CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

ON APPEAL

AND

IN ITS ORIGINAL JURISDICTION

CYPRUS LAW REPORTS

VOLUME 1 *(Civil)*

1986 February 15

[SAVVIDES, J.]

ANDRI CONSTANTINOU AND ANOTHER
AS ADMINISTRATORS OF THE ESTATE OF
THE DECEASED GEORGHIOS CONSTANTINOU,

Plaintiffs,

v.

MUSTAKAS SHIPPING AGENCIES LTD.,

Defendants.

(Admiralty Action No. 49/81).

Negligence—Contributory negligence—Stevedore injured in the course of his employment with the defendants—In the circumstances the defendants were wholly to blame.

Personal injuries—Damages—Causation—Chain of causation broken by reason of supervening causes—Stevedore injured in the course of his employment with the defendants—Died approximately three and a half months after the accident by reason of heart failure—In the circumstances the death was not attributed to his initial injuries, as the chain of causation was broken by reason of supervening causes,

namely his failure to follow his doctor's advice and negligent or inefficient medical treatment.

Personal injuries—General damages—Quantum—Stevedore injured in the course of his employment—Sustained fracture of the 4th, 5th, 6th and 7th rib, Atelectasis, contusion of right lung and serious pain, suffering discomfort and inconvenience for the period 1.12.79 (the date of the accident) to 10.3.80 (the date of his death)—Death not attributed to his initial injuries as the chain of causation had been broken—Award of £2,000.

Interest—The Civil Wrongs Law, Cap. 148 s. 58A (s. 5 of Law 156/85).

The Civil Wrongs Law, Cap. 148 s. 58A (s. 5 of Law 156/85) —Damages—Interest thereon.

This is an action brought by the administrators of the estate of Georghios Constantinou, late of Limassol, who died on the 10.3.1980, whereby they claim special and general damages in favour of the estate of the deceased and for the benefit of his dependants alleging that the death was due to an accident, which occurred on 1.12.79 by reason of the defendants' negligence whilst the deceased in the course of his employment with the defendants was engaged in loading the ship OLGA III.

The deceased was at the material time working together with other stevedores in the hold of the said ship. A hatchman was standing on the deck instructing the winch operator as to how to lower each sling within the hold. Upon landing of the goods, the stevedores were stacking them. Two big containers were loaded first. These two containers were reaching a height of about 8½ ft. Four stevedores were standing on the top of the containers to unhook each sling which was lowered on top of them and then push the goods down. The deceased and another stevedore were in the hold stacking the goods which were being so pushed to the sides of the hold. The foreman was standing on the deck near the hatchman, keeping an eye into the hold and giving instructions to the stevedores working therein as to how the goods were to be stacked

and at the same time shouting out at them to draw their attention that a sling was being lowered.

Whilst the last sling was being landed, instead of landing on top of the containers, it landed in such a position as part of it was on the containers and part of it on the stack of goods on the side. Upon its landing the sling got loose and went rolling down towards the place where the deceased was standing.

As a result the deceased was injured and removed to the hospital, where he was detained for treatment until the 3.12.79. On the 3.12.79 he left the Hospital but on the 4.12.79 he went and was admitted to the clinic of Dr. Zemenides, who accepted him as an in-patient.

Dr. Zemenides report stated, inter alia, that X-Rays revealed facture of the 4th, 5th, 6th and 7th right ribs, atelectasis and contusion of the right lung; that further X-Rays revealed an effusion in the right thoracic cavity; that such effusion vanished and the patient was discharged on the 21.12.79; that on the 11.1.80 an X-Ray revealed reappearance of the said effusion; that the patient was advised to stay in the clinic; that on the 25.1.80 the patient discharged himself; that on the 12.2.80 the patient complained of severe dyspnoea, bloodstained sputum, fever and pain in the right chest; that the diagnosis was bronchopneumonia and heart failure; that on the 20.2.80 another doctor, a cardiologist, was requested to see the patient and that such doctor confirmed the diagnosis; that the patient after intensive therapy recovered; that on the 29.2.80 he was discharged after his chest was clear and that the patient was advised to see the said second doctor for his heart as an out-patient.

On the 10.3.80 the patient died. Though Dr. Zemenides came to know of his death before the 31.3.80 when he made his said report he did not mention his death in the report.

Dr. Zemenides in his evidence gave one of the reasons for the re-appearance of the effusion after the deceased was discharged on the 21st December from his clinic, the

fact that the deceased must have not been taking the tablets which he prescribed to him. Furthermore, that on the 25th January, the deceased, contrary to his advice and whilst his effusion was improving discharged himself from the clinic with the result of his condition getting worse. Also, that on the 29th December, 1979, when he examined the deceased and found that there was effusion, he advised the deaceased to be re-admitted to the clinic and the deceased refused to do so.

Dr. Demetriades, a specialist in general and cardiovascular surgery who was called and gave evidence for the defendants, gave as two of the reasons for the triggering of the condition of the deceased, the insufficient medication or the non co-operation of the deceased with the instructions of the doctor and in commenting on the effect of the conduct of a patient who, acting contrary to the advice of his doctor, takes it upon himself to discharged himself home with effusion in his right cavity, expressed the opinion that this would deteriorate his condition and it might have been the beginning of a heart failure.

The Court found that a patient in the condition of the deceased at the time of his first admittance to the clinic of Dr. Zemenides ought to have been X-rayed immediately, that, bearing in mind the effusion and the respiratory problems, that the deceased presented, tubes had to be applied to him for taking away the fluids accumulated in his lungs and facilitating their oxygenation and that if the respiratory problems persisted, a tracheotomy had to be applied, and that an immediate X-Ray examination would have disclosed the hypertrophy of the heart. The Court further found that Dr. Zemenides failed to do anything of the above. Furthermore when the deceased returned to his clinic with clear indications that he had bronchopneumonia and heart trouble, he treated the deceased for a number of days and waited till the 20.2.80 to call a cardiologist to examine the deceased.

The questions which pose for determination in the light of the pleadings and the arguments advanced by counsel on both sides, are the following:

(1) At the time of the accident did the relationship of master and servant exist between the parties?

(2) If such relationship existed, are the defendants liable for negligence in respect of the accident which gave cause to the present action?

(3) Was the deceased guilty of contributory negligence?

(4) Whether the subsequent death of the deceased was the natural result of the injuries suffered by the deceased or whether the chain of causation between the original injury and the death was broken.

(5) The question of damages.

It should be noted that Counsel for the plaintiffs objected to Dr. Andreas Demetriades giving evidence contending that, once the defendants did not object to the production of the report of the cardiologist in which an explanation of the death was given, they were precluded from calling any evidence to give any other explanation as to the cause of death.

Held, (1) As to the admissibility of the evidence of Dr. Demetriades, that as the line of the defence was that the death was not the result of the injuries that the deceased suffered by reason of the accident, but the result of the negligent or inefficient treatment by Dr. Zemenides or the refusal of the deceased to follow the instructions of his doctor, Dr. Demetriades' evidence was necessary evidence to elucidate on matters concerning the treatment by Dr. Zemenides and as such, it was admissible in evidence.

(2) In the light of the evidence before the Court the relationship of master and servant did in fact exist at the time of the accident between the defendants and the deceased.

(3) In the light of the evidence before the Court there can be no doubt that the defendants are liable for negligence for the accident in question; indeed the accident was the result of the negligence of the defendants' servants who failed to hook the goods properly on the sling which was being lowered into the hold of the ship and also of

the negligence of the foreman and hatchman of the defendants who failed to give proper directions for the landing of the sling in question on top of the containers.

(4) The deceased was not to blame for the accident.

(5) The question as to whether an existing incapacity or death results from the original injury or from supervening cause appears to have been settled in England by the majority decision of the Court of Appeal in *Rothwell* v. *Caverswall Stone Co. Ltd.* [1944] 2 All E.R. 350 and the decision of the House of Lords in *Hogan* v. *Bentinck West Bartley Colliers (Owners) Ltd.*, [1949] 1 All E. R. 585.

The present case is not a case of a mere error of clinical judgment by a medical practitioner, which does not of itself amount to negligence, but a case of medical negligence and inefficient treatment. The death in this case was not the result of the original injury but the result of supervening causes, namely the refusal of the deceased to follow medical advice and the negligent and inefficent treatment by Dr. Zemenides, which have broken the chain of causation.

(6) An award of £2,000 by way of general damages is a fair and reasonable compensation for the injuries which the deceased sustained by reason of the accident and his serious pain, suffering, inconvenience and discomfort for the period as from the date of the accident till his death. In addition there would be an award of £1,700 as special damages (loss of earnings for the period 1.12.79-10.3.80 and medical fees and expenses).

(7) In the light of s. 58A of the Civil Wrongs Law, Cap. 148 (s 5 of Law 156/85) the above amount shall bear interest at 6 per cent annum as from 10.3.80 until to-day and legal interest as from to-day till final payment.

Judgment for £3,700.- with costs.

Cases referred to:

Rothwell v. *Caverswall Stone Co. Ltd.* [1944] 2 All E.R. 350;

Hogan v. *Bentinck West Bartley Colliers (Owners) Ltd.* [1949] 1 All E.R. 585;

Humber Towing Co. Ltd. v. *Barclay* [1911] 5 B.W.C.C. 142;

Rocca v. *Stanley Jones and Co. Ltd.* [1914] 7 B.W.C.C. 101;

Lakey v. *Blair and Co. Ltd.* [1916] 10 B.W.C.C. 58;

Dunham v. *Clare* [1902] 2 K.B. 202;

Ystradowen Colliery Co. Ltd. v. *Griffiths* [1909] 2 Q.B. 533;

Williams v. *Graigoles Merthyr Co. Ltd.* [1924] 132 L.T. 227;

McAuley v. *London Transport Executive* [1957] 2 Lloyd's L.R. 500;

Whitehouse v. *Jordan and Another* [1980] 1 All E.R. 655 affirmed on appeal by the House of Lords [1981] 1 All E.R., 267.

Admiralty Action.

Admiralty action by the administrators of the deceased Georghios Constantinou for special and general damages in respect of injuries and consequential death of the above deceased which occurred by reason of an accident while the deceased was engaged as a stevedore in the loading of the ship Olga III.

C. Hadji Pieras, for the plaintiffs.

G. Erotocritou for A. Neocleous, for the defendants.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The plaintiffs in this action are the administrators of the estate of the deceased Georghios Constantinou late of Limassol who died on the 10th March, 1980 and their claim is for special and general damages in favour of the estate of the de-

ceased and for the benefit of his dependants alleging that his death was the result of an accident in which the deceased was involved.

The accident in question occurred on the 1st December, 1979 on the ship OLGA III which was loading in the port of Limassol and on which the deceased was working as a stevedore. It is contended by the plaintiffs that the accident in question was the result of the negligence of the defendants in whose service the deceased was at the material time, particulars of which are set out in the petition filed by them.

Defendants deny that the deceased was in their employment and they allege that they were acting all along as agents for the defendant ship and that the deceased together with other stevedores were allocated by the Labour Office of Limassol not to them but to the ship OLGA III. They further deny any negligence on their part of the cause of the accident and they allege that the accident was the result of the negligence of the deceased who, in contravention of express instructions to him, went down to such part of the ship as he was not expected to be and where he knew or ought to have known as an experienced stevedore that it was dangerous for him to be. They also deny that the death of the deceased was the result of his injuries at the accident. Finally, they contend that the deceased contributed to a considerable degree to his predicament, by his own negligence.

The questions which pose for determination in the light of the pleadings and the arguments advanced by counsel on both sides, are the following:

(1) At the time of the accident did the relationship of master and servant exist between the parties?

(2) If such relationship existed, are the defendants liable for negligence in respect of the accident which gave cause to the present action?

(3) Was the deceased guilty of contributory negligence?

(4) Whether the subsequent death of the deceased was the natural result of the injuries sufferred by the deceased

or whether the chain of causation between the original injury and the death was broken.

(5) The question of damages.

I shall deal with the above questions in their numerical order and I shall consider first the question as to whether at the time of the accident the deceased was in the service of the defendants acting within the scope and in the course of his employment with them.

Useful assistance in this respect may be derived from the evidence of plaintiffs' witnesses 1, 3 and 4 and that of defendants' witness 3.

P. W. 1, a government official of the Labour Office attached to the section of employment of port labourers of the District Labour Office of Limassol, produced an application (exhibit 1) signed by the defendants for the allocation to them of stevedores for the unloading and loading of the ship OLGA III. Also, copy of the allocation list of stevedores under No. 125461 in the official allocation book of stevedores kept by the Labour Department (exhibit 2) according to which seven stevedores were allocated to the defendants for work on the ship OLGA III amongst whom there were included the deceased and P. W. 4. According to exhibit 2, the foreman for such stevedores was Demetrios Georghiou, alias, Kombos (D. W. 3), who signed such form to the effect that the said stevedores were allocated.

According to the evidence of P. W. 1 the defendants were the employers of the deceased and they never mentioned to him that they were acting as agents for the account of another. Furthermore, that in all documents signed by them, they appear as the employers and nowhere it is mentioned that they were acting as agents of another person and all along they were behaving as being themselves the employers.

P. W. 3 an employee of the District Labour Office in charge of the branch of the Labour Office in which the allocation of porters belongs, explained in his evidence how the labourers are allocated and that for the purpose

of allocation the employer has to sign a form and also produce a certificate of insurance covering the persons to be employed by him. In the present case the persons who signed the form and produced the insurance certificate were the defendants. He also said in his evidence that in the case of an accident the employer is by law obliged to report the accident to his office. After this accident occurred, the defendants submitted a form (which was produced by him as exhibit 5), reporting the accident and in which the defendants describe themselves as the employers. He also produced copy of the insurance policy which was delivered to him by the defendants (exhibit 6).

P.W. 4 a customs porter who was one of the seven stevedores allocated to the defendants, and whose name appears on the allocation list exhibit 1, said in his evidence that at the material time the employers of both the deceased and himself were the defendants and that the leader of the group was Demosthenis Stylianou, who was another stevedore whose name appears in exhibit 2. It should be pointed out that this witness was not cross-examined in this respect.

D.W.3, Demetrios Georghiou Kombos was the foreman for the loading and unloading of the ship OLGA III and is the person who signed exhibit 2, concerning the allocation of the seven stevedores. According to his evidence, he was the person responsible to supervise the stevedores in the way they did their work in the course of the loading and the unloading, and give them instructions how to carry out their work. In cross-examination he stated that the defendants were his employers.

The defendants did not adduce any evidence in support of their allegation that they were not the employers of the deceased and to contradict the evidence adduced by plaintiffs to the effect that the deceased was at the material time in the employment of the defendants. The evidence of D. W. 3, the only witness called by them concerning the circumstances of the accident, supports plaintiff's evidence in this respect.

In the light of the evidence before me, I am satisfied

that at the material time the relationship of master and servant did exist between the defendants and the deceased and that at the time of the accident the deceased was acting in the course of his employment with the defendants.

I come next to examine whether the accident in question was the result of the negligence of the defendants and/or their servants or employees.

The facts pertaining to the accident as emanating from the evidence of P. W. 4 and D. W. 3, are briefly as follows:-

The deseased together with P. W. 4 and a number of other stevedores, including Demothenis Stylianou, who was the hatchman (commandos), were at the material time working in the hold of the ship OLGA III in the course of their employment with the defendants. The hatchman was standing on the deck instructing the winch operator, who was operating the winch from the dock, as to how to lower each sling within the hold and the stevedores were working in the hold: upon the landing of the goods, they were stacking them. Two big containers were loaded first and were placed in the central part of the hold, occupying most of the loading space in the hold. These two containers were reaching a height of about 8½ ft. P.W.4 and three other stevedores were standing on the top of the containers to unhook each sling which was being lowered on top of the containers and then push the goods down, whereas the deceased and another stevedore were in the hold stacking the goods which were being pushed to the sides of the hold after they had been unloaded. D.W.3, the foreman of the defendants was standing on the deck near the hatchman, keeping an eye into the hold and giving directions to the stevedores working therein as to how the goods were to be stacked and at the same time shouting out to them to draw their attention that a sling was being lowered. The cargo which had to be loaded consisted of bales containing clothing material and boxes. When a sling was being lowered, the sling operator was guided by the hatchman so that the sling was landed on top of the containers. The space between the containers and the one side of the hold had already been stacked and the stevedores proceeded to stack goods on the other side of the

containers. Whilst the last sling which contained a big heavy box of about one cubic metre was being landed, instead of landing on top of the containers, it landed in such a position as part of it was on the containers and part of it on the stack of goods on the side. Upon its landing and before the stevedores unhooked the sling, the sling, which appears as having not been properly fixed, got loose and, as a result, it rolled over the half loaded stacks on the other side and went rolling down towards the place where the deceased was standing. The deseased, upon seeing that the box started rolling, moved backwards within such limited space but he could not avoid being hit and injured by the heavy box. He was assisted to climb up the stacks, complaining all the time that he felt strong pain in his chest and that his ribs were broken, and from there he was removed to the hospital.

According to the evidence of P. W. 4, the reason that the deceased and another stevedore were standing at the sides of the containers and not on top of them was to stack the goods which were being pushed by those standing on the containers to the sides of the hold. According to the evidence of D. W. 3 Demetris Georghiou Kombos, the foreman. from where he was standing he could only see some of the stevedores who were on top of the containers but he could not see where the deceased was standing as it was dark inside the hold and his visibility was also obstructed by the goods which had already been stacked in the hold. In his opinion, the deceased should have been standing at a point where he could see the hatchman and the other stevedores who were pushing the cargo to the sides. According to his evidence, he had given instructions to the stevedores to the effect that those who were working at a higher level, to look whether there were any labourers working at a lower level before pushing any goods and to warn them about the fact that goods were being pushed down. and that those who were working at a lower level, to have their attention directed to those working at a higher level so that in case anything dropped, they could have a chance to see it.

In answering a question put to him in his main examina-

tion as to whether he gave any instructions to the deceased to work in that particular part of the vessel where he was at the time of the accident, he answered as follows: "I could only instruct him to stand below the place where the cargo was being thrown. From what I know, the deceased was a very good labourer and, as some of the boxes or cases were not properly stacked and were uneven, it is possible that he might have gone there to stack them properly because he was a very conscientious labourer and this might have escaped the attention of the other labourers."

I have it, from the evidence of P. W. 3 that those who were standing on the top of the containers, at a higher level than that where the deceased was, knew that the deceased and another labourer were standing at such lower level for the purpose of stacking the goods which were being pushed by them.

On the above evidence, which has not been seriously contested or even at all, I have not the slightest doubt that the accident was the result of the negligence of the servants of the defendants who failed to hook the goods properly on the sling which was being lowered, and also that of the hatchman and the foreman of the defendants who failed to give the proper directions for the landing of the sling in question on top of the containers, where it could safely land, but let it land partly on the containers and partly on the stacks, thus making it unsafe for such box to remain steady at such position once the sling was not properly hooked, and as a result it rolled down towards the direction of the deceased and hit him.

I come next to consider whether the deceased has contributed to his injuries as a result of his own negligence. Nothing can be inferred from the evidence before me that the deceased acted in such a way as to be blamed for being negligent. It emanates from the evidence that he was there for the purpose of stacking the goods which were thrown by the other stevedores who were standing on the containers. D. W. 3 admitted in his evidence that the deceased was a very good labourer and that, as some of the boxes were not properly stacked and were uneven, it was possible

that he might have gone there to stack them properly because he was a very conscientious labourer.

In the circumstances, I find that the deceased was not to blame at all for this accident and that the defendants are fully liable.

The last issue which poses for consideration is the extent of the injuries of the deceased and whether his death was the result of the injuries suffered by him in the accident in question.

This has been a hotly contested issue and medical evidence was called by both sides. It is the case for the defendants that the cause of death was not the result of the accident but was the natural result of pre-existing heart trouble. In the alternative, it is submitted that the chain of causation was in any event broken by either the intervening negligent treatment of the doctor, or the intervening conduct of deceased who failed to follow the instructions of the doctor and the medication prescribed.

Counsel for plaintiffs, on the other hand, submitted that it is clear from the evidence that the death of the deceased was accelarated by the accident. Bearing in mind the fact, counsel submitted that the death was accelarated by the injuries the deceased suffered at the accident, and at the same time the conduct of the deceased in leaving the clinic, contrary to the instructions of the doctor, the amount of damages to which the deceased is entitled may be reduced by 50 per cent.

The issue of cause and effect in the present case is indeed very difficult. Using the words of Lord Simonds in *Hogan* v. *Bentick Collieres* [1949] 1 All E.R. 585 at 589, 590, "it raises in the field of law relating to workmen's compensation a problem which in various aspects has long vexed the human mind the problem of cause and effect, which in this relation is the problem whether a particular incapacity results from a particular injury by accident arising out of and in the course of a workman's employment."

In the present case this issue has been complicated in

view of the medical evidence before me and in particular the serious discrepancies and contradictions between the evidence in Court of doctor Zemenides, the orthopaedic surgeon, who treated the deceased in respect of his injuries, and his medical report prepared a few days after the death of the deceased.

Before reaching a conclusion on this issue, I find it necessary to deal, at some length, with the medical evidence. It emanates from the evidence of doctor Zemenides, that after the accident the deceased was removed to the Limassol Hospital where first aid was provided and he was detained for treatment until the 3rd of December, 1979. The deceased left the hospital on the 3rd of December, 1979, after the right part of his chest was immobilised with elastoplast and on the 4th December, 1979, he went to the clinic of doctor Zemenides "walking" (according to doctor Zemenides' evidence) for examination.

There is no evidence before me, except that as to the immobilisation of the chest with elastoplast, regarding the treatment of the deceased at the hospital and the circumstances which led to his discharge from the hospital. Doctor Zemenides on admission of the deceased at his clinic, did not make any inquiries from the hospital as to the injuries of the deceased, the treatment he had and the medication prescribed to him.

Doctor Zemenides after examining clinically the deceased and without carrying out an X-Ray examination to ascertain the nature or the extent of his injuries, removed the elastoplast and accepted him in his clinic as an in-patient. The reason he removed the elastoplast, as given by him, was that in his opinion it was not necessary, irrespective as to whether another doctor thought it fit, to apply same.

As to the condition of the deceased when he was admitted at the clinic of doctor Zemenides, the treatment he received and his condition all along till the day he was discharged, I find it necessary to refer to the medical report of doctor Zemenides which was prepared on the 31st March, 1980, that is, a few months after the accident, and which, at the request of counsel for the defendant was produced by doctor Zemenides and is exhibit 3 before me (excluding

the opinion and conclusions mentioned therein) and then I shall deal at some length with the evidence in Court which was given by doctor Zemenides, three years later. The medical report reads as follows:

"INITIAL EXAMINATION AND TREATMENT

The patient on admission was complaining of severe pain in the right chest and dyspnoea.

Objective findings:

The lips, nose and ears were cyanosed; he had paradoxical breathing: his right chest was covered with elastoplast; the chest expansion was limited; the breathing was shallow and quick, about 36/min. He was coughing and the sputum was bloodstained. The chestwall was bruised and he had slight elevation of temperature.

X-Rays of the chest revealed fracture of the 4th, 5th, 6th and 7th right rib, atelectasis and contusion of the right lung. Later on, during his stay in the clinic, further X-Rays showed appearance of effusion in the right thoracic cavity, which eventually vanished following appropriate treatment and he was discharged on the 21st December, 1979; he was seen regularly as outpatient.

On the 11th January, 1980, the patient did not feel well as dyspnoea deteriorated. An X-Ray revealed the reappearance of effusion in the right thoracic cavity and the patient was advised to stay in the clinic. His condition improved but the chest cavity was not clear and he discharged himself on the 25th January, 1980. He was seen irregularly as out-patient.

On the 12th February, 1980, the patient complained of severe dyspnoea, bloodstained sputum, fever and pain in the right chest. It was diagnosed bronchopneumonia and heart failure. On the 20th February, 1980, Dr. Akylas was requested to see the patient and he confirmed the above diagnosis (an appropriate report is supplied by Dr. Akylas). After an intensive therapy the patient recovered.

On the 29th February, 1980, the patient was X-Rayed and he was discharged after his chest was clear. He was provided with lanoxin, lasix and analgesics; he was advised to see Dr. Akylas for his heart as out-patient. Since then I did not see the patient. He was issued a sick leave from the day of the accident until the end of March, 1980.

DIAGNOSIS

1) Fracture of the 4th, 5th, 6th and 7th right rib.

2) Atelectasis of the right lung.

3) Contusion of the right lung.

4) Bronchopneumonia.

5) Heart failure."

Though doctor Zemenides mentions in his report that since the day he admitted the deceased in his clinic for the last time, that is, the 29th February, 1980 and the patient was X-Rayed and discharged, he did not see him again, he mentions nothing about the death of the deceased which occurred on the 10th March, 1980, about which, according to his evidence, he came to know before making his report of the 31st March, 1980.

I am coming now to the oral evidence of doctor Zemenides.

In his examination-in-chief doctor Zemenides, after having described the condition of the deceased on admission in his clinic which is described in his report, said that X-Rays were taken "on the same day he was admitted in his clinic" which revealed the fracture of the ribs and went on as follows:

"Later on during his stay in the clinic further X-Rays showed appearance of effusion in the thoracic cavity, *which eventually vanished following appropriate treatment* and he was discharged on the 21st December, 1979".

As to the condition of the deceased between the 11th January, 1980 when doctor Zemenides re-admitted the de-

ceased in his clinic till the 25th January, 1980, when the deceased discharged himself from the clinic and also between 12th February, 1980 when the deceased was re-admitted in the clinic for the third time till the 29th February, 1980, when the deceased was discharged for the last time after he was X-Rayed and his chest was found clear of effusion, his evidence is a repetiton of the contents of his medical report (exhibit 3) in this respect. As to the cause of bronchopneumonia which ensued on the 12th February, 1980, he said:

> "Bronchopneumonia was the result of the injuries to the ribs and the repeated effusion in the thoracic cavity. It is almost always common when you have fracture of the ribs with effusion in the lungs to have bronchopneumonia."

In support of his opinion that the deceased could not be suffering from his heart before the accident he said that it could not have been possible for a person suffering from his heart to work as a stevedore, because, any physical work would cause pain to his heart and might cause the heart to collapse.

When cross-examined by counsel for respondents doctor Zemenides admitted that the deceased was not X-Rayed on admission in his clinic on the 4th December, 1979 but three days later. Due to the seriousness of the case and the importance of the evidence of this witness, I find it necessary to narrate extracts of his evidence which was given in cross-examination and which runs over 29 pages.

> "Q. When you first examined the patient did you discover that day that he had a fracture of the 4th, 5th, 6th and 7th rib?
>
> A. No, I noticed the fracture on the 7th December, when I X-Rayed him for the first time.
>
> Q. When you made your first diagnosis, as you gave your evidence, what was the first opinion when he was admitted to your clinic?
>
> A. My conclusion was that there was something

wrong with his right chest, that his right lung was not functioning well, that there was some fluid in the right thoracic cavity, and these clinical findings were supported by the fact that his lips, nose and ears were cyanosed and had paradoxical breathing. Also, he had sputum which was bloodstained.

Q. So, your conclusion was that there was something wrong with his right chest?

A. Yes.

Q. When was the first time that you diagnosed pneumonia?

A. The first time that I diagnosed pneumonia was the 12th February, 1980.

. . . . . .

Q. In the first page of your report, the one before the last paragraph, you say that he was discharged on the 21st December, 1979 after the effussion had vanished. I would like to know the exact day that the effusion vanished.

A. In my progress notes of the 14th December, 1979, I have a note saying that 'there is improvement of effusion and reduced atelectasis,' and in my notes of the 21st December, I have that he was discharged and lasix was given to him.

Q. On the 14th December, you said that effusion was subsiding?

A. That is so. I do not have any other note that it vanished altogether. On the 21st December his effusion had diminished but in fact did not vanish completely. What I put in my report is a wrong expression that it eventually vanished.

. . . . . .

COURT: But what you said in your report that the effusion vanished by the 21st December, 1979, is not correct?

A. It is not absolutely correct because once he was discharged with lasix he must have had some residual effusion.

Q. After the 21st December when did you see him again?

A. I saw him again on the 29th December and I had taken an X-Ray again and I noted that effusion reappeared and patient advised to be readmitted.

COURT: This does not appear in your report?

A. No.

Cross-Examination continues:-

Q. Did you readmit him?

A. He did not want to be readmitted.

Q. Why any reason?

A. I cannot tell but he was readmitted on the 11th January.

Q. But your professional opinion is that he should have been readmitted on the 29th?

A. Yes, because the condition concerning the effusion had deteriorated.

Q. Do you know of any reason for the reappearance of the effusion after the 21st December?

A. *One, reason, is a hypothetical one, is that he might not have taken his diuretics.*

Q. Have you asked him whether he has been regularly, according to your instructions, taking the antibiotics you prescribed?

A. Well, the patients always say that they take the drugs but they don't always. I gave him the pills to take them home and the patient had taken them, but I do not know if he had taken them or not. I do not *think he has taken them, otherwise the effusion would not have increased.*

Q. Have you stressed to him the importance of taking them?

A. *Yes, I did.*

Q. Any other reason for the effusion to reappear after the 21st December?

A. Another possibility is that the drug is not the right one for the patient and you have to increase the dose.

Q. Do you know why in this case the effusion re-appeared despite the first reason?

A. *In my opinon he did not take the tablets which I prescribed to him.*

Q. Had he taken the tablets, you say is very difficult for the effusion not to improve?

A. *Yes. Because later on when he came to the clinic and he was under control he was taking the tablets and he was improving.*

Q. Again his condition improved and then on the 25th January his condition, I presume, was still improving? What happened? He was already in the clinic from the 11th, you treated him and you said that you made sure he took this particular medicine?

A. *Yes, and he discharged himself from the clinic contrary to my advice and be under close observation and treatment.*

Q. He insisted to leave the clinic?

A. *Yes.*

Q. On the last occasion, doctor, you have told the Court that after his admission to the clinic he discharged himself home on the 25th January, despite and contrary to your advice. This is just to refresh your mind as to what you said. Do you recollect this?

A. *Yes, and it is correct.*

Q. When did you see again the patient?

A. I saw the patient at home three times as an out-patient because I advised him—since he had discharged himself—to stay home in bed and he must take his medicines.

COURT:

Q. Does this appear in your report?

A. No, this is not mentioned in my report, but I used to see him as an out-patient at regular intervals at his house.

. . . . . .

A. In my opinion we never apply elostoplast to the thoracic wall, only in the cases when there is a double fracture.

Q. So, this was not such a serious case to require the application of elastoplast.

A. Exactly.

Q. And did you immobilise the ribs in any other way?

A. No, we do not immobilise them.

Q. You do not have to immobilise them?

A. No, we do not have to immobilize them.

. . . . . .

COURT:

Q. Did you remove it on the first day he came to your clinic?

A. Yes.

Mr. Erotocritou:

Q. And another doctor thought it proper to apply elastoplast.

A. Another doctor, Yes.

. . . . . .

Q. How do you explain the fact that the effusion did not diminish gradually and we come on the 12th February when his condition deteriorated considerably? This is contrary to your opinion at the time and now.

A. There are three possibilities: *First, either the patient did not take his tablets, secondly, there was* a continuous injury to the lungs and the chest wall and thirdly, he did not respond to the antibiotics, to the medicines generally.

. . . . . .

Q. *The question of the infection on the 12th indicates that either the antibiotics were not working or were not taken.*

A. *Exactly.*

Q. On the 12th you say in your report that you diagnosed bronchopneumonia and heart failure. So, this is the first occasion that you described that there was something wrong with the patient's heart.

A. Yes, it was the first time when I asked Dr. Akylas to come to see him.

. . . . . .

Q. Why did you call Dr. Akylas?

A. I asked Dr. Akylas to come because I noticed something wrong with his heart.

Q. When?

A. On the day of his admission.

Q. What did you notice?

A. Tachyarrhythmia.

. . . . . .

Q. When did you call Dr. Akylas?

A. On the same day.

Q. But in your report you say that you called Dr. Akylas on the 20th February to see the patient, which of the two is correct?

A. Looking into the contents of the file exhibit 4, I find that the patient was examined by Dr. Akylas on 14th February, 1980 and not on the 12th as I said before and neither on the 20th which is mentioned in my report. That is a mistake of the date.

Q. So, it was the 14th and not the 12th.

A. Yes.

Q. Can you give any explanation why the patient was not seen by a cardiologist on the same day that the heart complaint was discovered?

A. No, I cannot".

Doctor Zemenides further stated in his evidence that the effusion as shown on the X-Ray examination was not considerable and for this reason he did not carry out an aspiration (withdrawing of fluid from the thoracic cavity with a syringe) and his evidence in this respect goes on as follows:

"Q. Does effusion appear on the X-Rays?

A. Yes.

Q. Why did you not carry out an aspiration?

A. Because I thought that there was not considerable effusion necessitating such a course.

Q. When you say that there was no considerable effusion, in cc., in quantity, how much do you think there was?

A. I cannot tell you in cc., but I can tell you in which level it was.

Q. Don't you think that effusion which appears on X-Rays, as in this case, must be considerable?

A. No, it was not considered as considerable.

Q. Do you think that effusion of 500 cc. is considerable or not?

A. It is considerable, Yes.

Q. I put it to you that effusion of 500 cc. and upwards only appears on X-Rays and effusion of less than 500 cc. does not appear on X-Rays. Is this correct?

A. No."

Most of the questions put to the witness in re-examination and the answers thereto are such as tending rather to exonerate the doctor from any blame for the deterioration of the condition of the deceased and shift such blame on the deceased. Thus, in this respect, the evidence given is as follows:

"Q. You said that on 25.1.80 the patient left the clinic against your instructions and that he should have remained as an in-patient for treatment. Is it so?

A. Yes, that is so.

Q. The fact that he left the clinic influenced his condition?

A. I think it was not for his benefit to go home because if he had continuous treatment in the clinic it would be much better. However, I insisted that if he would follow this course to go home, he should be confined in bed and take the medicines prescribed. And also I was taking his temparature whenever I was visiting him at home. I was taking his temperature and he never had high temperature.

Q. When wou discharged him on 29.2.80, did you expect his condition to deteriorate in any way?

A. No, I did not.

Q. Can you give the reason of the reappearing of the effusion on 29.12.1979? And if there are more than one reasons, please give them to us.

A. I have mentioned before three possibilities: The one is if the patient was not taking his tablets, secondly, because of the continuous injury of the lung and the membrane of the chest wall by the fractured ribs and thirdly, the contusion of the lung.

Q. Can you say, today, if any of these three reasons was the cause of the reapearing of the effusion in this case?

A. No. I cannot".

In answering certain questions put to him by the Court as to whether, bearing in mind the fact that he could not attribute effusion to any of the three causes described by him and also that he could not find the reason why the effusion disappeared and then reappeared, subsequently diminished and later appeared again, it would not have been necessary for him to call a thoracic expert to examine the deceased, his answer was that he did not consider it proper to call a thoracic expert. In his opinion, every general or orthopaedic surgeon should be able to treat such a case without the co-operation of a thoracic surgeon irrespective of the fact that he was not in position to find out what was the cause of the unexpected changes of the effusion.

What further emanates from the evidence of doctor Zemenides, is that though when the deceased was admitted in his clinic on the 4th of December, 1979, he was complaining of "severe pain in the right chest and dyspnoea" and not-withstanding the fact that till the 7th of December, 1979, when the deceased was X-Rayed and the cause of his complaint was explained, doctor Zemenides was not in a position to diagnose the cause of the complaint of the deceased for severe pain in the chest and dyspnoea he did not consider it expendient to carry out a heart examination of the deceased other than the routine examination, of pulse and blood-pressure.

According to the medical report of doctor Akylas, a heart specialist, which was produced on behalf of the plaintiffs and was put in by consent as exhibit 3, doctor Akyllas examined the deceased for the first time, at the request of doctor Zemenides on the 20th February, 1980, and not on the 12th or the 14th February, as alleged by doctor Zemenides in his cross-examination. The medical report of doctor Akyllas, reads as follows:

«Εξήτασα τον ασθενή Γεώργιον Κωνσταντίνου την 20.2.1980 εις την κλινικήν Πέτρου Ζεμενίδη κατόπιν προσκλήσεως του ανωτέρω Ιατρού.

Εκ της εξετάσεως διεπίστωσα καρδιακήν ανεπάρκειαν και βρογχοπνευμονίαν.
Συνέστησα σχετικήν θεραπευτικήν αγωγήν ήτοι αντιβιοτικά, δακτυλίτιδα, διουριτικά, κάλιον και βρογχοδιασταλτικά.

Η κατάστασις του ασθενούς εσημείωσε βελτίωσιν.

Ο ασθενής με επισκέφθη εις το Ιατρείον μου την 5.3.80. Η κατάστασις του εμφανίζετο χειροτέρα. Τον επανεξέτασα μετά 2ήμερον εις την οικίαν μου. Επειδή η όλη κατάστασις του δεν εκρίθη υπ' εμού ικανοποιητική συνέστησα όπως εισαχθή εις το Νοσοκομείον Λεμεσού, όπερ και εγένετο.

Συμπερασματικώς μπορώ να πω ότι ο ανωτέρω ασθενής:

(α) Έπασχεν εκ καρδιοπαθείας.

(β) Η κατάστασίς του επιδεινώθη λόγω του τραύματος, εμμέσως δια της βρογχοπνευμονίας, το οποίον είχε. *Δύναται δε να λεχθή ότι τούτο επετάχυνεν* την επέλευσιν του θανάτου.

(γ) Ότι η θεραπεία πιθανώς να μη ήτο και τόσον επιτυχής λόγω του θωρακικού τραύματος και της συνεπεία αυτού παρουσιασθείσης βρογχοπνευμονίας.»

("After an invitation by Dr. Petros Zemenides I examined on the 20.2.80 the patient Georghios Constantinou in the clinic of the said doctor.

From the examination I found that the patient was suffering from heart failure and bronchopneumonia.

I recommended appropriate medical treatment, i.e. antibiotics, digitalis, diuretics, calsium and broncho-dilatings.

The condition of the patient improved.

The patient attended my office on 5.3.80. His condition appeared to have deteriorated. I re-examined him in my home two days thereafter. As his condition was not judged to be satisfactory I recommended his admission to the Limassol Hospital where he was in fact admitted.

In conclusion I may say that the said patient:

(a) Was suffering from a heart disease.

(b) His condition deteriorated by reason of the trauma, which he had, and indirectly by reason of the bronchopneumonia. It may be said that this accelerated his death.

(c) That the treatment was not perhaps so successful because of his thoracic trauma and the bronchopneumonia caused thereby").

Though such report was produced on behalf of plaintiffs, doctor Akyllas was not called as a witness to support doctor Zemenides that he was asked to examine the deceased on the 14th February and not on the 20th, as mentioned in his report.

On the issue as to whether the cause of death of the deceased was the natural result of, or that it was accelerated by, the injuries suffered by the deceased at the accident, counsel for defendants called doctor Andreas Demetriades, a specialist in thoracic surgery, who testified for the defendants. Counsel for plaintiffs objected to this witness giving evidence, contending that once the defendants did not object to the production of the medical report of doctor Akyllas in which an explanation for the death is given, they were precluded from calling any evidence to

give any other explanation as to the cause of death.

Bearing in mind the line of cross-examination of doctor Zemenides as to the treatment of the deceased by him, at his clinic, I decided at that stage to allow the evidence of doctor Demetriades and left the matter open as to whether such evidence could be legally admited and relied upon, after hearing further argument by counsel at the conclusion of the hearing, and in the light of the evidence which was to be given by doctor Demetriades. After the evidence of doctor Demetriades was concluded, counsel for plaintiffs did not raise any objection as to the admissibility of such evidence, or advanced any argument that it should be struck off the record as inadmissible, from which it may be inferred that he abandoned his original objection to the reception of such evidence. Irrespective, however, of the fact as to whether the objection was abandoned or not, I find that in view of the fact that the line of defence was that the death was not the result of the injuries that the deceased suffered at the accident, but due to his pre-existing condition of health, or that it was the result of the negligent or inefficient treatment by doctor Zemenides or the refusal of the deceased to follow the instructions of the doctor, the evidence of doctor Demetriades was necessary evidence to elucidate on matters concerning the treatment of the deceased in the hands of doctor Zemenides and as such, it was admissible evidence and should have been accepted.

As the medical evidence of doctor Demetriades is material in this case, I am bound to deal with such evidence at some length, in the way I did, regarding the evidence of doctor Zemenides, and the best way of reproducing the material parts thereof, is to refer to extracts from his evidence.

The specialisation of doctor Demetriades, according to his evidence, is cardiovascular surgery and general surgery and his experience in this field runs over a period of 30 years. He gave his opinion regarding the treatment of the deceased, on the basis of the medical report of doctor Zemenides. The following extracts are taken from his evidence:

"If there is fluid which is mostly blood in the pleural cavity, you put a chest tube to evacuate the blood, thoracostomy. If there is also air, pneumothorax, you put two tubes, one for the air and one for the blood. Also, we evaluate his pneumonary condition usually by examining the gases in the blood. Sometimes we need to do tracheotomy or sometimes we put respirator and all these factors they decrease to the minimum mortality from chest injuries.

. . . . . .

. . . . . .

I would have put tubes in the chest, first of all. From what I gather, there was effusion, so that the lung would expand the lung which is contused by the trauma and it has also fluid which restricts respiration. So the first thing I would do, I would have put a tube so that the quarter of the fluid would be taken away and so I would have given him 20 per cent more of respiratory function and if inspite of these things the patient continued to have poor oxygenation, I might have done tracheotomy.

Q. At what stage you would have taken X-Rays of this patient?

A. Immediately on admission and every day.

Q. Would there be a reason for waiting before you take the X-Rays?

A. There is no waiting in this case.

Q. If you were to take X-Rays would the X-Rays be for the whole of the chest area?

A. Of course and not only that, I would also have taken electrocardiogram to evaluate the condition of the heart.

Q. From the X-Rays that you would have taken from the chest especially the lung area where the heart is, would you have been able to notice if there

was anything abnormal about the condition of the heart?

A. I can see the size of the heart, if the heart is big or not. Whenever there is injury of the chest always there is a possibility of having injury of the heart. That is why with an electrocardiogram or with an X-Ray you can see the condition of the heart and it is very common to have heart injury with chest injury when you have a head-on collision or a steering wheel injury.

Q. In any event, if there is enlargement of the heart, you would have noticed it by the X-Rays?

A. Yes.

Q. In the report of Dr. Zemenides, the 4th paragraph, the one before the last, there is the expression that there was atelectasis of the right lung. What does that mean?

A. It means that the lung does not act, it is not aerated sometimes it is due to the blockage of the bronchus, that is why we do bronchoscopy and we unblock the bronchus or we do tracheotomy by cleaning the airway because the tracheotomy also helps the secretion because after the injury of the chest there is a lot of secretion and sometimes most of these people they are dragged in this secretion.

Q. Do you think that it is possible that on these X-Rays the hypertrophy of the heart would not have shown?

A. I think it was seen right from the beginning, as I can understand from the report that there was hypertrophy of the heart.

Q. Since this is the case, would you have called a specialist cardiologist?

A. Yes, I would have called a cardiologist as a thoracic surgeon right from the beginning of a chest injury.

. . . . . .

Q. But if the effusion did not vanish completely but there was still some effusion, is it medically advisable to discharge the patient?

A. In this case I would do thoracentisis.

Q. In any case the patient was discharged on the 21st December after the effusion had vanished. On the 11th of January the patient did not feel well, his dyspnoea deteriorated (the last paragraph of Dr. Zemenides' report) and he discharged himself on the 25th January. Now, what is the effect of a patient who acts contrary to his doctor's advice and he takes it upon himself to discharge himself home with effusion in his right cavity?

A. This could have been the beginning of a heart failure and if you do not do the appropriate treatment, at that time, and he goes home, then he will deteriorate.

Q. If he discharges himself and he is not under proper treatment how would the effusion develop?

A. It depends, if the heart goes to inefficiency, that is weakness of the function of the heart which will leave the effusion in stability and the non functioning of the heart will accelerate the effusion."

After a long examination of this witness on the question as to whether the hypertrophy of the heart which appeared on the X-Ray examinations was an indication that the deceased was suffering from cardiopathy long time before the accident, contrary to the opinion expressed by doctor Zemenides that the deceased could not have been suffering from his heart before the accident counsel for plaintiffs made the following admission on their behalf:

"In the light of the medical certificate of Dr. Akylas I am bound to accept that there was cardiopathy before the accident and that the accident accellerated his death. I am not insisting that the cardiopathy was the result of the accident".

Doctor Demetriades, further, in his evidence, said the following:

"When you have an injury of this extent, four ribs, and you have also damage of the lung, this kind of injury is better treated by a well trained thoracic surgeon, because the changes in the respiration and the function of the lung are so quickly changed and so lethal sometimes that you should anticipate all the things will happen to the patient. A trauma of the chest is a challenge to a thoracic surgeon."

In cross-examination, he stated the following:

"I may explain myself as follows: This man was suffering from cardiopathy. This might have led to the heart failure at any time, either in the near future or at a later stage. In this case, however, from the whole p cture which I have before me, there were certain matters which have contributed to the triggering of his condition. One of these conditions is the emotional strain as a result of the accident, the deterioration of his condition because of insufficient medication or his non-cooperation with the instructions of the doctors.

. . . . . .

Q. In this particular case, doctor, do you know what was the damage of the heart of this patient?

A. From the report of the doctors who treated him, he had hypertrophy of the heart and hypertrophy of the heart means that the heart was overloading, overworking, that is why it becomes enlarged.

Q. When did he have the hypertrophy?

A. Once it appeared in the first X-Ray, it means that he had it many years back.

. . . . . .

Q. You mentioned before in your evidence, that you put a tube in the lungs when there is effusion. It it always necessary to do this?

A. It depends, but from my experience with this severe injury with four ribs broken and with blood, I put tubes in the chest prophylactic to evacuate the chest and to improve his respiration.

. . . . . .

Q. You agree with me that it depends on the clinical picture of the patient whether you are going to use tubes or not.

A. Having regard to the injuries in this particular case, I have given my answer. With such injuries and blood and blood sputum, I always use the tube.

Q. The clinical condition of the patient is a matter which will be considered whether a tube is necessary or not?

A. This patient was very lucky to survive without having applied to him the tube, having regard to the extent of his injuries.

Q. Can you say what was the condition of the patient on the 4th December?

A. I have read the report of the doctor as to his condition on the 4th December and I was amazed with so much difficulty in respiration without tubes being inserted and that he had been treated by an orthopaedic surgeon alone.

Q. What was his condition on the 4th?

A. According to the medical report which I have before me, his condition was (reads the report of the doctor). This man lost 50 per cent of his capacity to breathe and you are asking me the condition of this patient."

Having narrated at length the facts and having made extensive reference to the medical evidence, I am coming now to evaluate such evidence and examine whether in the light of such evidence the death of the deceased was the result of the injuries he received at the accident or whether the deterioration of his condition was the result of (a) the

disregard by him of medical advice (b) the negligent or inefficient medical treatment.

The evidence of doctor Zemenides is full of contradictions and the whole picture he presented as a witness both in respect of his evidence and his demeanour in the witness box is that of an irresponsible witness who in the course of cross-examination when it became apparent that the line of defence was to the effect that the medical treatment of the deceased in his hands was inefficient or negligent, introduced into his evidence matters which were not mentioned in his medical report, he made statements inconsistent with his medical report and he tried to shift the blame for the deterioration of the condition of health of the deceased upon him by stating several times that the deceased failed and/or refused to follow his medical advice. Though a mere reading of the extracts of his evidence which have been reproduced in this judgment obviate the inconsistencies in his evidence, I shall focus on a few examples of such inconsistencies and contradictions even at the risk of repeating myself. His statements in evidence that the deceased was X-Rayed upon admission in his clinic, that by the 21st December, 1979, the effusion in the thoracic cavity of the deceased had vanished and the deceased was discharged from his clinic, that on the 12th February, 1980 when the deceased was readmitted to his clinic and he diagnosed bronchopneumonia and heart failure he called for doctor Akylas, a cardiologist, who examined the deceased on the same day, are statements which after a lengthy cross-examination he contradicted by admitting that the deceased was not X-Rayed on admission, but three days later, that on the 21st December, 1979, when the deceased was discharged from his clinic the effusion had diminished but had not vanished. As to the examination of the deceased by doctor Akylas, he mentioned in his report and his evidence in chief that this took place on the 20th February, 1980; in cross-examination he gave the 12th February, 1980, as the date of such examination and then the 14th of February, as the correct date, contending that the date mentioned in his medical report and his evidence as being the 20th February, was wrong. It should be noted once again that doctor Akylas gave the 20th February, as

the first occasion when he examined the deceased. On a number of instances he admitted the inconsistencies between his report and his evidence, but in an effort to make such contradictions milder, he gave the explanation that certain statements in his report were "not absolutely correct".

I do not consider it necessary to expand further on the contradictions between the evidence of this witness and his medical report and the inconsistencies in the whole of his evidence.

On the other hand, I have before me the evidence of doctor Demetriades, who was called by the defendants to give his opinion as a specialist thoracic surgeon. The impression I formed of doctor Demetriades is that of an impartial and responsible witness who spoke in the field of his expertise and in the light of a vast experience in the matter.

With the above in mind, I come now to consider the question as to whether the condition of the deceased was aggravated by the refusal of the deceased to follow the medical advice given to him.

Irrespective of the fact that counsel for the plaintiffs in the course of his address, admitted that the deceased left the clinic, contrary to the instructions of his doctor, a fact which, according to his submission, might reduce the damages by 50 per cent, there is sufficient material emanating from the evidence called by the plaintiffs concerning the conduct of the deceased in relation to his medical treatment.

Doctor Zemenides in his evidence gave one of the reasons for the re-appearance of the effusion after the deceased was discharged on the 21st December from his clinic, the fact that the deceased must have not been taking the tablets which he prescribed to him. Furthermore, that on the 25th January, the deceased contrary to his advice and whilst his effusion was improving discharged himself from the clinic with the result of his condition getting worse. Also, that on the 29th December, 1979, when he examined the deceased and found that there was effusion, he advised

the deceased to be re-admitted to the clinic and the deceased refused to do so.

Doctor Demetriades gave as two of the reasons for the triggering of the condition of the deceased, the insufficient medication or the non-co-operation of the deceased with the instructions of the doctor and in commenting on the effect of the conduct of a patient who, acting contrary to the advice of his doctor takes it upon himself to discharge himself home with effusion in his right cavity, expressed the opinion that this would deteriorate his condition and it might have been the beginning of a heart failure.

I come next to consider the second question concerning the medical treatment of the deceased by doctor Zemenides.

The condition of the deceased when he was admitted at the clinic of doctor Zemenides on the 4th December, 1979, has already been described. A patient in such a condition according to the evidence of doctor Demetriades, had to be X-Rayed immediately to ascertain whether there was any internal injury and bearing in mind the extent of the effusion and the respiratory problems that the deceased presented, tubes had to be applied to him for taking away the fluids which had accumulated in his lungs and facilitate the oxygenation of the lungs and if the respiratory problems did not diminish, then a tracheotomy had to be applied. The need for an X-Ray examination immediately was necessary to ascertain also the condition of the heart as such X-Ray would have disclosed the hypertrophy of the heart which would have necessitated the immediate need for call of a cardiologist. Doctor Zemenides failed to do anything of the above, but he admitted the deceased and he removed the elastoplast which had been fixed whilst the deceased was under treatment at the hospital without having inquired as to the reason why such elastoplast had been fixed. He also failed to take an X-Ray examination to ascertain the cause of the trouble of the deceased which would have immediately disclosed the fact that this man was a cardiopath prior to the accident and in the circumstances seek the assistance of a cardiologist. He X-Rayed the deceased for the first time three days later when

he found for the first time that the deceased had been suffering from fracture of the ribs. Furthermore, when according to his evidence the deceased came to his clinic having clear indications that he had heart trouble and pneumonia, which might have been the result of the heart trouble, instead of calling immediately a cardiologist to examine the deceased, he was treating the deceased for a number of days without calling the assistance of a cardiologist and waited till the 20th February to call doctor Akylas to examine the deceased for the first time. What may be inferred from the above, is that doctor Zemenides considered himself as an expert, not only in the field of orthopaedics but also in the field of thoracic surgery and cardiology, having failed to call a specialist thoracic surgeon and a specialist cardiologist to examine the deceased, bearing in mind the condition of the deceased when admitted in doctor Zemenides' clinic and the fact that the hypertrophy of the heart which appeared on the first X-Ray examination showed clearly that the deceased presented heart problems.

Bearing in mind the way doctor Zemenides had treated the deceased, all along, I find such treatment both inefficient and negligent.

As to the medical report of doctor Akylas which was put in by consent, such report was based on information supplied to doctor Akylas by doctor Zemenides without doctor Zemenides having disclosed to him the full picture of the condition of the patient. Doctor Akylas examined the patient on two occasions only, the first one on the 20th February at the clinic of doctor Zemenides and the second on the 5th March when he found that the condition of the deceased deteriorated and he sent him to the hospital. The deceased had already been suffering from bronchopneumonia and heart trouble since the 12th February and it was easy for him to ascertain whether the bronchopneumonia was the result of the heart trouble that the deceased sufferred on the 12th February or the chest injury which he had suffered three months before such date as a result of the accident. Doctor Akylas was not called as a witness to give his opinion as to whether the treatment by doctor Zemenides was the proper one in the circumstances, nor did he have before him the report of doctor Zemenides which he

prepared on the 30th of March, 1980. I, therefore, find that the medical report of doctor Akylas cannot throw any light on the question of the failure of the deceased to follow the medical advice or the inefficiency of the treatment of doctor Zemenides.

Having found as above, I am coming now to consider the effect of a supervening cause, either by the refusal of the deceased to follow medical advice, or the inefficient treatment of the medical attendant.

The question as to whether an existing incapacity or death results from the original injury or from supervening cause, has been a matter of controverse which appears to have been settled in England by the majority decision of the Court of Appeal in *Rothwell* v. *Caverswall Stone Co. Ltd.* [1944] 2 All E. R. 350 and the decision of the House of Lords in *Hogan* v. *Bentinck West Bartley Colliers (Owners) Ltd.* [1949] 1 All E. R. 585.

Rothwell case deals at length with the question of how far medical negligence amounts to a novus actus interveniens so as to disentitle an injured workman to recover compensation. In that case Scott, L. J., in a dissenting judgment, after an exhaustive analysis of all the relevant cases, arrived at the conclusion that the two lines of cases, the one represented by *Humber Towing Co. Ltd.* v. *Barcley* [1911] 5 B.W.C.C. 142, *Rocca* v. *Stanley Jones & Co Ltd.* [1914] 7 B.W.C.C. 101 and *Lakey* v. *Blair & Co. Ltd.* [1916] 10 B.W.C.C. 58 and the other represented by *Dunham* v. *Clare* [1902] 2 K. B. 202, *Ystradowen Colliery Co. Ltd.* v. *Griffiths* [1909] 2 Q.B. 533 and *Williams* v. *Graigoles Merthyr Co. Ltd.* [1924] 132 L.T. 227 were in conflict and that he was at liberty to disregard the first line and to apply the principle of the second line of authorities to the case then under appeal. In his view,

> "any other decision would make the recovery of compensation dependent upon the skill of the medical attendant, a position wholly inconsistent with the social policy upon which the Workmen's Compensation legislation is based".

But his view was not accepted by the other members of

the Court, Luxmoore and Du Parcq, L. JJ. who found no such conflict. Du Parcq, L. J., said the following in his judgment [1944] 2 All E. R. 365:

> "In my opinion, the following propositions may be formulated upon the authorities as they stand: first, an existing incapacity 'results from' the original injury if it follows, and is caused by, that injury, and may properly be held so to result even if some supervening cause has aggravated the effects of the original injury and prolonged the period of incapacity. If, however, the existing incapacity ought fairly to be attributed to a new cause which has intervened and ought no longer to be attributed to the original injury, even though, but for the original injury, there would have been no incapacity. Secondly, negligent or inefficient treatment by a doctor or other person may amount to a new cause and the circumstances may justify a finding of fact that the existing incapacity results from the new cause, and does not result from the original injury. This is so even if the negligence or inefficient treatment consists of an error or omission whereby the original incapacity is prolonged. In such a case, if the arbitrator is satisfied that the incapacity would have wholly ceased but for the omission, a finding of fact that the existing incapacity results from the new cause, and not from the injury, will be justified. In stating these propositions I am far from seeking to lay down any new principles of construction. I have sought only to collect by a process of induction, such general, and necessarily vague, rules as seem to emerge from the decided cases. Such rules do no more than indicate the bounds within which an arbitrator is free to decide —the province of fact. It is constantly being said, and must always be remembered, that the arbitrator is the sole judge of the facts."

And further down at the same page:-

> "It is apparent that the line between those cases where a 'supervening cause' aggravates the injury and yet is not to be regarded as superseding the injury as the cause from which the incapacity results, and those

others in which the cause is 'new' and the existing injury can be held to result from it alone, is a line which can only be drawn after a full examination of all the relevant facts, and not with well-defined precision. No rule can be laid down by reference to which the arbitrator having ascertained the facts, will be enabled to put the case infallibly on the right side of the line. If, however, he confines himself to the question formulated by *Lord Cozens-Harby, M.R.*, in *Humber Towing Co.'s* case, his own intelligence will be his surest guide, and he will, I think be all the more likely to come to a right decision if he refuses to be drawn into a discussion of the more subtle refinements of the theory of causation."

The above dicta were adopted and repeated in the majority judgments in *Hogan* v. *Bentinck Colliers* (Lord Simonds, Lord Normand, Lord Morton of Henryton, with Lord Macdermott and Lord Reid dissenting). Lord Simonds in his judgment found the review of the cases by Du Parcq in *Hogan's* case "so lucid and accurate a summary of the result of them" that he adopted the first of the above dicta and in expounding it, had this to say [1949] 1 All E. R. 592:-

"In this statement I think that the most important word is the permissive 'may' which is used four times, for it emphasises the fact which, to my mind, lies at the root of this controverse, that it is, first and last, a question of fact for the arbitrator to determine from what a present incapacity results."

We further read the following in the judgment of Lord Simonds (at p. 593).

"It does not appear to me, My Lords, that in principle there is any conflict between the two lines of cases that I have cited. The question whether a present state of incapacity is substantially the result of an original accident or of the later negligent act of a doctor is to ask, in other words, whether the present incapacity is due to the original accident or to the intervention of a novus actus which breaks 'the chain of causation', and the question can only be an-

swered on a consideration of all the circumstances and, in particular, of the quality of that later act or event."

In concluding his judgment he upheld the decision of the county court Judge on a claim by a workman for compensation on the ground of pain in the stump of the finger which had been operated, who after accepting the view of the medical witness that the operation was a proper one to cure the congenital deformity but not to cure the pain consequential to the accident, refused compensation on the ground that the incapacity then existing was due not to the accident, but to the operation, which "appeared to have been ill-advised".

In giving his reasons for upholding the judgment of the county court Judge, Lord Simonds had this to say (at page 594 [1949] 1 All E. R.).

"In coming to this conclusion I have got some assistance from the not infrequent cases in which the employer has contended that the workman's incapacity is the result of his unwillingness to undergo an operation or other curative treatment. It has been held that in such cases, where the workman's refusal has in fact been unreasonable, he is not entitled to compensation. Such a view has the authority of this House: see *Steele* v. *Robert George & Co. (1937) Ltd.* It has, indeed, been suggested that this is the result of some kind of 'judicial legislation', whatever that phrase may mean. From this suggestion I must respectfully dissent. It is to my mind plain that such a case affords a good illustration of the common sense meaning to be attributed to the section. The man in the street and with him the learned arbitrator are entitled and are likely to say of a man, who could be cured, if he would, that his present continued incapacity is the 'result' of his obstinacy and unreason, and, if they do say so, that is the end of it. On this point, also, I am happy to find myself in agreement with what Du Parcq, L.J. said [1944] 2 All E.R. 367) in *Rothwell's* case. In this connection it was urged that it would be strangely hard on the workman, if, on the one hand,

he was liable to lose his compensation if he refused to submit to treatment, and, on the other, liable also to lose it, if, submitting to treatment, he was the victim of negligence and his incapacity could be said to be due to that. My Lords, I recognise that such a case would bear hardly on the workman. But the possibility of such hardship cannot outweigh the broad consideration which have led me to the conclusion that I have already expressed. It would be a strange thing if an arbitrator were debarred from finding as a fact that a present state of incapacity is due to the negligence of a surgeon because in another case a state of incapacity might be held to be due to the workment's unreason.

I move that this appeal be dismissed with costs."

In his judgment in the above case Lord Normand had this to say (at pp. 596, 597 [1949] 1 All E. R.):-

"I start from the proposition, which seems to me to be axiomatic, that if a surgeon, by lack of skill or failure in reasonable care, causes additional injury or aggravates an existing injury and so renders himself liable in damages, the reasonable conclusion must be that his intervention is a new cause and that the additional injury or the aggravation of the existing injury should be attributed to it and not to the original accident. On the other hand, an operation prudently advised and skilfully and carefully carried out should not be treated as a new cause, whatever its consequences may be. A Court of Appeal would, therefore, be entitled to hold that an arbitrator had misdirected himself if he had made an award in favour of a workman in respect of an incapacity which he had found to be attributable to the surgeon's actionable negligence, or if he had refused to make an award where the injury by accident still subsisted, though in an aggravated form, after an operation prudently advised and properly carried out. But these limiting cases, which exemplify the duty of the Court to decide questions of remoteness as a matter of law, a duty which provides a necessary safeguard against aberra-

> tions from the standard of sound practical sense, are somewhat theoretical. For the issue before the arbitrator is not whether the surgeon's conduct was actionable, and a finding that it was actionable would be out of place. He must find the facts and among them the cause of the incapacity. If his finding is not repugnant to good sense, it cannot be set aside because the Court of Appeal may think that he has failed to place the surgeon's conduct at the correct point in the nicely graduated scale of human misfortune and fallibility that extends from venial error of judgment to actionable want of skill or negligence. That is a question on which judges and juries may differ and it is not to be solved by treating it as a question of law."

Useful reference may also be made to the case of *McAuley* v. *London Transport Executive* [1957] 2 L1. L. R. 500 with respect to the disregard by an injured person of medical advice.

The plaintiff in that case sustained injuries culminating to severance of ulnar nerve while employed by defendants. Plaintiff was advised to have operation which had 90 per cent chance of successfully restoring mass action of fingers and 35 per cent chance of restoring fine movement of fingers. Pearson J. who tried the case in the first instance, found as follows:

> "Whatever the truth may be, it is obviously well established and obviously a matter of ordinary common sense that, if the continuance of an injury is due to the plaintiff's unreasonable refusal to have an operation, the continuing effects are not chargeable against the defendants. They are not due to the initial cause but due to the intervening cause of the unreasonable refusal. I therefore, hold that the continuing disability is not due to the accident but due to this unreasonable refusal."

On appeal the decision in the above case was affirmed and it was held (per Jenkins L.J. at p. 505 [1957] 2 L1. L. R.) that:-

"It is not in dispute that, inasmuch as in a case of this sort it is the duty of the injured party to mitigate damages, it is his duty to act on any medical advice he receives to the effect that this or that treatment will give this or that prospect of success. If he receives medical advice to the effect that an operation will have a 90 per cent chance of success, and is strongly recommended to undergo the operation and does not do so, then the result must be, I think, that he has acted unreasonably, and that the damages ought to be assessed as they would properly have been assessable if he had, in fact, undergone the operation and secured the degree of recovery to be expected from it."

The principles enunciated by the above cases should be differentiated from those applicable to cases of error of clinical judgment by a medical practitioner. The mere error of clinical judgment by a medical practitioner does not of itself amount to negligence in the legal sense (see *Whitehouse* v. *Jordan and another* [1980] 1 All E. R. 655 affirmed on appeal by the House of Lords [1981] 1 All E. R. 267).

The present case, however, is not a case of a mere error of clinical judgment by a medical practitioner, but a case of negligence and inefficient treatment.

Applying the above principles to the facts of the present case, I have come to the conclusion that the death of the deceased was not the result of the original injury but of the supervening causes of both the refusal of the deceased to follow medical advice and the inefficient and negligent treatment by the doctor, which have broken the chain of causation.

Having found as above, I come now to assess the damages to which the estate of the deceased is entitled as a result of the injuries suffered by the deceased for the period of 1st December, 1979 when the accident occurred, till the 10th March, 1980 when he died.

Special Damages:

The annual emoluments of the deceased, including benefits for leave and all other benefits, have been agreed at

£3,000. On the basis of such figure, I assess his pecuniary loss in respect of emoluments for the period as from 1st December, 1979 to 10th March, 1980 at £835. In addition to the above, the deceased is entitled to his expenses for medical treatment which, according to the evidence before me amount to £865 (£40 for doctor Akylas and £825 for doctor Zemenides).

As to funeral expenses, having found that the death of the deceased was not the result of the original injuries, I cannot award such item. Therefore, the total amount of special damages amounts to £1,700.

General Damages:

Bearing in mind the extent of the injuries suffered by the deceased as described in evidence, the serious pain, suffering, inconvenience and discomfort for the period as from the date of the accident till his death, I have come to the conclusion that an amount of £2,000 is a fair and reasonable compensation in the circumstances of this case.

Interest:

In the light of the provisions of section 58A of the Civil Wrongs Law, Cap. 148 which has been introduced by section 5 of Law 156/1985, I award interest at the rate of 6% on the above amounts as from 10.3.1980 till today and legal interest as from today till final payment.

In the result, judgment is given in favour of plaintiffs against the defendants in the sum of £3,700 with interest at 6% per annum as from 10.3.1980 till today and legal interest from today till final payment. Defendants also to pay the costs of this action, to be assessed by the Registrar.

Judgment in favour of plaintiff for £3,700.- with costs.