

MICHAEL IOANNOU KOTZIAPASHI,  
*Appellant,*

MICHAEL  
IOANNOU  
KOTZIAPASHI  
v.  
THE POLICE

v.

THE POLICE

*Respondents.*

(*Criminal Appeal No. 2900*)

*Road Traffic—Conviction—Appeal against conviction for driving a motor vehicle on a road without due care and attention, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332—On the ground that the findings of the trial Court, upon which the conviction was based, are against the weight of evidence, taken as a whole—Court of Appeal not persuaded that such findings are unsatisfactory.*

*Road Traffic—Sentence—Observations by Court of Appeal regarding inadequacy of sentence.*

*Court of Appeal—Appeal—Against findings of fact made by trial Courts—Approach of Court of Appeal.*

This is an appeal against conviction for the offence of driving a lorry on a public road without due care and attention, contrary to section 6 of the Motor Vehicles and Road Traffic Law Cap. 332, taken on the ground that the findings of the trial Court, upon which the conviction is based, are against the weight of the evidence, taken as a whole.

*Held*, (1) the approach of this Court to appeals of this nature, has been stated in a number of cases ; and is now well settled. Unless the appellant can show from the record, that the findings of the trial Court are unsatisfactory and cannot, therefore, be sustained, this Court will not disturb them. What findings have been found unsatisfactory, in some cases ; and what findings have not been so found in other cases, is a matter which may be seen by reference to the reports. It is a matter which is discussed and determined in each case, on the material before the Court.

(2) After hearing learned counsel for the appellant in the present appeal, we are not persuaded that the findings of the trial Judge, upon which the conviction is based, are unsatisfactory. We have, therefore, found it unnecessary to call on counsel for the respondent, to answer the appeal.

*Appeal dismissed.*

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*Observations* : Observations by Court of Appeal regarding the inadequacy of the sentence of £2.- fine imposed on the appellant on the charge of carrying on his lorry a load of 2,949 okes of weight in excess of the lorry's licence.

**Appeal against conviction.**

Appeal against conviction by appellant who was convicted on the 27th March, 1967, at the District Court of Famagusta (Criminal Case No. 7720/66) on one count of the offence of driving a goods vehicle without due care and attention contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 and was sentenced by Kourris, D.J., to pay a fine of £12.

*E. Emilianides*, for the appellant.

*A. Frangos*, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, P.: The appellant was convicted in the District Court of Famagusta on a charge of driving his lorry on a public road without due care and attention, contrary to section 6 of the Motor Vehicles and Road Traffic Law (Cap. 332).

The charge arose from a collision between the rear part of appellant's lorry and the front offside part of a Simca saloon car, which occurred very near the junction where a new road from the harbour of Famagusta, joins at almost right angles the main Nicosia-Famagusta road, within the Municipal area of the town of Famagusta.

The case for the prosecution was that the drivers of both cars were to blame for the collision, having failed in their duty to drive their respective vehicles with due care and attention, at the material time. Both drivers were prosecuted in the same charge on separate counts. The driver of the saloon car pleaded guilty to the charge ; and was fined £8. The driver of the lorry pleaded " not guilty " ; and the case against him went to trial accordingly.

After hearing three witnesses for the prosecution, and the appellant who gave evidence for the defence, the trial Judge found the appellant guilty ; and convicted him accordingly. Dealing with his evidence, the trial Judge stated the reasons for which he found the appellant an unreliable witness ; and discarded his evidence (page 8 G). The Judge was

satisfied on the evidence before him, that the appellant failed to stop before entering the main road at the junction ; and failed to have a proper lookout before entering the main road (page 9, E).

The appeal is taken on the ground that the findings of the trial Court, upon which the conviction is based, are against the weight of the evidence, taken as a whole.

The approach of this Court to appeals of this nature, has been stated in a number of cases ; and is now well settled. Unless the appellant can show from the record, that the findings of the trial Court are unsatisfactory, and cannot, therefore, be sustained, this Court will not disturb them. What findings have been found unsatisfactory, in some cases ; and what findings have not been so found in other cases, is a matter which may be seen by reference to the reports. It is a matter which is discussed and determined in each case, on the material before the Court.

After hearing learned counsel for the appellant in the present appeal, we are not persuaded that the findings of the trial Judge, upon which the conviction is based, are unsatisfactory. We have, therefore, found it unnecessary to call on counsel for the respondent, to answer the appeal.

Before closing this case, however, we wish to draw the attention of counsel for the prosecution to the sentence of £2 fine, imposed on the appellant, on the charge of carrying on his lorry a load of 2,949 okes of weight in excess of the lorry's licence. There is no appeal against sentence in this case, and we cannot, therefore, enter into that matter ; but we are rather concerned with the sentence imposed for an offence, knowingly and deliberately committed, (apparently for purposes of profit) in full disregard of the dangers involved in such violation of the regulations. Carrying more than double the weight for which this lorry is licensed, may not be entirely disconnected with the collision in the present case. This apart of other dangers on the road. We consider such a sentence as manifestly inadequate to serve any of the purposes for which a sentence is provided by law, for an offence of this nature.

The appeal against conviction, which constitutes the matter before us, shall stand dismissed.

*Appeal dismissed.*

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