1988 October 17

(A. LOIZOU, P., SAVVIDES, AND KOURRIS, JJ.)

GEORGHIOS PETROU,

*Appellant-Defendant,*

v.

1. MARIOS SOCRATOUS,
2. ANDREAS SOCRATOUS,

*Respondents-Plaintiffs.*

*(Civil Appeal No. 7166).*

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*Appeal — Apportionment of liability — Interference with, on appeal — Principles applicable.*

*Negligence — Contributory negligence — Road traffic collision — Two queues of cars, each coming from the direction opposite to the other, came to a standstill in order to allow appellant to enter from a side street and turn right — Appellant started slowly entering the main street, but at the same time respondent motorcyclist, occupying the middle of the road, was overtaking the queue to the appellant's right — A collision ensued — Neither party had the opportunity to see the other prior to the collision — Appellant 70% and respondent motorcyclist 30% to blame — Court of Appeal declined to interfere with such apportionment.*

*Damages — General damages for personal injuries — Swollen and painful ankle, sprain of such ankle, abrasions, immobilisation of ankle by plaster of Paris, permanent visible, but not ugly scar, numbness and pain in the area of ankle, which would abate with time, moderate amount of pain for a few days, no permanent disability — £850.- for general damages — Manifestly excessive — Reduced to £500.*

*Damages — Loss of earnings — Injuries by reason of a collision — Medical reports assessing period of temporary incapacity at two months — Evidence that plaintiff was unemployed for five months (not including period of said two months) coupled with letter by his employers that he was dismissed from his employment by reason of the accident two days after its occurrence — Award of £500 (£100*

*per month for five months) — Trial Judge not entitled to award anything for a period beyond that referred to in the medical reports — Award reduced to £200*

*Damages — Interest thereon — The Civil Wrongs Law, Cap 148 section 56A, as amended by Law 156/85 — Its application is confined to damages for injuries or for causing death — It does not apply to damage to property*

Respondent 1 was riding respondent' s 2 motorcycle at Strovolos Avenue, towards Nicosia There was heavy traffic in both directions Appellant, who at the time was driving his motor car, stopped at a side street of the said Avenue, with intention of entering it and turn right towards Strovolos

A driver of a car in the queue of cars going towards Nicosia stopped, in order to allow the appellant to enter the Avenue At the same time a driver of another car in the queue of cars coming from the direction of Nicosia stopped in order to facilitate the entry of the appellant to the avenue As a result the two opposite queues of cars came to a standstill

The appellant proceeded slowly to enter the avenue At the same time respondent 1 was overtaking the queue facing Nicosia from its right side In fact, the motorcyclist was occupying the middle of the road

As a result the motorcyclist collided with the appellant The trial Judge, who found that neither party had an opportunity to see the other prior to the collision apportioned liability 70% on appellant and 30% on respondent 1

By reason of the collision respondent 1 sustained the injuries hereinabove described The trial Judge awarded £850 general damages

In accordance with the medical reports the period of the first respondent' s temporary incapacity was two months However, in the light of a letter by his employers that he was dismissed from work by reason of his injuries and evidence coming from the department of social insurance that for a period of five months (which period did not include the two months' period referred to in the medical reports) he was unemployed, the trial Judge awarded £500 as loss of earnings (C £100 per month)

The issues raised by the appeal and cross-appeal are. (a) The apportionment of liability, (b) The quantum of the general damages, (c) The award of £100 to respondent 2 for the damage to his motorcycle, (d) The award of £500 for loss of earnings, (e) The

award of interest on the amount of the special damages as from the date of the accident.

Held, (1) This Court has not been convinced that, in apportioning the blame, the trial Judge misapprehended a vital fact bearing on this matter or that his assessment was in any way wrong in law.

(2) The amount of £850.- is manifestly excessive in the circumstances and it should be reduced to £500.

(3) The trial Judge was wrong in assessing loss of wages for a period beyong that which was not attributable to any incapacity resulting from the accident. The basis of the award should have been the period referred to in the medical reports. Therefore, the amount is reduced to £200.

(4) Section 58A of Cap. 148, providing for the payment of interest, applies to damages for personal injuries or for causing death and not to any damage to property.

*Appeal allowed to the above extent. Cross-appeal dismissed. Costs of appeal in favour of appellant. No order as to costs for the cross-appeal.*

*Cases referred to:*

*Covotsos Textiles Ltd. v. Serghiou* (1981) 1 C.L.R. 475;

*Christoforou v. Solomou* (1981) 1 C.L.R. 612;

*Antoniou v. Serghis* (1979) 1 C.L.R. 169;

*Kika v. Lazarou* (1979) 1 C.L.R. 670;

*Christodoulou v. Angeli* (1968) 1 C.L.R. 338;

*Brown v. Thompson* [1968] 1 W.L.R. 1003.

**Appeal and cross-appeal.**

Appeal and cross-appeal against the judgment of the District Court of Nicosia (Laoutas, S.D.J.) dated the 14th April, 1986 (Action No. 5648/82) whereby the defendant was ordered to pay to the plaintiffs the sum of £940.- as damages due to a road traffic accident.

*Chr. Clerides*, for the appellant.

*A. Pandelides with Th. Zervos*, for the respondents.

*Cur. adv. vult.*

A. LOIZOU P.: The judgment of the Court will be delivered by L. Savvides, J.

SAVVIDES J.: This is an appeal from the judgment of a Judge of the District Court of Nicosia in Civil Action No. 5648/82 for damages arising as a result of a road-traffic accident.

The accident occurred along Strovolos Avenue, Nicosia, as a result of the collision of a motorcycle belonging to respondent 2 and driven by respondent 1 and proceeding towards Nicosia and motorcar No. GC 919 which was driven by the appellant coming out of a petrol filling station, which was on the left-hand side towards Nicosia, and was entering into the main road to proceed towards Strovolos direction. At the material time there was a heavy traffic coming from both directions and the long queue of cars which was proceeding on the left-hand side of the road stopped as the driver of the car which was heading the queue stopped and signalled to the appellant to come out of the petrol station into the main road and gave him way for such purpose. At the same time cars coming from the opposite direction also stopped to offer an opportunity to the appellant to enter into Strovolos Avenue. Respondent 1 who was riding his motorcycle proceeded and overtook the queue of cars which was on his left-hand side and travelling about the middle of the road reached the first car which had stopped and collided with appellant' s car which was coming outside of the petrol station. According to a sketch which was produced before the trial Judge the collision took place approximately in the middle of the road, the asphalted part of which was 19 feet wide.

The learned trial Judge found that the motorcyclist was driving at a moderate speed along the road which was busy at the time. He started to overtake a queue of stationary cars which was at his nearside and upon reaching the level of the exit of the petrol filling station he collided with the car of the appellant which had emerged between the gap. He found that the appellant emerged at a slow speed and that neither of the drivers had seen each other as their visibility was obstructed by the queue of cars and that neither of them had the opportunity or the time to take any avoiding action before the collision.

On the facts before him the learned trial Judge found that the appellant was negligent in that though he had a difficult task to do in entering the road nevertheless he had to bear in mind that it was

dangerous to emerge into a main road at a busy time and he had to be very careful. On the other hand he found the motorcyclist negligent in that though there was nothing wrong in his overtaking the long queue of stationary cars neverthless when he was appoaching the first car and could see that the cars were stationary on both directions he should have put himself on his guard and thus be able to see the gap between the cars. He found, on the basis of the above fact combined with the fact that he failed to take any avoiding action, something he should have easily achieved having regard to the type of vehicle he was riding that the motorcyclist contributed also to the accident and apportioned liability of 70% on the motorcar driver (the appellant) and 30% on the cyclist (the respondent).

The finding of the trial Judge that the failure of the cyclist to take an avoiding action was one of the elements of his negligence is in controversy with his previous finding that «neither of the two drivers had the opportunity or the time to take any avoiding action before the collision as their visibility was obscured by the presence of the long tail of vehicles». Notwithstanding however such discrepancy all the facts are before us as well as the findings of the trial Judge on such facts and the evidence before him so as to enable us to consider whether his assessment of contribution of the two drivers in the accident was correct or not.

Respondent 1 suffered personal injuries as appears from the various medical reports which, by consent, were made exhibits in the case. The first report was issued by a government doctor who examined respondent 1 on his admission to the hospital according to which he presented the following injuries: His ankle was swollen and painful; abrasions were present. No fracture was revealed. He had a sprain of the left ankle which was immobilized by plaster of Paris and attended several times as an outpatient. He had a scar over the anterior aspect left lower leg. Sick leave was granted from 12th December, 1981 till 18th February, 1982.

The other medical report was that of Dr. Thalis Michaelides issued on 7th April, 1983, after he had examined respondent 1 a few days before such date. What is mentioned in such report is that respondent 1 felt numbness and pain at the area of the scar which would abate with time but the scar, three and a half inches long, would remain permanent.

The last report was that of Dr. Tornaritis dated 21st March, 1984, who examined respondent 1 at the request of the insurance company. Dr. Tornaritis in his report mentions the following:

«1. 6 x 2 cm scar on the left lower leg, tender to the touch.

2. No limitation of the range of motion of the left ankle joint.

3. No muscle wasting of the left thigh or calve.

4. Can stand on tip-toe and on the toes.

5. Squatting is possible.

6. X-rays of the left ankle and foot showed no abnormality.»

and concluded his report by giving his opinion as follows:

«This patient sustained injuries in a traffic accident two years and three months ago. The injuries sustained entailed a moderate amount of pain, suffering initially for a few days. The injuries resulted in a tender scar of the left lower leg; otherwise there is no functional deficit resulting from the injuries sustained.»

Respondent 1 in his evidence complained of aching when he gets tired. Also that he felt numbness on touching the scar.

The learned trial Judge relying on the medical reports before him found that respondent 1 was not left with any functional incapacity and that the only permanent injury is the scar in respect of which he found that though visible was not an ugly scar. On the basis of his findings he assessed the general damages at £850.- Concerning the special damages of respondent 1 he did not find satisfactory the evidence of respondent 1 concerning a claim of £30.- for travelling expenses, £10.- for the value of a pair of trousers, £10.- for the value of his shoes and £50.- as medical fees of Dr. Michaelides, which he rejected. Concerning the loss of his emoluments, the trial Judge found that respondent 1 failed to adduce evidence in this respect although the burden was cast upon him. Nevertheless, relying on the evidence coming from the Social Insurance Department to the effect that respondent 1 was unemployed from 10th May, 1982 until 27th October, 1982, which was adduced by the appellant, he found that that was the period of his unemployment as a result of the accident which on the basis of his earnings as a door attendant (porter) at Manglis building at £100.- a month amounted to £500.-

Respondent 1 produced in fact a letter from the General Engineering Co Ltd which appeared to be his employers, dated 7th January, 1982 to the effect that as a result of the accident he was dismissed from his work on the 14th December, 1981 i e two days after the occurrence of the accident, being unable to perform his duties

In respect of the damage to the motorcycle for which respondent 2 was claiming £279 250 mils, the learned trial Judge awarded £100 - which according to his findings, based on the evidence of a witness called by respondent 2, was the market value of such motorcycle at the material time

The appellant as a defendant in the action felt dissatisfied with the judgment of the Court and filed the present appeal challenging both the apportionment of liability and the award of damages as found by the trial Judge

The grounds of appeal which were raised and argued before us were to the effect that the finding of the Court that the defendant was guilty of any negligence was not supported by the evidence in the case and that the apportionment of liability was erroneous in fact and in law Also that the award of interest on the amount of damages to property from a date prior to the date of the judgment was wrong

Counsel for the appellant also contested by his appeal the findings of the trial Court as to the quantum of general damages, the emoluments of respondent 1 and the award in respect of loss of earnings for a period of five months.

The respondents filed a notice of cross-appeal eighteen months after the filing of the appeal by which they complain as to the apportionment of negligence and also as to the quantum of damages awarded and argued that both findings of the trial Court were wrong and that respondent 1, on the evidence before the Court, could not have been found guilty of contributory negligence at all or to the extent found by the trial Court and that the amount of damages awarded is manifestly low

The issues which pose for consideration before us are the following

(a) The apportionment of liability

(b) The quantum of damages

(c) The award of interest on the sum of £100 - damage to the motorcycle

It is well established that the question of apportionment of liability is a primary matter for the trial judge to decide, and unless there is some error in law or in fact in his judgment his finding ought not to be disturbed (see, inter alia, *Covotsos Textiles Ltd v Serghiou* (1981) 1 C L R 475, *Christoforou v Solomou* (1981) 1 C L R 612, *Antoniou v Sergis* (1979) 1 C L R 169, *Kika v Lazarou* (1979) 1 C L R 670).

In *Christodoulou v Angeli* (1968) 1 C L R 338 *the following* was said at p 346, after reference was made to the principles enunciated on this matter in *Brown v Thompson* [1968] 1 W L R 1003

> «Where no error of principle has been shown and no misapprehension of the facts on the part of the trial Court has been made to appear on appeal, this Court will be reluctant to interfere with the apportionment made by the trial Court even if somewhat differently inclined »

We have not been convinced that, in apportioning the blame, the learned trial Judge misapprehended a vital fact bearing on this matter or that his assessment was in any way wrong in law and we affirm his decision apportioning liability by 30% on the plaintiffs and 70% on the appellant-defendant

We come next to consider the second issue which is the quantum of damages

Both appellant and respondent (1) complain as to the quantum of damages assessed by the trial Court As to the damage caused to the motorcycle respondent (2) has not advanced any sound argument against the assessment of damage to this motorcycle at £100 - The learned trial judge was correct in awarding the sum of £100 - for the damage caused to the motorcycle which was its market value at the material time

As to the injuries suffered by respondent (1) we have before us the findings of the learned trial Judge which are based on the medical reports produced by consent reference to which has been made earlier on

On the basis of such reports and the evidence of repondent 1 the learned trial Judge made the following findings

«From the contents of the medical report I am satisfied that the plaintiff 1 has not any functional incapacity. The only permanent injury is the scar. The Court had an opportunity to look at it. Although visible is not an ugly scar. Having regard to the medical evidence and the nature of the injuries sustained and having in mind a number of authorities on the subject, I am of the opinion that a sum of £850.- would be an adequate and reasonable compensation.»

The findings of the learned trial Judge as to the nature and extent of the injuries suffered by respondent (1) are warranted by the medical reports and the evidence before him and we agree with him in this respect.

Bearing however in mind the nature of the injuries of the plaintiff and in particular the fact that the whole period, according to the medical report during which he was on sick leave for treatment was as from 12th December, 1981 till 18th February, 1982, that is a period of just over two months, that he endured a moderate amount of pain initially for a few days and then discomfort due to the presence of the plaster till the 19th January, 1982 when it was removed, that no functional deficit resulted from the injuries sustained and the only permanent injury is the scar over the anterior aspect of the left lower leg which though tender on touch did not bring about any functional deficit to the leg and which according to the trial Court «although visible is not an ugly scar», we have come to the conclusion that the amount of £850.- is manifestly excessive in the circumstances and that such amount should be reduced to £500.-

On the question of special damages the learned trial Judge awarded a sum of £500.- for loss of wages. In justifying this amount the learned trial Judge had this to say:

«This plaintiff produced a letter from his employers (Exh. 3) to the effect that he was dismissed from his job due to incapacity in the performance of his duty, being the result of a traffic accident. The burden of proof is on the plaintiff on the balance of probabilities to satisfy the Court as to his loss. As to the small items he has not convinced me that he has sustained the amounts set in his Statement of Claim.

With regard to the loss of earnings he has not adduced any satisfactory evidence as to the length of time he was employed. There is evidence coming from the defendant,

which I accept, according to which the plaintiff 1 was signing, in the Social Insurance Department, as unemployed from 10.5.82 until 27.10.82. I find as a fact that this was the period of time he was out of work i.e. 5 months. His emolument has not been challenged, therefore his loss of earnings amounts to £500.-»

We shall deal first with the letter (exhibit 3) to the effect that he was dismissed from his job due to incapacity in the performance of his duties. The accident in which respondent (1) was involved occurred as already mentioned, on 12th December, 1981, and according to the contents of such letter he was dismissed from his job as from the 14th December, 1981. Under the provisions of s.5(a) of the Termination of Employment Law, 1967 (Law 24/67 and its subsequent amendments) temporary incapacity of an employee to perform his duties due to illness, injury etc. does not entitle the employer to terminate the services of the employee. If respondent (1) was a regular employee and not a casual worker he could only be dismissed under the provisons of the law. Respondent (1) never raised any claim against his employers for terminating his employment immediately, without any notice. Furthermore, according to the evidence of Defence Witness 5, respondent (1) was not entitled to unemployment benefits which is an indication that either he had not been declared to the Labour Office as a regular employee or that he had not worked as such for the minimum period contemplated by Law. According to his evidence respondent (1) signed as unemployed once a month as from 10th May, 1982 - 27th October, 1982 and never attended again after that date up to the end of 1983. From the medical evidence the period during which he was incapable to work was as from 12th December, 1981 till 18th February , 1982. After such period he could resume work. The fact that in the meantime he had been dismissed and was for a certain period out of work was not due to any incapacity from the accident but due to the fact that there was no job for him.

In the present case the period during which respondent (1) could not work as a result of the accident was the period as from 12.12.81, the date of the accident, till 18.2.82, the date till which a sick leave certificate was issued to him, that is a period of two months. On the basis of his emoluments of £100.- the amount of special damages for loss of wages could not be more than £200 -. The learned trial Judge was wrong in assessing loss of wages for a period beyond that which was not attributable to any incapacity resulting from the accident.

We finally come to the question of award of 6% interest on the amount of £100.- damage to the motorcycle as from the 3rd November, 1982 instead of the 14th April, 1986, the date of the judgment.

Provision for the award of interest on damages awarded on a claim for negligence in personal accident cases has been introduced by s.58A of Law 156/1985 amending the Civil Wrongs Law Cap. 148. Such section provides as follows:

«58Α. Τηρουμένων των διατάξεων των εδαφίων (2) και (3) του άρθρου 33 των περί Δικαστηρίων Νόμων του 1960 έως 1985, καθ' οιανδήποτε ενώπιον οιουδήποτε *Δικαστηρίου διαδικασίαν δια την είσπραξιν* αποζημιώσεων δια σωματικήν βλάβην ή θάνατον συνεπεία αστικού αδικήματος το Δικαστήριον δέον να επιδικάζη, εκτός εάν είναι ικανοποιημένον ότι συντρέχουν ειδικοί περί του αντιθέτου λόγοι, τόκον με επιτόκιον 6% ετησίως επί ολοκλήρου ή μέρους του ποσού των επιδικασθεισών αποζημιώσεων, δι' ολόκληρον ή μέρος της περιόδου μεταξύ της ημερομηνίας ότε εγεννήθη το αγώγιμον δικαίωμα και της ημερομηνίας εκδόσεως της αποφάσεως, ως θέλει κρίνει πρέπον».

And the translation in English:

«(Subject to the provisions of sub sections (2) and (3) of section 33 of the Courts of Justice Law 1960 to 1985, at any proceedings before any Court for the payment of compensation for bodily injury or death on account of a civil wrong the Court must adjudge, unless satisfied that special reasons to the contrary exist, interest at 6% annually on the whole or part of the amount of the adjudged damages, for the whole or part of the period between the date on which the cause of action arose and the date of issue of the judgment, as it may deem fit.)»

The above provision expressly applies to damages for personal injuries or for causing death and not to any damage to property. Therefore the learned trial Judge though correct in awarding interest at 6% on the amount of damages for personal injuries to respondent 1 from a date prior to the judgment was wrong in awarding such interest to respondent 2 for damage to his motorcycle. The appeal therefore in this respect succeeds.

In the result, the appeal is allowed and the judgment of the trial Court is amended accordingly. Costs of the appeal in favour of the appellant. Cross appeal dismissed with no orders as to costs.

*Appeal allowed. Cross appeal dismissed.*