

## Litigation - Cyprus

### Supreme Court offers guidance on contributory negligence

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#### Facts

#### Decision

On July 13 2012, in its judgment in *Stavros Orthodoxou v Neophytos Ioannou*,<sup>(1)</sup> the Supreme Court clarified the principles underlying the apportionment of negligence.

#### Facts

While crossing a street on foot, the applicant was hit by a vehicle driven by the respondent. The court of first instance decided that both parties had been negligent in relation to the accident, apportioning 75% of the negligence to the applicant and 25% to the respondent.

The applicant appealed against three aspects of the judgment:

- the apportionment of 75% of the liability to him;
- the excessively low amount of damages awarded; and
- the court's refusal to make any award regarding a plastic surgery procedure which he had been forced to undergo due to the accident.

The respondent counter-appealed on two grounds:

- the apportionment of 25% liability to him; and
- the excessively high damages awarded to the applicant.

#### Decision

The Supreme Court decided that both the appeal and the counter-appeal had common grounds and it would be appropriate to consider them together.

Regarding the issue of the allocation of negligence, the applicant claimed that the respondent's fault was greater, since he had failed to take into consideration the clear and reasonable risk of hitting any one of the crowd of approximately 200 people (of which the applicant was one) who were about to cross the street. He also claimed that the respondent should have given priority to the pedestrians who were on the pavement and intended to cross to the other side. On the other hand, the respondent claimed that he had taken all reasonable measures to avoid any possible risk.

According to *Alexander v Leventis*,<sup>(2)</sup> in the case of road accidents, the allocation of negligence should be decided broadly, based on logic and common sense. The Supreme Court noted that negligence on the part of the driver of a vehicle has greater potential consequences than negligence on the part of a pedestrian or a cyclist. Even if the percentage of the contributory negligence between a driver and a pedestrian is equal, the amount of potential damage caused by the driver's negligence is greater. The Supreme Court also referred to the House of Lords decision in *Baker v Willoughby*,<sup>(3)</sup> in which it was held that in deciding the contributory negligence of each of the parties, both the actual negligence and the causative potency should be taken into account.

Taking into account the cases referred to above, the Supreme Court concluded that there is no general legal principle apportioning a higher percentage of negligence to the driver. It agreed with the court of first instance that the respondent had taken all the necessary actions, except those that were found to be negligent, and that the respondent's negligence was in fact less than the applicant's. Therefore the apportionment remained unchanged as to the applicant's contributory negligence.

Regarding the second common ground of appeal - the amount awarded as damages - the Supreme Court found that although the applicant's claim regarding the dysfunction brought about by the amputation of one of his toes was somewhat exaggerated, the injury was nevertheless severe, particularly since the applicant was a talented and aspiring football player. The Supreme Court therefore increased the general damages awarded to the applicant by €28,000 to €33,000 on a full liability basis. Taking the applicant's share of the liability into account, the award was reduced to €9,000.

Regarding the third ground of appeal - the cost of plastic surgery - the first instance court had made no award as nothing had been included in the statement of claim. The Supreme Court allowed the claim and increased the amount awarded to the applicant by €3,000.

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#### Endnotes

<sup>(1)</sup> Civil Appeal 248/2009.

<sup>(2)</sup> [1996] 1 AAD 420.

<sup>(3)</sup> [1969] 3 All ER 1528.

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