1984 February 20

[HADJIANASTASSIOU, SAVVIDES, PIKIS, JJ.]

ZOE ACHILLEOS, THROUGH HER FATHER AND NATURAL GUARDIAN COSTAS ACHILLEOS,
Appellant-Plaintiff.

v.

SOCRATIS CHARALAMBOUS AND ANOTHER,
Respondents-Defendants.

(*Civil Appeal No.* 6535).

Findings of fact made by trial Court—Appeals turning thereon—Principles applicable—Road accident—Personal injuries—Over-perspiration—Finding of trial Court that it was not due to the accident fully warranted by the evidence before it.

The appellant-plaintiff was injured in a traffic accident and sustained a slight concussion and a small bruise above the left eye-brow. The trial Court awarded to her the sum of £300 as general damages and rejected her claim in respect of an alleged post-traumatic effect namely over-perspiration of her hands. Hence this appeal which was solely directed against the finding of the trial Court in respect of over-perspiration.

In connection with her claim for over-perspiration appellant relied on her own evidence and that of Dr. Charalambides who mentioned that the manifestation of post-concussional syndromes is different in respect of each person, both concerning the type and duration; and that though she was examined by a number of doctors none of them was called to give evidence on the subject of perspiration. On the totality of the evidence adduced by appellant the trial Court was not satisfied that her over-perspiration was due to the accident.

Held, that this Court will only interfere with the findings of a trial Court if satisfied that such findings are not warranted by the evidence before it and that the reasoning behind them is wrong; that having perused the record this Court is satisfied that the

findings of the trial Court are fully warranted by the evidence and it has not been persuaded that such findings are erroneous, accordingly the appeal must fail.

Appeal dismissed.

Cases referred to:

Pilavaki v. CY.T.A. (1963) 2 C.L.R. 429;

Nicolaides v. Economides (1963) 2 C.L.R. 78;

HadjiPetri v. HadiGeorghiou (1969) 1 C.L.R. 326;

Kkafa v. Kalorkotis (1982) 1 C.L.R. 372 at p. 378.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Artemides, Ag. P.D.C.) dated the 4th February, 1983 (Action No. 2400/79) whereby she was awarded the sum of £355.- as special and general damages for injuries suffered by her as a result of an accident.

P. Ioannides, for the appellant.

G. Pelaghias, for the respondent.

Cur. adv. vult.

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

SAVVIDES J.: This is an appeal against the judgment of the District Court of Nicosia, by which a sum of £355.- was adjudged to appellant for special and general damages for injuries suffered by her as a result of a road traffic accident in which she was involved. The appeal is directed against the finding of the trial Court whereby a claim in respect of an alleged post-traumatic effect and in particular, over-perspiration of the hands, was rejected.

The accident in respect of which the cause of action arose, occurred on 6.8.1977 when bus TDY 334 owned by respondent 2 and driven by respondent 1, in which appellant was a passenger, went off the road and collided with an electric pole. The liability was admitted by respondents and the only issue which was left for determination by the Court, was the quantum of damages.

At the time of the accident the appellant was 16 years old, and as a minor brought the action through her father as her natural guardian.

The trial Court after hearing a number of witnesses called by the parties, including the appellant, came to the conclusion that the only injuries that appellant proved were a small bruise above the left eye brow and slight concussion, and awarded to her the sum of £300.- as general damages. The trial Court, however, rejected her complaint that the over-perspiration of her hands was the result of the accident. On the date of the hearing of the action the appellant was 21 years old and was working as an assistant hairdresser earning £76.-per month. She contended that due to the over-perspiration of her hands, a symptom which as she alleged appeared a few months after the accident, she could not carry her work properly and earn higher wages. The trial Court found as a fact that appellant's hands presented an over-perspiration which caused her inconvenience and anxiety and she had to carry with her tissue paper to dry them up, but was not satisfied that this suffering was either the result of her injury or that in any way it affected her work. In explaining the reason for reaching such conclusion, the learned trial Judge said in his judgment:

> "It is admitted that plaintiff suffered a very mild concussion and normally slight post-concussional syndromes disappear in a relatively short time. It is a fact that Dr. Charalambides mentioned that the manifestation of post-concussional syndromes is different in respect of each person, both concerning the type and duration. On the totality, his evidence does not satisfy me to attribute the suffering of the plaintiff to the accident. My opinion does not rest only on the evidence of Dr. Charalambides but also on the evidence of the plaintiff which, as I have already found, has not proved satisfactory in many respects. Also, plaintiff herself mentioned that in connection with the over-perspiration of her hands, she was examined by a number of doctors, three of whom at the clinic of Dr. Christopoulos and also by Dr. Kessaris and others, but none of these doctors was called to give evidence on this subject".

Though the learned trial Judge rejected appellant's claim for over-perspiration of her hands, following the established pract-

ice, (see, *Nocolaides* v. *Economides* (1963) 2 C.L.R. 78, *Pilavaki* v. *Cyprus Inland Telecommunications Authority* (1963) 2 C.L.R. 429, *HadjiPetri* v. *HadjiGeorghiou and Another* (1969) 1 C.L.R. 326) proceeded and assessed the damages to which the appellant would have been entitled, had she proved her claim at £400 -

At the hearing of this appeal counsel for appellant stated that he considered the amount awarded for concussion as satisfactory and that the present appeal is not directed against such award but against the findings of the trial Court in respect of over perspiration and the quantum of damages which the Court considered as sufficient in respect of such complaint, had the plaintiff succeeded on such issue

In arguing this appeal, counsel for the appellant contended that the trial Court erroneously found that the over-perspiration of the plaintiff was not due to the accident. There was evidence, counsel submitted, coming from the plaintiff and Dr. Charalambides which, considered with the rest of the evidence, leaves no doubt that the over-perspiration is due to the accident and, therefore, the finding of the trial Court that the evidence was not satisfactory is unjustified. Finally, he concluded that the sum of £400 - which the trial Court found as satisfactory, in case the claim was accepted, is manifestly low, taking into consideration the findings of the trial Court that three years after the accident this symptom continued to exist and as a result, plaintiff was suffering from inconvenience and anxiety and also the fact that according to appellant's version, which has not been contradicted, her working capacity as a hairdresser has been considerably diminished affecting her present and future earnings

We have carefully considered the arguments advanced by learned counsel for the appellant but we find ourselves unable to accede to his submission that the finding of the trial Court that the plaintiff failed to discharge the onus of proof that the over-perspiration of her hands was the result of the accident, was wrong. It was reasonably open to the learned trial Judge, for the reasons given in his judgment, to treat the evidence before him as insufficient to lead him to the conclusion that the over-perspiration was the result of the accident. We agree with his observation that though from the time when the first

symptoms appeared, some months after the accident, she was examined by Dr. Sofocleous, a specialist psychiatrist on the advice of the orthopaedic surgeon who treated her for the bruise and concussion, and by a number of other doctors, and that on one occasion she was examined at the clinic of Dr. Christopoulos by a medical board, of three doctors, none of whom was called as a witness. The learned trial Judge, rightly took this factor into consideration in evaluating the evidence of the appellant. On the other hand, his finding that the evidence of Dr. Charalambides who examined the appellant three years after the accident, considered with the rest of the evidence before him and in particular the evidence of the appellant and the fact that no medical data were given by him leading to the conclusion that the over-perspiration was due to the anxiety appellant continued to encounter due to the accident, was neither wrong nor unwarranted by the evidence before him.

It has been held time and again that this Court will only interfere with the findings of a trial Court if satisfied that such findings are not warranted by the evidence before it and that the reasoning behind them is wrong. Such principle has been reaffirmed recently in *Kkafa* v. *Kalorkotis and Another* (1982) 1 C.L.R. 372 in which Hadjianastassiou, J., at page 378, had this to say:

> " this Court, when hearing and determining an appeal, is not bound by any determinations of questions of fact made by the trial Courts, and it has power to review the whole evidence in drawing its own inferences. But it will only do so, when a finding is not warranted by the evidence considered as a whole, and the reasoning behind a finding is unsatisfactory and/or is of the opinion that the trial Court was clearly wrong, and that the Court of Appeal should interfere to put right that which has gone wrong in the Court below, bearing always in mind that the making of such findings and the appreciation in general of the evidence at the trial is what the trial Judges are there for".

Having perused the record we are satisfied that the findings of the trial Court are fully warranted by the evidence and we have not been persuaded that such findings were erroneous.

We, therefore, see no valid reason for interfering with the judgment.

In the result, the appeal is dismissed with no costs, as none have been claimed by counsel for respondent.

Appeal dismissed with no order as to costs.