellas v. *The Ship "Natalena H" and Others*, Admiralty Action 14/80 (reported in this part at p. 807 post);

Walker v. *John McLean and Sons Ltd.* [1979] 2 All E.R. 965 (C.A.);

Dotts v. *Dotts* [1978] 2 All E.R. 531;

Antoniou v. *Kyriacou* (1978) 1 C.L.R. 77;

Gregoriou v. *Fella and Another* (1980) 2 J.S.C. 384;

Nicolaides v. *Nikou* (1981) 1 C.L.R. 225;

Xenophontos and Another v. *Anastassiou* (1981) 1 C.L.R. 521.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Stylianides, P.D.C. and Fr. Nicolaides, D.J.) dated the 20th June, 1981 (Action No. 934/78) whereby they were adjudged to pay to plaintiff the sum of £9,503.– by way of special and general damages for injuries sustained by him while working with the defendants in Libya.

Ch. Ierides with *Chr. Clerides*, for the appellants.

Ant. Lemis, for the respondent.

Cur. adv. vult.

HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Mr. Justice Pikis.

PIKIS J.: Respondent, a carpenter by training and occupation, was severely injured while working with appellants in Libya. He was then 23 years old. His injuries necessitated immediate hospitalization; three days later he was flown over to Cyprus where he was treated by Dr. Ioannou, an orthopaedic surgeon of Nicosia. Also he was seen and examined by Dr. Christodoulakis, another orthopaedic surgeon, on behalf of his employers.

As a result of the accident respondent suffered crushing inju-

ries on the left hand. His injuries necessitated amputation of the distant phalanxes of the thumb and index finger of the left hand. The amputation operation was performed in Libya. The middle finger of the left hand was also injured. There was a crushing comminuted compound fracture of the middle phalanx of the finger. Recovery was not uneventful and treatment was painful. On his arrival in Cyprus, the middle finger was infected, emitting puss, while the thumb stump was painful at the edges and the index stump producing pain on touch or palpitation. He remained hospitalized at the clinic of Dr. Ioannou from 6th December, 1977, to 23rd December, 1977. His condition necessitated readmittance on 9th January, 1978, accompanied by a five days stay in the clinic of Dr. Ioannou.

The injuries left the respondent with grave incapacitation, a condition confirmed by both doctors—Dr. Ioannou and Dr. Christodoulakis. This incapacitation had grave repercussions on the working capacity of the respondent in view of the nature of his work. In a joint medical report eventually, submitted before the trial Court, the two doctors concurred in their findings but differed to a degree as to the implications of the injuries on the working capacity of the respondent. In the opinion of Dr. Ioannou, the condition of the respondent was such as to prevent him from assuming any work requiring the use of both hands. In effect, it barred him from taking up manual work. Dr. Christodoulakis, on the other hand, was not as pessimistic as that his opinion being that which the capacity of respondent for manual work had been seriously impaired, it was not such as to prevent him from taking up manual employment, subject always to the qualification that his performance would be adversely affected.

Liability was settled at the trial, appellants admitting two thirds liability for the accident. The task of the Court was, therefore, limited to the assessment of damages. In a detailed judgment the Full District Court of Nicosia adverted to the implications of the injuries of the respondent, their after-effects and the loss and damage produced thereby. Damages were assessed at £15,035.- subject to a reduction on account of the contribution of the respondent, comprising, inter alia, (a) £9,360.- future losses of earnings arrived at by multiplying annual loss at the date of hearing, estimated at

£624.- by 15, the multiplier chosen to establish future losses and (b) £3,000.- general damages. We need not concern ourselves with other items of special damages for the present appeal is solely directed towards challenging the multiplier chosen and the quantum of general damages. The amount of annual losses is not in dispute so it need not be touched upon in this appeal.

Principles of damage—The multiplier:

The multiplier is the figure of arithmetic chosen to establish future losses on the basis of losses of earnings quantifiable at the date of trial. In terms of legal theory it is an instrument for the assessment of damages, the part designed to establish future losses. It must be stressed, however, that a multiplier is nothing other than a practical tool for the assessment of future losses. The need for its adoption does not stem from any rule of law. Nor is its employment the only means to discern future losses to the injured party. The Court may adopt any reasonable means at its disposal for the accomplishment of its duty that requires the restoration of the injured party to the position he was expected to enjoy but for his injuries. (See *Joyce* v. *Yeomans* [1981] 2 All E.R. 21 (C.A.)). Subject always to the need to ensure that the damage awarded is reasonable as between the parties. (See *C.R. Taylor (Wholesale) Limited* v. *Hepworths* [1977] 2 All E.R. 784).

The object of an award of damages is to do justice to the loss and damage of the injured party without imposing an inordinate burden upon the tort-feasor. (*See Fletcher* v. *Autocar Transporters Ltd.* [1968] 1 All E.R. 726; *Constantinou* v. *Salahouris* (1969) 1 C.L.R. 416). In other words the award must be socially acceptable. Consequently, social ethos at the material time is invariably a consideration relevant to our task particularly with regard to non-pecuniary loss. Pecuniary loss being more amenable to mathematical calculation is less dependent on social norms. The object of the exercise is to arrive at a figure,at the end of the process, that is fair and reasonable in the circumstances of the case.

The assessment of future loss involves an element of guesswork; foretelling the future entails pondering the uncertain.

Future uncertainty tends to be augmented in modern society on account of the rapidly changing social and technological conditions.

The multiplier is intended to reduce, so far as reason and common sense make it possible, the element of uncertainty in the process and provide an objective basis for the assessment of damage while inducing, at the same time, an element of uniformity in the awards. The multiplier is chosen primarily, but not exclusively, by reference to the age and state of health of the injured party and to a lesser extent his employment prospects. His age is the first denominator. The nature of his work and the hazards associated with it though secondary constitute nonetheless important indicators on future loss. Ultimately a figure must be chosen best designed to yield the present value of future loss. Therefore, the figure chosen by reference to the factors above listed must be scaled down sufficiently to reflect the present value of future loss. Justice and fairness should guide the Court throughout the process of assessment of damage. (See dicta of Geoffrey Lane, L.J. in *Service Europe Atlantique* v. *Stockholmes* [1978] 2 All E.R. 764).

If the cases establish any principle it is this: No hard and fast rules can be established giving a uniform answer to the choice of the multiplier in every case. (See *Taylor* v. *O'Connor* [1971] 1 All E.R. 365 (H.L.); *Gavin* v. *Wilmot Breeden Ltd.* [1973] 3 All E.R. 935 (C.A.); *Poullou* v. *Constantinou* (1973) 1 C.L.R. 177).

Recently I had occasion to review the principles pertaining to an award of damages in *Djiellas* v. *The Ship "NATALENA H" and Others,* Admiralty Action No. 14/80, judgment delivered on 6th November, 1982, not yet reported.*

The starting point in the process of assessment of future loss is the ascertainment of the yearly financial loss arising from the injuries calculated as at the date of trial. (See *Walker* v. *John McLean and Sons Ltd.* [1979] 2 All E.R. 965 (C.A.). Likewise the multiplier must be fixed from the perspective of the date of hearing. (See *Dotts* v. *Dotts* [1978] 2 All E.R. 531). The respondent was aged 27 at the date judgment was given.

* Now report at p. 807 *post.*

There is considerable flexibility as it emerges from the study of the English and Cyprus Case Law in the choice of the multiplier, the choice resting in the first place with the trial Court. Nevertheless, we were invited by learned counsel for the appellant to hold that the multiplier in this case was wrongly fixed at 15. In his submission it ought to have been not higher than 12. In support of his submission he cited two decided cases those of *Antoniou* v. *Kyriacou* (1978) 1 C.L.R. 77 and *Gregoriou* v. *Fella & Another* (1980) 2 J.S.C. 384, a decision of the District Court of Larnaca delivered by myself. He argued that the above cases establish that for injured parties in their 20's the multiplier ought not to be higher than 12. We cannot sustain this submission. Far from it a study of the above cases reveals that the choice of the multiplier turns, as in every case, on the peculiar circumstances of the case. If the submission of counsel was well founded the cases cited by Mr. Lemis on behalf of the respondents would come in conflict with the principle allegedly established by the aforementioned cases. (See *Nicolaides Ltd.* v. *Nikou* (1981) 1 C.L.R. 225; *Xenophontos and Another* v. *Anastassiou* (1981) 1 C.L.R. 521 and the decided cases cited in Kemp and Kemp, 4th ed., vol. 2 at p. 611 et seq.

A principle of law, depicted from decided cases, is one of general application, applicable to broadly similar situations. No precedent is established in the sense of stare decisis from the results of the application of a principle of law to the facts of individual cases. The only principle of law relevant to an award of damages is that damage should on the whole be fair and reasonable. Where a multiplier is chosen to assess future loss the figure must be chosen by reference to the criteria listed earlier in this judgment. The prevalent trend reflecting judicial approach is that a multiplier in the region of 15 may be adopted in cases where the plaintiff is in his 20's or younger and that generally a smaller multiplier is warranted in the case of elder persons. Had we been concerned at first instance to assess future loss likely to be suffered by the respondent we might opt for a smaller multiplier in view of the none too settled work habits of the respondent; but that is far from saying there is any room for interfering with the award of the trial Court. The principles on which the Supreme Court may interfere with the assessment of damage by the trial Court are well settled to the point of not warranting a restatement. In the absence

of a misdirection, and there is none here, we would only be entitled to interfere with an award of damages if it is either inordinately high or inordinately low. The award in the present case for future loss is neither too high nor too low. Therefore, we shall refrain from in any way interfering with the conclusions of the trial Court.

General Damages

The trial Court was in our judgment right in making a substantial award of general damages rightly based so far as we may gather on the value of money at the date of hearing. The respondent suffered an awful lot on account of his injuries and, worse still, found himself as a result crippled while a young man something that is bound to have grave repercussions on his capacity for the enjoyment of life as well as the lingering sense of disability. As Hadjianastassiou, J. pointed out in the course of argument there is a steady tendency to liberalize awards for damages by awarding greater amounts compared to what was regarded as the norm in days past; that is precisely the case. A higher premium is placed on human pain and the agonies of disability. Far from agreeing with counsel for the appellant, who it must be said took up every point that could be taken on behalf of the appellant, we are inclined to the view that the amount of £3,000 was reasonable, so this ground of appeal fails as well.

In the result the appeal is dismissed with costs.

Appeal dismissed with costs.