1989 May 29

(SAVVIDES, HADJITSANGARIS, BOYADJIS, JJ.)

PITRI BROTHERS AND OTHERS,

Appellants-Defendants,

v.

THEODOROS M. SHIAMPTANIS,

Respondent-Plaintiff

(Civil Appeal No. 7265).

Appeal — Findings of fact — Interference with, on appeal — Principles applicable.

Trial — Duties of trial Court — Duty to make concrete findings of fact on the evidence before it after analysing such evidence and give due reasoning for such findings — The duty to reason a judgment is not discharged merely by recounting the conflicting versions.

Reasonning of a judicial decision — Duty of a trial Court to reason its judgments is not discharged by a mere recounting of conflicting versions.

The facts of this case need not be summarized. Suffice it to say that the Court ordered a retnal on the ground that the trial Court merely recounted conflicting versions without commenting upon them and making findings of fact on the evidence.

Appeal allowed. Retrial ordered. Costs of the appeal to be costs in cause, but not against the appellants. Costs of previous trial to be costs in cause.

Cases referred to:

Papadopoulos v. Stavrou (1982) 1 C.L.R. 321;

Pioneer Candy Ltd. v. Tryfon and Sons Ltd. (1981) 1 C.L.R. 540;

Parmaxi and Another v. Katsiola (1985) 1 C.L.R. 633;

Agapiou v. Panayiotou (1988) 1 C.L.R. 257.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Laoutas, S.D.J.) dated the 29th September, 1986 (Action No. 684/83) whereby they were adjudged to pay to the plaintiff the sum of £1,801.- for damages caused to his car as a result of the negligence of the defendants whilst same was in their care

K. Koushios, for the appellants.

E. Vrahimi (Mrs.), for the respondent.

Cur. adv. vult

SAVVIDES J. read the following judgment of the Court. This is an appeal against the judgment of a Judge of the District Court of Nicosia whereby the appellants, defendants in Civil Action No. 684/83 were adjudged to pay to the respondent, plaintiff in the action, the sum of £1,801 - with interest and costs

The facts of the case are briefly as follows:

The respondent in this appeal, who was the plaintiff in Civil Action No. 684/83 (hereinafter to be referred to as «the plaintiff»), claimed against the appellants, defendants in the action, (hereinafter to be referred to as «the defendants») £2,873.- for damages caused to his car as a result of the negligence of the defendants whilst same was in the care of the defendants

Defendants 2 and 3 are mechanics and own a garage at Pallouriotissa where they operate their business under the business name of «Pitris Brothers», defendants 1 in the action. The defendants undertook to carry out certain repairs to the plaintiff's car which had been delivered to them after it has been involved in an accident. Whilst such car was in the custody of the defendants, it caught fire and was completely destroyed.

The plaintiff's allegation, according to the Statement of Claim, was that the defendants were negligent in handling his car and as a result of such negligence, the damage claimed arose. In the alternative it is alleged that the defendants were guilty of breach of contract of bailment.

The learned trial Judge found that the case was a clear case of breach of contract of bailment and concluded as follows:

«The facts of the present case support the argument of Mrs.

Vrachimi which I accept and hold that this is a clear cut case of bailment. All the features of bailment and in particular that of possession are apparent in the present case».

In his grounds of appeal learned counsel for the appellants included under (d) a ground that the learned trial Judge «wrongly concluded» that the present case was one of bailment. We shall not deal however with this aspect of the case as learned counsel for the appellants in the course of the hearing of the appeal abandoned such ground and limited the appellants' appeal to the following grounds:

(a) The learned trial Judge made a wrong evaluation of the evidence before him and/or did not take into consideration part of the evidence in that:

(1) He failed to make any finding in connection with the evidence before him about offers made for the purchase of the car after the fire.

(2) Evidence to the effect that the value of the car had been diminished due to its involvement in a previous accident in addition to any diminution due to the fact that such car was being used.

(3) In assessing the damages, he failed to take into consideration the damage that the car had previously sustained due to a traffic accident which necessitated the carrying out of certain repairs.

(4) He failed to assess correctly the salvage value of the car.

(5) He included in his assessment of damage items in respect of which no evidence was adduced.

(b) He failed to examine and/or give due weight to the allegation of the defendants about failure of the plaintiff to minimize his loss and applied wrongly the relevant legal principles in this respect.

(c) He made a wrong assessment of damages and failed to give due reasoning and/or explain how he assessed the damage.

The learned trial Judge, having dealt with the evidence before him in his judgment, went on as follows:

«On the issue of damages a considerable volume of

evidence has been adduced by both sides This evidence is in direct conflict with one another The plaintiff alleged that his car had been a total loss and beyond economic repair It was sold as a salvage at £400 The defendants, on the other hand alleged that the engine was intact and could have been placed in a new body at a low cost

Both expert valuers, the one on behalf of the plaintiff and the other of the defendants have stated that the car was a total loss but the engine was intact and could have been installed in a new body The cost of the installation would have been approximately £350 -

There is, also the evidence of D W 3, which I accept, to the effect that a new body of the same model as that of the plaintiff would cost, at that time, around £900

It is in evidence too that the plaintiff purchased the subject matter car at £2,300 duty free This leads me to the conclusion that the plaintiff could have had a new car at a cost lower than the purchase price The plaintiff has failed as he was dutybound, to take any reasonable steps to minimise his damage So I find that the plaintiff is entitled not to the whole amount of the market value of his car but to the amount of £1,250 - being the cost of the new body and the installation of the engine The plaintiff in my opinion, is precluded from claiming replacement of his car simply because part of it could have been used and a new car could have been built

According to the evidence of both valuers, the new car could have been sold at around £3,800 - It is my opinion and so hold, that the plaintiff is entitled to the amount of £1,250 - and not to the whole value of the car when purchased From this amount the sum of £370 - has to be deducted which represents the value of the salvage (£400 -) less the cost of the transportation (£30 -)

I find, further, that the plaintiff has proved to my satisfaction items (b) (c) (d) (e) and (f) of para 5 of the Statement of Claim

If my calculations are correct, the plaintiff is entitled to the total amount of £1,801 - »

Item (b), which was included in the assessment of damages, was in respect of the duty which had to be paid on the said car which had been imported and used free of import duty and which amounted to £416 It is in evidence that the plaintiff, after the damage caused to the car, which was considered as amounting to total loss of the car, was allowed to buy another duty free car and thus was not deprived of his benefit to possess a duty free car In making his calculation and awarding the amount of import duty on the said car, it escaped the attention of the learned trial Judge that the plaintiff, to be entitled to a new duty free car, had to pay the duty on what was left of his previous car and that the car after the payment of duty, would have been a duty paid car available for sale without any restriction and, as a result, its value as a duty paid car would be higher then that of a duty free car

Item (e) is claimed in respect of a sum of £100 - paid to the defendants on account for the repairs of the damages to the car as a result of the accident in which this car was involved before it was taken to the garage of the respondents and item (f) is in respect of two new mudguards provided by the plaintiff for repacement of those damaged due to the accident

The learned trial Judge by accepting the above items, has in an indirect way accepted that the value of the car had a diminution of its value due to the previous accident to the extent of £300 - In his assessment, whereas on the one hand he adds such expenses as additional damage to the plaintiff he makes no deduction from the value of the car as found by him in the condition it was before the fire, of the amount required for repairs to bring the car to that condition

It is in evidence that several offers were made to the plaintiff for the purchase of the salvage of the car in the condition it was after the fire In fact, the learned trial Judge mentioned such evidence in his judgment in which we read the following

> «They offered £1,750 - to purchase the car at the condition it was after the fire They had also found another purchaser who offered £1,500 - .
>
> D W.4 is a car dealer and according to his testimony he made an offer of £1,500 - to the defendants for the purchase of the salvage of the subject matter vehicle They rejected it Defendant 2 informed him that the owner would not sell it»

The learned trial Judge failed to make any analysis of such evidence, which was material in the assessment of damages, and make any findings in respect thereof supported by due reasoning. Without any finding on such evidence the learned trial Judge proceeded and made his own calculations, reaching the conclusion that the value of the salvage was £370 (£400 less the cost of transportation £30). Such calculations could be completely different if the evidence about offers for the purchase of the car in the condition it was after the accident were taken into consideration.

It is well settled that this Court will be reluctant to interfere with findings of fact of a trial Court unless such findings are inconsistent with the evidence adduced, they are unsatisfactory, arbitrary or arrived at in disregard to the evidence (*Papadopoulos v. Stavrou* (1982) 1 C.L.R. 321).

It is the duty of trial Court to make concrete findings of fact on the evidence before it after analyzing such evidence and give due reasoning for such findings. In *Pioneer Candy Ltd. v. Tryfon & Sons Ltd.* (1981) 1 C.L.R. 540, it was held by the Court of Appeal at p.541, that:

> «The authorities establish that for the requirement of due reasoning, there must be:
>
> (a) An analysis of the evidence adduced in the light of the issue as arising and defined by the pleadings;
>
> (b) Concrete findings as the necessary prelude to the judgment of the Court: and,
>
> (c) A clear judicial pronouncement indicating the outcome of the case».

In *Parmaxi and Another v. Katsiola* (1985) 1 C.L.R. 633 at p.643, we read the following:

> «It is indeed well settled that findings of fact based on the evaluation of credibility of witnesses is the province of trial Courts and that an Appellate Court is disinclined to interfere with them unless it appears that they are arbitrary or arrived at in disregard of the evidence and without proper evaluation of same».

Also, in the recent decision in *Agapiou v. Panayiotou* (1988) 1 C.L.R. 257, it was held at p.262 that:-

> «The duty to reason a judgment is not discharged by merely recounting the conflicting versions or commenting upon them. The failure of the trial Court to make findings respecting the credibility of the witnesses made the determination of the case vulnerable to be set aside for lack of due reasoning».

As already mentioned, in the present case, the learned trial Judge merely recounted material evidence before him without commenting and making any findings on such evidence, which in the circumstances might have had a bearing on the assessment of damages and his final award. Such omission renders the conclusion reached by him arbitrary and arrived at without proper evaluation of the evidence before him.

In view of the above, we have no alternative but to set aside the finding of the trial Court and order a new trial. The decision, therefore, of the trial Court is set aside and an order is made for a new trial under s.25(3) of the Court of Justice Law 1960 which will necessarily have to take place before a differently constituted Bench.

Regarding costs, we order that the costs of this appeal will be costs in cause but not against the appellants. Regarding all other costs in these proceedings, they should be costs in cause.

Appeal allowed. Retrial ordered. Costs in cause.