

1985 January 9

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

ANDREAS EVRIPIDOU AND ANOTHER,

*Appellants-Defendants,*

v.

PANAYIOTA M. KANNAOUROU,

*Respondent-Plaintiff.*

(Civil Appeal No. 6697).

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*Civil Procedure—Pleadings—Amendment—Before and during the hearing—Principles applicable—Action for damages for personal injuries—Statement of claim rightly amended during the hearing so as to tally with existing condition of plaintiff.*

In an action for damages for personal injuries the plaintiff sought to give evidence that would have, if accepted by the Court, increased the amount of damages as compared to those in the statement of claim. The defendant objected successfully to this course and when the hearing was adjourned the plaintiff filed an application for the amendment of the statement of claim so that same would tally with her existing condition and, therefore, allow her to prove matters that would entitle her to higher damages both special and general. 5 10

The defendant objected to the application but the trial Judge granted the amendments prayed for. Hence this appeal by the defendant which was argued on the single issue that the application for amendment came up too late and injustice will be suffered by the appellant-defendant by the order made. 15 20

Held, that it is well settled that as a rule of conduct, however negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side, and there is no injustice if the 25

other side can be compensated by costs; that before the  
 hearing leave is readily granted on payment of the cost  
 occasioned, unless the opponent will be placed in a  
 worse position than he would have been if the amended  
 5 pleading had been delivered in the first instance; that  
 leave to amend is sometimes given at the hearing but the  
 Court will not readily allow at the trial an amendment,  
 the necessity of which was abundantly apparent months  
 ago and then not asked for; that at any rate, it would be  
 10 wrong to allow an amendment at the close of the evidence  
 or even at an extremely late stage of the trial where it  
 could result in a party being confronted with an entirely  
 new case; that on the facts of this case the trial Judge  
 rightly exercised his discretion in the circumstances  
 15 as no injustice will be done to the appellant by allowing  
 the order for the amendment of the statement of claim to  
 stand, in as much as the plaintiff-respondent has already  
 submitted herself to an examination by the doctors of  
 the choice of the appellant and no doubt she will submit  
 20 herself for a further examination, if required, so that her  
 condition can be verified by them as well; that, in any  
 event, the evidence to be adduced, consequent to the  
 amendment, both that of herself and that of medical experts,  
 will be subject to the scrutiny of cross-examination; that  
 25 moreover, the appellants will have the opportunity to  
 adduce their evidence and challenge any new fact put  
 forward by the further evidence adduced by the respondent-  
 plaintiff; accordingly the appeal must fail.

30 *Held, further*, that in personal injuries cases, as the  
 one under consideration, damages are determined by a  
 trial Court once and for all; that being so the condition  
 of the plaintiff up to judgment, as well as the expenses  
 incurred, including loss of wages, is another factor to be  
 borne in mind by trial Courts in the exercise of their  
 35 discretion.

*Appeal dismissed.*

Cases referred to:

*United Sea Transport v. Zakou* (1980) 1 C.L.R. 510;

40 *U Drive Co. Ltd. v. Panayi and Another* (1980) 1  
 C.L.R. 544;

*Pourikkos v. Fevzi* (1963) 2 C.L.R. 24;

*Nicolaidis v. Yerolemi* (1980) 1 C.L.R. 1;

*Associated Leisure Ltd. and Others v. Associated Newspapers Ltd.* [1970] 2 All E.R. 754 at pp. 756-757;

*Brown v. Dean* [1910] A.C. 373.

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**Appeal.**

Appeal by defendant 2 against the ruling of the District Court of Nicosia (Demetriou, Ag. P.D.C.) dated the 9th January, 1984 (Action No. 5778/80) granting defendant's application for leave to amend her statement of claim.

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*Th. Ioannides* with *P. Liveras*, for the appellant.

*A. Pandelides*, for the respondent.

A. LOIZOU J. gave the following judgment of the Court. This is a typical instance of an action for damages for personal injuries where in the course of the hearing the plaintiff sought to give evidence that would inevitably, if accepted by the trial Court, increase the amount of damages both special and general as compared to those claimed in the statement of claim. To this attempt made on behalf of the plaintiff, the defendant-appellant in this appeal objected to, successfully and the case went on with the hearing of the testimony of the plaintiff herself and two witnesses whose evidence turned only on the question of liability.

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When the case was adjourned and before the date of the next hearing, the plaintiff filed an application for the amendment of the statement of claim so that same would tally with the existing condition of the plaintiff and therefore allow her to prove matters that would entitle her to higher damages both special and general. This, according to the affidavit filed in support of that application, was necessitated by the fact that contrary to the expectations of the plaintiff her condition did not improve and crystalize as thought of originally and consequently this course had to be pursued even at this late stage of the proceedings.

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The appellant objected to that application but the learn-

ed trial Judge exercised his discretion in favour of granting the amendments prayed for.

5 This appeal has been argued before us on the single and vital issue that the application for amendment came up too late and injustice will be suffered by the appellant-defendant by the order made and of course if permitted by this Court to stand.

10 We need hardly refer to the principles of law governing the question of amendments of pleadings and at that statements of claim. The matter came up before this Court in numerous cases and it is well settled that as a rule of conduct, however negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side, and there is no injustice if the other side can be compensated by costs.

20 Before the hearing leave is readily granted on payment of the cost occasioned, unless the opponent will be placed in a worse position than he would have been if the amended pleading had been delivered in the first instance. Leave to amend is sometimes given at the hearing but the Court will not readily allow at the trial an amendment, the necessity of which was abundantly apparent months ago and then not asked for. At any rate it would be wrong to allow an amendment at the close of the evidence or even at an extremely late stage of the trial where it could result in a party being confronted with an entirely new case.

30 A review of the position as regards amendments of pleadings has been made by Malachtos, J., sitting alone, in the case of *United Sea Transport v. Zakou* (1980) 1 C.L.R., p.510, and also by this Court on appeal in *U Drive Co. Ltd. v. Efsthios Panayi and Another* (1980) 1 C.L.R. p.544, where reference is made to numerous decisions of this Court as well as to English authorities. In this case an application for amendment of the statement of claim on appeal was refused in the circumstances of the case and Triantafyllides, P., in delivering the judgment of the Court distinguished it to that of *Pourikkos v. Fevzi* (1963) 40 2 C.L.R. 24 on the ground that leave to amend the state-

ment of claim was granted during the hearing of an appeal, so that there could be recovered special damages which had been awarded in relation to the damage caused to the scooter of the plaintiff in that case and which could not otherwise have been recovered because the plaintiff had only claimed damages for personal injuries.

On the facts of this case we have come to the conclusion that the learned trial Judge rightly exercised his discretion in the circumstances as no injustice will be done to the appellant by allowing the order for the amendment of the statement of claim to stand, in as much as the plaintiff-respondent has already submitted herself to an examination by the doctors of the choice of the appellant and no doubt she will submit herself for a further examination, if required, so that her condition can be verified by them as well. In any event, the evidence to be adduced, consequent to the amendment, both that of herself and that of medical experts, will be subject to the scrutiny of cross-examination. Moreover, the appellants will have the opportunity to adduce their evidence and challenge any new fact put forward by the further evidence adduced by the respondent-plaintiff.

No doubt the filing of an application for amendment late in the day is a factor to be taken into consideration. This matter was dealt with at some length in *Lambros Nicolaidis and Another v. Marina Yerolemi* [1980] 1 C.L.R. p.1. The principle governing such an issue is as stated by Lord Denning, Master of the Rolls, in *Associated Leisure Ltd. and Others v. Associated Newspapers Ltd.* [1970] 2 All E.R. 754, at pp. 756-757, "that an amendment ought to be allowed, even if it comes late, if it is necessary to do justice between the parties, so long as any hardship done thereby can be compensated in money". Linked with this issue is, of course, the principle stated by Lord Loreburn L.C. in *Brown v. Dean* [1910] A.C. 373, House of Lords, at p.374, regarding the extreme value of the old doctrine "Interest rei publicae ut sit finis litium".

Amendments inevitably result in delays on account of their necessitating at times even the adjournment of the hearing of a case. This is also a factor that has to be

5 taken into consideration by a trial Court in the exercise  
of its discretion for or against granting an application for  
amendment. The plaintiff, is naturally more anxious to  
see that litigation comes to an end, both from the point  
of view of obtaining as quickly as possible the compensa-  
tion to which he may be entitled as well as being relieved  
from the strain and anxiety that is inevitably caused by  
prolonged litigation. A defendant may likewise be affected  
by a delay but at least in so far as the payment of  
10 compensation is concerned, he may be on occasions on  
the profiting side.

15 It has also to be born in mind that in personal injuries  
cases, as the one under consideration, damages are deter-  
mined by a trial Court once and for all, that being so the  
condition of the plaintiff up to judgment, as well as the  
expenses incurred, including loss of wages, is another  
factor to be born in mind by trial Courts in the exercise  
of their discretion.

20 For all these reasons we find ourselves unable to  
interfere with the exercise of the learned trial Judge's  
discretion and consequently we dismiss the appeal with  
costs.

*Appeal dismissed  
with costs.*