1984 May 23

[A. LOIZOU, DEMETRIADES, STYLIANIDES, JJ.]

ANDROULLA CHRISTAKI PAVLIDES,

Appellant-Defendant,

v.

ANTHIMOS ANDREOU, INFANT,
THROUGH HIS FATHER AND NEXT FRIEND
ANDREAS A. ANTHIMOU,

Respondent-Plaintiff.

(*Civil Appeal No.* 6658).

Damages—General damages—Personal injuries—Bruise over the distal end of the left leg and abrasion over the right iliac cresta and left elbow—Right wrist immobilized in a forearm plaster —Award of £1000 *though on the high side yet within the normal* 5 *brackets of awards made in circumstances such as those in this case—Sustained.*

Damages—General damages—Other than loss of future earnings— To be assessed by reference to comparable awards in comparable cases and by following the trend emanating from such comparable 10 *awards—Necessary adjustments to be made due to the decrease in the value of money.*

The respondent–plaintiff, who was aged nineteen, was injured in a road traffic accident and sustained a bruise over the distal end of the left leg, and abrasion over the right iliac cresta and 15 left elbow. His right wrist was immobilized in a forearm plaster, he was given analgesic tablets and advised rest. He was granted sick leave for over a period of 6 weeks. His injuries entailed severe amount of pain and suffering, initially, subsiding slowly; and following the treatment he was making satisfactory progress.

20 Upon appeal by the defendant against an award of £1000 by way of general damages:

Held, that the amount of £1,000.– awarded as general damages though on the high side, yet is within the normal brackets of

awards in circumstances such as those in this case and this Court is not prepared to interfere with it as it is not satisfied that the trial Judge has acted either upon a wrong principle of Law or has misapprehended the facts or has for some reason made a wholly erroneous estimate of damages suffered, not being enough that there may be a matter of difference of opinion or other preference; that the scale does not go down heavily against the figure for this Court to interfere, the function of a Court of Appeal being to ensure that an award comes within the limits of proper restitution; accordingly the appeal must fail.

Held, further, that some parts making up the award of general damages other than loss of future earnings are not capable of being estimated in terms of money and therefore Courts have to proceed in assessing them by reference to comparable awards in comparable cases and follow the trend emanating from such comparable awards; that such comparable cases do not, however, constitute as in other categories of judicial pronouncements precedents as the necessary adjustments with regard to changes through the ever decreasing worth of monetary units and all reasonable adaptations to the circumstances of the case, have to be made.

Appeal dismissed.

Cases referred to:

Georghiou v. *Planet Shipping Co. Ltd.* (1979) 1 C.L.R. 188 at p. 193;

Skappoullaros v. *Kaisha and Another* (1979) 1 C.L.R. 448 at p. 465;

Lim Poh Choo v. *Camden and Islinghton Health Authority* [1979] 2 All E.R. 910 at p. 920;

Paraskevaides (Overseas) Ltd. v. *Christofis* (1982) 1 C.L.R. 789.

Appeal.

Appeal by defendant against the judgment of the District Court of Limassol (Korfiotis, D.J.) dated the 5th November, 1983 (Action No. 2706/81) assessing and/or awarding the amount of £1000.- by way of general damages, on a full liability basis, claimed by the plaintiff in respect of a traffic accident.

A.S. Myrianthis, for the appellant.

St. Hourry (Mrs.) for the respondent.

A. LOIZOU J. gave the following judgment of the Court. The sole issue that arises in this appeal is the assessment and/or award of the amount of £1,000.—by way of general damages claimed by the appellant to be "wholly erroneous having regard to the evidence as a whole and, in any case, as being so extremely high as to make it a wholly erroneous estimate of the damage and/or excessive and justifying the intervention of this Court by greatly or substantially reducing same".

The facts of this traffic accident case are not in dispute. The liability of each party was agreed as being 50% each and the special damages suffered by them were also agreed. What was left for determination by the learned trial Judge was the amount of the general damages to which the respondent/plaintiff was on a full liability basis entitled to.

They further put in by consent two medical certificates as regards the condition of the respondent/plaintiff. The one certificate was from Dr. Kyriacos Andreou, who had treated him from the injuries he received from the accident, and which is dated 13th July, 1981, and the other from Dr. Elias Georghiou who examined the respondent on the 5th March, 1982.

Te injuries which the respondent received as described in the certificate of Dr. Andreou are as follows:

> "Bruise over the distal end of the Lt. leg. Abrasion over the Rt. iliac cresta, and Lt. elbow. His Rt. wrist was immobilized in a forearm plaster.
>
> X-Ray showed satisfactory position of the fracture separation of the Rt. radial epiphysis.
>
> He was given analgesic tablets and advised rest".

In the opinion of this doctor:

> "This patient sustained the above mentioned injuries in a road traffic accident.
>
> These entailed severe amount of pain and suffering initially subsiding slowly.

Following the treatment he is making satisfactory progress.

Further improvement is expected with time and exercises.

Occasional pain and stiffness after active use of the Rt. hand may remain. 5

He was granted sick leave for over a period of 6 weeks".

When examined by Dr. Georghiou, the respondent was still complaining that he had some occasional aching of the wrist joint in cold weather. The clinical examination of the respondent revealed no deformity, thickening or swelling over 10 the right wrist and the movements appeared to be full with no muscle waisting over the right forearm. In the opinion of this doctor, on the basis of his examination and the X-Ray taken, the crack fracture of the ulnar styloid of the respondent had completely healed and the patient's recovery was complete, 15 there being no functional disability following the patient's accident.

The learned trial Judge then concluded that from the said two medical certificates there did not arise substantial differences regarding what the respondent suffered except that mentioned 20 in the certificate of Dr. Andreou that "occasional pain and stiffness after active use of the right hand may remain" and the testimony of the respondent himself on this point that when it is cold or exerting stress his hand still ached.

After referring to a number of awards from cases referred 25 to in *Kemp and Kemp The Quantum of Damages* 4th Edition Volume II and from Cyprus cases the learned trial Judge taking into consideration "the age of the respondent being nineteen, the injuries he suffered, the pain and sufferring born out of the medical certificates and his own testimony, the present value 30 of money, and the aforesaid authorities" — obviously referring to the cases set out in his judgment — found that the amount of £1,000.- on a full liability basis is reasonable and fair.

Learned counsel for the appellant has argued that this amount was manifestly excessive and in consequence thereof wrong in 35 principle, as he put it, and he referred us to awards in other cases decided by this Court.

Whilst on this point we would like to say that some parts making up the award of general damages other than loss of future earnings are not capable of being estimated in terms of money and therefore Courts have to proceed on assessing them by reference to comparable awards in comparable cases and follow the trend emanating from such comparable awards. Such comparable cases do not, however, constitute as in other categories of judicial pronouncements precedents, as the necessary adjustments with regard to changes through the ever decreasing worth of monetary units and all reasonable adaptations to the circumstances of the case, have to be made. (See *Georghiou* v. *Planet Shipping Co., Ltd.*, (1979) 1 C.L.R. p. 188 at p. 193 and *Skapoullaros* v. *Kaisha and another* (1979) 1 C.L.R. p. 448 at p. 465 where reference is made to what Lord Scarman said in *Lim Poh Choo* v. *Camden and Islinghton Area Health Authority* [1979] 2 All E.R. 910 at p. 920 to the effect that "there will be a tendency in times of inflation for awards to increase, if only to prevent the conventional becoming contemptible".

Furthermore reference may be made to *Paraskevaides (Overseas) Ltd.*, v. *Christofis* (1982) 1 C.L.R. p. 789 where it was pointed out that there "is a steady tendency to liberalize awards for damages by awarding greater amounts to what was regarded as the norm in days past".

On the totality of the circumstances before us and having paid due regard to the arguments of learned counsel for the appellant, we have come to the conclusion that the amount of £1,000.- awarded as general damages, though on the high side, yet is within the normal brackets of awards made in circumstances such as those in this case and we are not prepared to interfere with it as we are not satisfied that the learned Judge has acted either upon a wrong principle of Law or has misapprehended the facts or has for some reason made a wholly erroneous estimate of damage suffered, not being enough that there may be a matter of difference of opinion or other preference. The scale does not go down heavily against the figure for this Court to interfere, the function of a Court of Appeal being to ensure that an award comes within the limits of proper restitution.

For all the above reasons this appeal is dismissed but having felt that the award of general damages was on the high side, we have decided to make no order as to costs.

Appeal dismissed with no order as to costs.