1982 November 25

[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

ANDREAS CONSTANTINOU,

Appellant-Defendant,

v.

THEOCHARIS KRITIKOS,

Respondent-Plaintiff.

(*Civil Appeal No.* 6268).

Damages—General damages—Personal injuries—Plaintiff aged 59 *at the time of the trial—Future loss of earnings—Future nursing expenses—Multipliers of* 6 *and* 8 *years respectively—Reasonably open to the trial Court and not so high as to offend against the need for uniformity between multipliers used in different cases.*

Damages—General damages—Personal injuries—Nursing services—Pain, suffering and loss of amenities—Severe injuries to cervical spine—Plaintiff aged 59, *tetraplegic initially, made very little improvement, remained incapacitated and restricted to a wheel chair life—Required assistance for every personal need—All his faculties damaged except for functioning of the mind and had to depend on others for the rest of his life for his existence—His condition likely to deteriorate if he did not have proper nursing—Amount of* C£1,200.- *per year in respect of future nursing services by his wife and award of* C£15,000.- *for pain, suffering and loss of amenities not excessive.*

The respondent-plaintiff sustained severe injuries to his cervical spinal cord at a road accident and as a result he was tetraplegic initially. He made very little improvement and he remained incapacitated and restricted to a wheel chair life. His rehabilitation had not been very satisfactory and he required assistance for every personal need. All his faculties were damaged, in fact out of action, except for the functioning of the mind. For the rest of his life he had to depend on others for his existence. His condition had not improved by the time of the trial notwithstanding the lapse of nearly three years from the

day of the accident; and it was likely to deteriorate if he did not have proper nursing. The respondent was aged about 59 at the time of the trial and he had, provided he was properly looked after, normal life prospects.

The trial Court awarded to the respondent C£100.- per month for a period of eight years in respect of the future nursing services of his wife; and C£15,000.- general damages for pain, suffering and loss of amenities. It also awarded him an amount of £9,894.–, after fixing the multiplier for the determination of future losses of earnings at 6 years and his annual earnings at £1,164.–.

Upon appeal by the defendant it was mainly contended first that the amount awarded in respect of nursing services to be rendered in future to the respondent by his wife was excessive, secondly, that the multipliers used for the determination of future losses of earnings and future nursing expenses were wrong, and thirdly that the general damages awarded for pain, suffering and loss of amenities were excessive.

Held, (1) that, in the condition in which the respondent is, the amount of C£1,200.- per year which was awarded in respect of future nursing services by the wife of the respondent, is not excessive but, on the contrary, rather on the low side and there is no reason, therefore, to interfere with it.

(2) That bearing in mind that there should be a reasonable degree of uniformity between the multipliers used in the different cases, this Court does not think that the multipliers used, in the present instance, by the trial Court were not reasonably open to it or that they were so high as to offend against the need for uniformity in the light of the miltipliers used in other comparable cases, in so far as, of course, they could be treated as comparable having regard, on the one hand, to their particular circumstances and, on the other hand, to the circumstances of the present case; there is, therefore, no reason to interfere with the multipliers adopted by the trial Court.

(3) That this Court has, on the basis of all the material before it - (including the terrible situation in which the respondent has found himself as a result of his injuries, and, especially, the fact that he is aware of his condition and, consequently, his suffering is increased even more) - reached the conclusion, in the light,

too, of the principles governing its powers to interfere on appeal with the assessment of general damages (see, inter alia, *Aristodemou v. Angelides & Philippou Ltd.*, (1976) 1 C.L.R. 93, 96), that it should not reduce the aforementioned amount of general damages.

Appeal dismissed.

Cases referred to:

Owens v. Brimmell [1976] 3 All E.R. 765 at pp. 773, 774;

Poullou v. Constantinou (1973) 1 C.L.R. 177 at pp. 184, 185;

Antoniou v. Kyriakou (1978) 1 C.L.R. 77 at p. 92;

Antoniades v. Markides (1969) 1 C.L.R. 245;

Mylonas v. Kaminarides (1972) 1 C.L.R. 215;

Curium Palace Hotel v. Eracleous (1979) 1 C.L.R. 26;

Lim Poh Choo v. Camden and Islington Area Health Authority [1979] 2 All E.R. 910;

Cunningham v. Harrison [1973] 3 All E.R. 463;

Croke v. Wiseman [1981] 3 All E.R. 852 at pp. 858, 864;

Aristodemou v. Angelides and Philippou Ltd. (1976) 1 C.L.R. 93 at p. 96;

Karaolis v. Charalambous (1976) 1 C.L.R. 310 at p. 321;

Antoniou v. Iordanous (1976) 1 C.L.R. 341 at p. 349;

Panayides v. The Republic (1981) 1 C.L.R. 304 at p. 309.

Appeal.

Appeal by defendant against the judgment of the District Court of Larnaca (Pikis, P.D.C. and Michaelides, D.J.) dated the 16th April, 1981 (Action No. 1172/78) whereby he was ordered to pay to the plaintiff the sum of C£24,164.- as special and general damages in respect of injuries which he received as a result of a road accident.

A. Drakos with *Chr. Clerides*, for the appellant.

Ant. Lemis, for the respondent.

TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellant has appealed against the judgment of the District Court of Larnaca by virtue of which he was ordered, on 16th April 1981, to pay to the respondent special and general damages amounting to C£24,164, and costs, in respect of injuries which the respondent received on 21st May 1978 when,

while driving his own taxi, he collided with a lorry driven by the appellant.

The total amount of special and general damages were assessed at C£56,328, out of which, as the parties had agreed that they were equally liable, through negligence, for the collission in question, the appellant was adjudged to pay C£28,168, minus C£4,000 which had already been paid to the respondent on 10th July 1980.

In determining this appeal we have derived very great assistance from the fact that the judgment of the trial court was, obviously, very meticulously prepared; and we shall be quoting from it at some length as and when the need arises.

The injuries suffered by the respondent and their effect on his health are described in the judgment of the trial court as follows:

> "... the plaintiff suffered devastating injuries that rendered him totally incapacitated, virtually a human wreck. His grave condition is described in a joint medical report issued on 6th December 1979 by Doctor N. Spanos, a neurosurgeon and C. Christodoulakis, an orthopaedic surgeon. It appears that all his faculties were damaged, in fact put out of action, except for the functioning of the mind. No doubt the realization of his helplessness must aggravate his pain and suffering. The concluding part of the report of the doctors gives a picture of his condition. We quote:
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> > 'Opinion: The patient sustained severe damage to his cervical spinal cord at the accident he was injured in on the 21.5.1978. As a result of that he was tetraplegic initially. He made very little improvement and he remains incapacitated and restricted to a wheel chair life. His rehabilitation has not been very satisfactory and he requires assistance for every personal need.
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> > Some further improvement towards his independence might be achieved if he is treated and rehabilitated in a special centre for paraplegics, but is not anticipated that he will ever reach a stage of thorough independence for his personal needs'.

The inescapable inference is that plaintiff shall have to depend, for the rest of his life, on others for his existence. His condition has not improved notwithstanding the lapse of nearly three years from the day of the accident. And his condition is likely to deteriorate if he does not have proper nursing, as Dr. Pelides (P.W.1) testified".

The assessment of damages by the trial court has been challenged on three grounds: First, that the amount awarded in respect of nursing services to be rendered in future to the respondent by his wife is excessive, secondly, that the multipliers used for the determination of future losses of earnings and future nursing expenses were wrong, and, thirdly, that the general damages awarded for pain, suffering and loss of amenities were excessive.

As regards the future nursing requirements of the respondent the trial court found as follows:

"Dr. Pelides analysed the nursing requirements necessary to keep the plaintiff comfortable and prevent a deterioration of his health. The plaintiff must be nursed 24 hours a day. It seems that the nursing he has had so far was not as extensive or as thorough as it should have been. Dr. Pelides found the plaintiff in a worse condition that he would expect him to be having regard to his quadriplegia. Regrettably no institutions are available in Cyprus for the care of tetraplegics and the prospect for the establishment of any such institution appears at present to be remote.

Not only the plaintiff must be assisted for the discharge of elemental needs but also he must be moved about in bed in order to avoid bed sores. With proper nursing his span of life will be within the range of the normal. He endorsed the decision of the plaintiff to seek care at home for psychological reasons as well as because of lack of facilities for the care of tetraplegics in Old People's Homes.

The extent to which the plaintiff must be nursed is apparent from the evidence of the plaintiff himself. His decision to seek care at home cannot be faulted for it is perhaps the only place where he can derive a degree of pleasure from life".

In respect of the future nursing services of the wife of the respondent the trial court awarded C£100 per month for a period of eight years; and, in this connection, it stated the following:

"We shall act, in the light of the evidence, on the assumption that the cost of employing a professional nurse at present for an 8–hour shift is £5 a day. We have been invited, on behalf of the plaintiff, to hold that plaintiff is entitled to the cost of employing more than one nurses a day. A realistic assessment of the situation leads us to the conclusion that the wife of plaintiff who has, so far, shown both nursing capabilities and strong devotion to her husband can fill the gap. We think that she could manage, by the employment of the professional nurse who will relieve her for part of the day of the need to look after her husband whereas she will assume the nursing responsibilities for the rest of the day. For this she is entitled to be remunerated (see *Owens* v. *Brimmell* [1976] 3 All E.R. 765). It would be socially unacceptable to allow the wrong doer to benefit from the readiness of close relations to render gratuitously services to the victim of tort. Their inclination to help is sustained by making an appropriate allowance for their remuneration.

In all the circumstances of the case we should allow another £100 per month for the nursing services to be rendered by the wife".

It is useful, at this stage, to quote the following passages from the judgment of Tasker Watkins J. in *Owens* v. *Brimmell*, [1976] 3 All E.R. 765, at pp. 773, 774:

"He is looked after, as I find, from their evidence by his mother and father and, to a lesser extent, by his brother and sister. There are times when he is left alone at home because his mother works in a shop and his father is in regular employment. They are both hard–working and sensible people, who have accepted their new and onerous responsibility philosophically. His mother told me that the plaintiff goes for short walks on his own. When at home he is nearly always drawing or sitting still. He does not really look at television but he enjoys a bit of

pop music. He can make himself a cup of tea to accompany food prepared for him to eat when he is left alone. I observed that he answers simple questions quite quickly and to the point. I thought he understood what taking an oath meant so I caused him, before giving the small amount of evidence he gave, to take the oath. He is undoubtedly utterly dependent on the care given to him by his father and mother.

There is another matter, however, which cannot and must not be left out of account in cases of this nature. Although it is not suggested for a moment that he is in need of repetitive daily nursing attendance and attention, he is in need of constant care and attention. He is dependent on his family and it would be wholly wrong to allow the case to pass by without recognition of the new-found and unexpected and onerous responsibilities of the parents, unless the damages include some measure of compensation, payable, of course, to the plaintiff but so as to enable him to reward his parents suitably for the work they do regularly on his behalf. They had thought that when he married and had a child their duties of parenthood were over and I suppose even on the failure of the marriage, when he came back the same fit, strong, young man, that they had little else to do save, so far as his mother was concerned, to prepare his meals, for which she could reasonably expect some payment from him. That, obviously, can no longer be the case. I think the sum of £500 a year is suitable to mark that kind of loss which the plaintiff can be said to suffer, since, as I have said, it would be wholly unacceptable, at any rate it is to me, that the parents should have to shoulder the new-found responsibilities without recompense".

From the above passages it is abundantly clear, in our opinion, that when there is compared the amount of £500 per year, which was assessed in respect of future nursing expenses of the plaintiff in the *Owens* case, supra, in the light of the circumstances described in the said passages, with the amount of C£1,200 per year which was awarded in respect of future nursing services by the wife of the respondent in the present case, in the condition in which, as already stated in this judgment, the

respondent is, the inevitable conclusion has to be that the said amount of C£1,200 is not excessive but, on the contrary, rather on the low side and there is no reason, therefore, to interfere with it.

As regards the multipliers adopted by the trial court the following are stated in its judgment:

> "The multiplier is the principal instrument for the determination of the present value of future losses and as the future is fraught with uncertainty because of the frailty of human life and uncertainty about environmental conditions the multiplier is not co-extensive with the projected span of the working life of the plaintiff as it may be foreshadowed by statistical data. Furthermore it is scaled down in order to make allowance for the fact that in reckoning compensation for future losses regard should be had not only to the capital, as represented by the Court's award, but to the income therefrom in years to come as well. In *Poullou* v. *Constantinou* (1973) 12 J.S.C. 1645 (not published in the C.L.R.) the Supreme Court pointed out that the age of retirement to old age pension is not the ceiling of one's working life. Indeed in *Demetrios Antoniades* v. *Andreas Nicolaou Markides* (1969) 1 C.L.R. 245 a multiplier of 4 was chosen in the case of a man of 63. In *Poullou* (supra) the Supreme Court made reference to a number of factors that have a bearing on the determination of the multiplier for the forecast of future losses of earnings. Regard should be had to the financial position of the plaintiff as reflecting his amenity for an early retirement, his health as a pointer to his span of life and lastly the nature of his work, indicative of the hazards lying ahead. In this case the plaintiff was a healthy man engaged in a rather hazarduous occupation.
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> In *Taylor* v. *O' Connor* [1970] 1 All E.R. 365 (H.L.) Lord Pearson observed that annuity tables are not an infallible guide to the choice of the multiplier, whereas in *Gavin* v. *Wilmot Breeden Ltd.* [1973] 3 All E.R. 935 (C.A.) it was stressed that the choice of a multiplier does not depend on any fast and hard rule.
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> The choice must be approached from a wide angle after a proper evaluation of all factors bearing on the issue.

The Courts have rejected suggestions that the multiplier should be raised in order to counter balance future inflation for two reasons: Firstly because future inflation is both as unknown and imponderable fact and secondly because the adverse effects of inflation may be offset by a wise investment of the funds. (See *Cookson* v. *Knowles* [1978] 2 All E.R. 604 (H.L.).

The multiplier must be chosen by reference to the age of the plaintiff at the time of the trial. (See *Dodds* v. *Dodds* [1978] 2 All E.R. 531).

The Age and Expectation of Life at the time of the Trial

The plaintiff at present is aged about 59 and he has, provided he is properly looked after, normal life prospects.

Counsel rightly agreed that the multiplier for nursing expenses should be higher compared to that adopted for future losses of earning for the obvious reason that it is fixed by reference to plaintiff's expectation of life and not his expectation of working life.

Having weighed all relevant factors we have come to the decision that the multiplier for the determination of future losses of earnings should be fixed at 6 *and that for the determination of future nursing expenses at* 8".

It may be observed, while on this point, that in the case of *Poullou* v. *Constantinou*, (1973) 1 C.L.R. 177, which is referred to by the trial court in the above passage, the plaintiff was at the time of the accident sixty-five years old and it was argued that it should be considered that in view of his age his working life had come to an end at the time of the accident.

A. Loizou J. stated, however, the following (at pp. 184, 185):

"In our view, reaching the age of entitlement to pension under the Social Insurance Law, does not by itself and automatically mark the end of one's working life which has to be considered in relation to a number of factors, including the financial condition, the health and the nature of one's work, as well as the fact that pension benefits are

not so big as to offer the means for complete retirement from profitable employment to a number of people.

The trial Court, in our judgment, in the performance of its duty to give a fair and reasonable compensation to the plaintiff in order to put him in the same position so far as money can do it, as he would have been had he not sustained those injuries, took a reasonable view of the case and we have found nothing to suggest that its assessment of general damages was based on some wrong principle of law or that it was extremely high as to make it a wholly erroneous estimate, so as to justify our interference.

General damages awarded once and for all, include damages for pain and suffering or loss of amenities of life, headings conventional in character, not capable of mathematical calculation; they have to be assessed on the basis of comparable awards in comparable cases and there is always a margin of discretion. So long therefore as the amounts awarded are within those limits, this Court will not interfere".

Counsel for the appellant, in the present case, has argued that the multipliers used for the determination of future loss of earnings, that is six years, and for the determination of future nursing expenses, that is eight years, were too high and that as regards both the above matters a multiplier of four years ought to have been used; and in support of the above contention we have been referred to, inter alia, *Antoniou* v. *Kyriakou*, (1978) 1 C.L.R. 77, 92, *Antoniades* v. *Markides*, (1969) 1 C.L.R. 245, *Mylonas* v. *Kaminarides*, (1972) 1 C.L.R. 215 and *Curium Palace Hotel Ltd.* v. *Eracleous*, (1979) 1 C.L.R. 26, which were decided by this Supreme Court, and, also, to the English cases of *Lim Poh Choo* v. *Camden and Islington Area Health Authority*, [1979] 2 All E.R. 910 and *Cunningham* v. *Harrison*, [1973] 3 All E.R. 463.

In approaching the aspect of the multipliers in the present case we have borne duly in mind the following dictum of Denning MR in *Croke* v. *Wiseman*, [1981] 3 All E.R. 852, (at p. 858):

"The multiplier in these cases is of much importance. It makes many thousands of pounds' difference to the award.

There should be a reasonable degree of uniformity in the approach by the judges, and it is the function of the Court of Appeal to assist in attaining it".

Griffiths L.J. in the same case said in relation to the matter of the multiplier the following (at p. 860):

"It is desirable that on comparable life expectation there should not be too great a disparity between the multipliers used in the different cases, although complete uniformity can never be expected because different circumstances will affect different cases".

Also, Shaw L.J. said, again in the same case (at p. 864) the following:

"It is universally accepted that in the assessment of damages in this field where no fixed mathematical basis exists it is not right to apply a slide-rule examination to the determination of the trial judge".

Having borne in mind the above dicta we do not think that the mutlipliers used, in the present instance, by the trial court were not reasonably open to it or that they were so high as to offend against the need for uniformity in the light of the multipliers used in other comparable cases, in so far as, of course, they could be treated as comparable having regard, on the one hand, to their particular circumstances and, on the other hand, to the circumstances of the present case. We, therefore, see no reason to interfere with the multipliers adopted by the trial court.

Lastly, as regards the aspect of general damages for pain, suffering and loss of amenities in relation to which the amount of C£15,000 was awarded, we have, on the basis of all the material before us—(including the terrible situation in which the respondent has found himself as a result of his injuries, and, especially, the fact that he is aware of his condition and, consequently, his suffering is increased even more)—reached the conclusion, in the light, too, of the principles governing our powers to interfere on appeal with the assessment of general damages (see, inter alia, *Aristodemou* v. *Angelides & Philippou Ltd.*, (1976) 1 C.L.R. 93, 96, *Karaolis* v. *Charalambous*, (1976)

1 C.L.R. 310, 321, *Antoniou* v. *Iordanous*, (1976) 1 C.L.R. 341, 349 and *Panayides* v. *The Republic*, (1981) 1 C.L.R. 304, 309, as well as the case of *Poullou*, supra), that we should not reduce the aforementioned amount of general damages.

Consequently, this appeal fails and it is dismissed with costs. 5

Appeal dismissed with costs.