1982 November 17

[HADJIANASTASSIOU, DEMETRIADES, PIKIS, JJ.]

GEORGHIOS CONSTANTINOU,
Appellant-Plaintiff,

v.

CHRISTOS EVLAMBIOU AND ANOTHER,
Respondents-Defendants.

(*Civil Appeal No.* 6239).

Damages—General damages—Personal injuries—Mild concussion with moderate after-effects—Award of £300 *sustained.*

Damages—Personal injuries—After-effects—Genuineness of allegations as to—Once it was in issue it was for trial Judge to examine it on what was appellant's condition.

The appellant-plaintiff was injured in a traffic accident on 13.1.1978 and suffered, as a result, mild concussion and some superficial injuries.

About one year after the accident he persisted in his complaints and maintained he continued being afflicted with insomnia, headaches and dizziness as before His doctor advised him on 22.2.1979 to resume work partly as an antidote to his condition because the persistence of these complaints led him to the view that appellant developed hypochondriasis, a neurosis arising from over-concern with one's health. The appellant did not take out this advice or a subsequent advice which was given in April, 1979 and continued keeping out of work. After visiting his doctor in July, 1979 appellant left for work abroad in Libya without consulting him and without feeling constrained from so doing on account of his condition.

In an action for damages by the appellant the trial Court, concluded there was an element of malingering in the conduct of the appellant after the accident, marked by a tendency to exaggerate his condition; and proceeded to award to him a sum of £100.- for partial incapacitation for the period commencing

22.2.1979 up to the end of April, 1979 when he was positively fit to take up employment according to the medical evidence; and an amount of £300.- by way of general damages to compensate him for pain and suffering.

Upon appeal against the findings regarding plaintiff's fitness for work and the award of general damages:

Held, that once the genuineness of the allegations of the appellant as to his after-effects was in issue, it was very much for the trial Court to examine it and decide on what was appellant's condition in point of fact; that the medical evidence was inconclusive in the absence, as his doctor mentioned to the Court, of reliable medical means to test the genuineness of the complaints of the appellant; that certainly the trial Judge was in a unique position to evaluate the evidence and sense the feel of the case; that his findings must remain undisturbed unless ill-founded or based upon unwarranted inferences; that the findings of the learned trial Judge are not vulnerable on any count; that there was evidence wherefrom he could ascribe, as he did, the unwillingness of the appellant to take up employment in Cyprus after 22.2.79; that in the light of the findings of the learned trial Judge, the amount awarded by way of general damages - £300 - was in no way out of range with an award that could be made for a mild concussion with moderate after-effects.

Appeal dismissed.

Cases referred to:

Stavrou v. Laos (1978) 1 C.L.R. 103 at p. 109;

Antoniou v. Iordanous and Another (1976) 1 C.L.R. 341;

Joyce v. Yeomans [1981] 2 All E.R. 21 (C.A.);

Watt (or Thomas) v. Thomas [1947] 1 All E.R. 582 at p. 587;

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

Constantinou v. Salahouris (1969) 1 C.L.R. 416.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Artemides, S.D.J.) dated the 6th February, 1982, (Action No. 3699/79) whereby he was awarded the sum of £884.- as special and general damages for the injuries he suffered in a road accident.

C. Ierides with *Chr. Clerides,* for the appellant.

A. Drakos, for the respondents.

HADJIANASTASSIOU J.: Having heard counsel for the appellant, we consider it unnecessary to call upon counsel for the respondents. Mr. Justice Pikis will proceed to give the judgment of the Court.

PIKIS J.: Georghios Constantinou, the appellant, was the victim of a road accident while travelling as a passenger in a bus driven by respondent 1 for whose acts respondents 2 were vicariously liable. The accident occurred on 13.1.78. He suffered, as a result, mild concussion and some superficial injuries of no consequence. In the proceedings before the District Court of Nicosia liability was admitted on behalf of the respondents and what the Court was required to decide were the damages which appellant was entitled to. It was common ground that the only injury of appellant that merited compensation was the concussion and its after-effects, and pecuniary loss resulting therefrom.

The evidence of Dr. Theoklitou, a psychiatrist who treated the appellant, laid the foundations about the nature of his injury and subsequent implications. Neither the veracity nor the correctness of this evidence was called in question. On the contrary, the evidence adduced on behalf of the respondents, consisting of a medical report issued by another psychiatrist - Mr. Evdhokas - tended to support it. So, the evidence of Theoklitou was of crucial importance for the findings of the trial Court. The doctor gave a detailed account of the follow-up, the complaints voiced by the appellant as to his condition and, the means available for verification of these complaints or the absence of them. It is undisputed that from the date he was involved in the accident, appellant was unable to carry out any work up to 22.2.79, i.e. a period of fourteen and a half weeks, for which he was compensated at the going rate of wages for the employment of iron welders that plaintiff was, viz. £31.-. No complaint was raised with regard to this aspect of the case or the award made.

On 22nd February, 1979, appellant persisted in his complaints and maintained he continued being afflicted with insomnia, headaches and dizziness, as before, contrary to the expectations of Mr. Theoklitou who, having regard to his injuries, anticipated that appellant should have shown considerable improvement by then. The persistence of these complaints led him to

the view that appellant developed hypochondriasis, a neurosis arising from over-concern with one's health, associated with exaggeration by the patient of his condition. The doctor advised the appellant to resume work partly as an antidote to his condition, in an effort to induce him to concern himself with things other than his health. The appellant did not take out this advice and continued keeping out of work. Towards the end of April, 1979, Mr. Theoklitou saw the appellant again. This time he positively found him to be fit for work and advised him to go back to work. The advice was once more not heeded by the appellant who remained unemployed. Mr. Theoklitou saw him once more towards the end of July of the same year, and noticed an appreciable improvement in his condition. His prognosis, as well as that of Dr. Evdhokas, was positive. Mr. Theoklitou candidly stated before the trial Court there were no objective means to test the genuineness of the complaints of the appellant, lasting for an unexpectedly long period of time, or his proclaimed inability to take up work after 22.2.79. But he expressed his surprise on learning at the time of the trial that shortly after visiting him in July, 1979, the appellant left for work abroad in Libya without consulting him and without feeling constrained from so doing on account of his condition.

Artemides, S.D.J., as he then was, after a thorough review of the evidence before him, concluded there was an element of malingering in the conduct of the appellant after the accident, marked by a tendency to exaggerate his condition. In so holding, he was influenced by the fact that appellant lost no time to proceeding abroad for work, when he secured employment, and in fact did so without feeling the need to consult his doctor. This attitude did not fit in very well, as the learned Judge noted, with his earlier inhibitions to take up employment but tallied with his work itinerary since 1976, working abroad as a rule. In the opinion of the learned trial Judge, the capacity of the appellant to take up work was mostly restored by 22.2.79, attributing his omission to take up employment to unwillingness to work in Cyprus in the expectation of securing work abroad. So, he awarded him only a sum of £100.- for partial incapacitation for the period commencing 22.2.79 up to the end of April of the same year when he was positively fit to take up employment, as Dr. Theoklitou found.

Lastly, an amount of £300.- was given to appellant by way of general damages to compensate him for pain and suffering. The appeal is directed towards questioning the findings as well as the award for losses of earnings for the period between 22.2.79 to the end of April, 1979, and, secondly, the award of general damages.

In the submission of Mr. Clerides, the trial Judge misconstrued the evidence of Mr. Theoklitou as to appellant's ability to work after 22.2.79, leading him to the erroneous conclusion that the incapacitation of appellant for work thereafter was partial, whereas, in fact, it was total. The advice of the doctor to take up employment did not entail a certification of ability to resume work but consisted rather of advice of a medical kind to relieve appellant of the effects of hypochondriasis. Further, it was argued that the award made in this respect, £100.-, is arbitrary and ought to be increased and brought into conformity with the facts of the case. General damages, on the other hand, were, in the submission of counsel, inordinately low having regard to appellant's condition and its after-effects giving him pain, discomfort and inconvenience for months afterwards. The after-effects of the injury have an important bearing, as the injury itself, on the award to be made. (See, *Stavrou v. Laos* (1978) 1 C.L.R. 103 at 109).

In arguing the appeal before us, learned counsel did not overlook the burden cast on the appellant to make out a case on appeal justifying our intervention. The premises to be established to justify interference with the award of the trial Court were clearly indicated, as he reminded us, by Hadjianastassiou, J., giving the judgment of this Court in *Kyriacos Antoniou v. Iordanis Iordanous and Another* (1976) 1 C.L.R. 341, putting the matter thus:

> "The Court of Appeal will not interfere with the award of a Judge, although they might themselves have awarded a different amount, unless satisfied that the Judge in assessing the damages applied a wrong principle of law (as for instance by taking into account some irrelevant factor or leaving out some relevant one) or short of this, that the amount awarded was so extremely high or low as to make it a wholly erroneous estimate of the damage."

We agree with the above statement of the law. In this case, we are primarily concerned to decide whether the award is so out of step with what ought to be given in our view, as to justify our intervention. Disagreement with the amount awarded by the trial Court as such, is no ground for interference. The award must be so disproportionate to the norm, whatever it ought to be, as to make necessary our intervention in the interests of justice. This, so far as the award of general damages is concerned. For, as respects losses of earnings for the period between 22.2.79 and 30.4.79, the question arising is not dependent on our view of the propriety of the award but on estimation of the findings of the trial Court in this area. This estimation of the evidence is also relevant to the assessment of general damages so far as it may throw light on the after-effects of the injury, a factor that should always be heeded in the award for general damages.

Once the genuineness of the allegations of the appellant as to his after-effects was in issue, it was very much for the trial Court to examine it and decide on what was appellant's condition in point of fact. The medical evidence coming from Dr. Theoklitou was inconclusive in the absence, as Mr. Theoklitou mentioned to the Court, of reliable medical means to test the genuineness of the complaints of the appellant. Certainly the trial Judge was in a unique position to evaluate the evidence and sense the feel of the case. His findings must remain undisturbed unless ill-founded or based upon unwarranted inferences. In our judgment, the findings of the learned trial Judge are not vulnerable on any count. There was evidence wherefrom he could ascribe, as he did, the unwillingness of the appellant to take up employment in Cyprus after 22.2.79, not so much to his condition but to his preference for securing employment abroad, a factor that led him to exaggerate his condition. The reasoning of the trial Court is most persuasive.

In the light of the findings of the learned trial Judge, the amount awarded by way of general damages - £300.- - was in no way out of range with an award that could be made for a mild concussion with moderate after-effects. The fact that we would be inclined to award a slightly higher amount, does not justify any interference by the Court of Appeal. Likewise, we

feel disinclined to interfere with the award of one hundred pounds designed to compensate the appellant for the period following 22.2.79. The assessment of loss based on facts not amenable to precise definition inevitably involves an element of guesswork. The trial Court is primarily entrusted to weigh, to the extent possible, facts that are hard to ponder because of unique position to perceive the facts of the case in a way we cannot, and give the measure of the loss. In the absence of a misdirection, the Court of Appeal, as indicated in the case of *Joyce v. Yeomans* [1981] 2 All E.R. 21 (C.A.), any disposition to interfere with the conclusions of the trial Court must be checked unless the advantage enjoyed by the trial Court in seeing and hearing the witnesses "could not be sufficient" to explain and justify such conclusions, or where the reasons appear unsatisfactory or, lastly, where it unmistakably appears to the Appeal Court that the trial Judge did not take proper advantage of his having seen and heard the witnesses. (See also, *Watt (or Thomas) v. Thomas* [1947] 1 All E.R. 582, 587). When the final result is such as to be reconcilable with the ends of justice that require the making of an award that does justice to the grievance of the appellant, and is socially acceptable in that it does not impose an inordinate burden upon the respondent, the duty of this Court is to uphold it. And we so adjudge in this case. (See, *Fletcher v. Autocar and Transporters Ltd.* [1968] 1 All E.R. 726; *Constantinou v. Salahouris* (1969) 1 C.L.R. 416). Consequently, the appeal fails. But as no costs are claimed by the respondents, the dismissal of the appeal will be unaccompanied by an order as to costs.

Accordingly, the appeal is dismissed with no order as to costs.

Appeal dismissed with no order as to costs.