[TRIANTAFYLLIDES, STAVRINIDES AND LOIZOU, JJ.]

ADAMOS GAVRIELIDES,

Appellant-Plaintiff,

v.

DEMOS SHOUKIUROGLOU,

Respondent-Defendant.

(*Civil Appeal No.* 4606).

Civil Wrongs—Road Traffic—Road accident—Negligence—Liability—Apportionment of—Collision of Motor Vehicles—Findings of the trial Court on the issue of negligence—Upheld by the Supreme Court on appeal—Approach of an Appellate Court to the findings of fact made by trial Courts.

Practice—Appeals—Findings of fact by trial Court—Approach thereto of an Appellate Court—See above.

Evidence—Failure of the appellant to give evidence in support of his case—Trial Court not unduly influenced by such absence from the witness box—Trial Court entitled to comment on such failure.

Trials in civil cases—Witnesses—Failure of the appellant-plaintiff to take the witness stand at the trial in support of his case—Comments of trial Court thereon—Properly made.

Negligence—See above.

Road accident—See above.

The facts of the case sufficiently appear in the judgment of the Court dismissing the appeal by the plaintiff in this action No. 2194/64 tried by the District Court of Nicosia.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Evangelides Ag.D.J. and Demetriades D.J.) dated the 20th October, 1966. (Action No. 2194/64) dismissing plaintiff's action for damages for negligent driving.

Ph. Clerides, for the appellant.

N. Pelides, for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the Judgment of the Court which was delivered by :

TRIANTAFYLLIDES, J. : This is an appeal by the Appellant-Plaintiff against the judgment given by the District Court of Nicosia in civil action 2194/64 in favour of the Respondent-Defendant.

The salient facts, in so far as they do not appear to be in dispute between the parties, are as follows :

On the 7th June, 1964, at about 10 p.m., the Respondent, who was driving, an Alfa Romeo car, CG. 426, and was proceeding down Demetra Street towards Pediaeos Bridge, in Nicosia, stopped at the traffic lights at the cross-roads of Demetra Street, Metochiou Street, Heroes Street and Pediaeos Bridge. The Appellant, who was driving a Volvo car, AV. 124, was following some distance behind the Respondent; he collided with the car of the Respondent while it was stationary, and, consequent upon the impact, the Appellant lost control of his car and he hit two other vehicles on Pediaeos Bridge before he managed to stop. As a result be suffered serious injuries and damage to his car.

The total damages, special and general, were agreed between the parties at £2500 and what remained to be decided by the trial Court was the question of liability.

The Appellant did not dispute at the trial that he was negligent and that he had contributed to the accident, but he alleged that the Respondent had been also negligent and had contributed to the accident to a material extent; thus, the trial Court was invited to apportion liability between the parties. It held that the Respondent did not contribute to the accident through negligence of his own, and it accordingly dismissed the action of the Appellant, who has, as a result, filed the present appeal.

The Appellant's case has been that the Respondent's negligence consisted, first, of the fact that he had stopped at the traffic lights while they were green in his favour, and not red against him, and that he had so stopped suddenly and without making any signal; secondly, that while stopping the Respondent's car had swerved to the right and as a result the Appellant's car collided with the Respondent's car. On both these issues the trial Court found against the Appellant.

We have listened carefully to the submissions of counsel for the parties and we have gone fully through the record of this case, too.

Bearing in mind the proper approach of an appellate Court to findings of fact made by a trial Court, we find ourselves unable to hold that the findings of the trial Court that at the material time the traffic lights were red, against the Respondent, and that he did not stop thereat abruptly, without due warning, were not warranted by the evidence before the trial Court.

In any case, once the traffic lights were red, and it was night-time, and the Appellant was following behind the Respondent, there could be no question of the Appellant expecting much of a warning on the part of the Respondent that he was going to stop at the traffic lights, because the Appellant could easily see for himself that the traffic lights had changed to red; moreover, the indicator stop-lights, operated by the brakes of the Respondent's car, did constitute, in the circumstances, adequate warning to the Appellant that the Respondent was stopping at the traffic lights; and the absence of any brake-marks caused, in the course of stopping, by the Respondent's car, shows that such stopping was not abrupt.

We pass on next to whether the Respondent contributed to the accident by swerving to the right on stopping at the traffic lights. On this issue, even if we were prepared to accept that there was evidence indicating that the Respondent's car veered slightly to the right while stopping, we find ourselves, on the material before the Court, unable to disturb the trial Court's finding that the evidence did not establish that the Respondent had, thus, contributed to the accident; on this issue the burden was on the Appellant and he has failed to discharge it.

There is a further ground of appeal with which we might usefully deal and this is the complaint of the Appellant that the trial Court was wrongly influenced by the fact that the Appellant had failed to give evidence in support of his case. It is true that the trial Court has commented in its judgment that the Appellant, who was the person who knew best his own actions and reactions at the time, had failed to come forward to give evidence, and had, also, failed to establish that due to the injuries which he had suffered he had no recollection of what had happened, so as to explain his non-giving evidence.

We think that the trial Court was properly entitled to comment as it did and that it was not unduly influenced by the failure of the Appellant to give evidence—in the sense of being wrongly influenced in its assessment of the evidence actually before

it, or in the sense that it was wrongly influenced to find for the Respondent on that account.

On course it is not always fatal for a plaintiff not to come forward to give evidence in support of his case, but, depending on the material circumstances of each case, his absence from the witness-box may be an element which may deprive his case of the possibility of being established to the trial Court's satisfaction.

For all the above reasons we dismiss this appeal with costs.

Appeal dismissed with costs.