

1968
May 3

[TRIANTAFYLLIDES, STAVRINIDES, HADJIANASTASSIOU, JJ.]

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SYMEON
CHRISTOU
MINOR SUING
THROUGH HIS
FATHER AND
NEXT FRIEND
TAKIS SYMEOU
v.
ANDREAS
MICHAEL
MAKRIS AND
OTHERS

SYMEON CHRISTOU, MINOR, SUING THROUGH
HIS FATHER AND NEXT FRIEND TAKIS SYMEOU,

Appellant-Plaintiff,

v.

ANDREAS MICHAEL MAKRIS AND OTHERS,

Respondents-Defendants.

(Civil Appeal No. 4669).

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Road traffic—Negligence—Running down cases—Personal injuries—Motorist knocking down and injuring a minor attempting to cross the road—By attempting to dash across the road and in front of the car driven by one of the defendants-respondents—No reason to disturb the finding of the trial Court to the effect that in the circumstances the driver-defendant was not negligent.

Negligence—Road traffic—Knocking down a child of 6 years—Attempting to dash across the road—See above.

The facts of the case sufficiently appear in the judgment of the Court.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Evangelides, Ag. D.J.) dated the 30th September, 1967, (Action No. 1626/65) whereby plaintiff's claim for damages, for personal injuries was dismissed.

P. Petrides, for the appellant.

Ph. Clerides, for the respondents.

TRIANTAFYLLIDES, J. : In this case the appellant-plaintiff appeals against the judgment of the District Court of Nicosia, in action 1626/65, by virtue of which his claim for damages, for personal injuries, against the respondents-defendants was dismissed.

The accident, in which the appellant—at the time a boy 6 years' old—was injured, occurred on the 22nd of January, 1964, in Pendayia village, at about 11.30 a.m.

Respondent 1, who was at the time acting in the course of the employment of respondent 2, was driving motorcar AY432 in Pendayia village, at a speed of 20-25 mph., when he noticed ahead of him, from a distance of about 40 yards, three children playing at the left hand side of the road. According to his evidence, which was accepted by the trial Court, he then slowed down to a speed of 10-15 mph. He sounded his horn two or three times, and kept his attention on the children. When he was about 10 feet away from them one of the children, the appellant, attempted to dash across the road, in front of the car, with the result that even though respondent 1 applied his brakes and swerved he did not succeed in avoiding the appellant, who was knocked down by the left part of the front bumper of the car and was injured seriously. The appellant was not thrown away or dragged along when struck by the car, but he fell more or less at the spot where he was hit.

The evidence of respondent 1 was not heard by the trial Court. It was heard as evidence preparatory to the trial by another judge of the District Court of Nicosia. At first sight it might appear rather unorthodox that the evidence of a most material witness for the defence, such as respondent 1, should have been heard as preparatory to the trial, and by a member of the District Court who was not eventually a member of the Full District Court which tried the case. But, it seems that respondent 1, who was residing abroad, had come specially to Cyprus in order to testify at the hearing of the case, which was fixed for the 25th of May, 1968; then, such hearing was adjourned to the 29th September, 1967, on an application by appellant and, as a result, counsel for respondents was obliged to apply for the evidence of respondent 1 to be taken by a Judge as preparatory to the trial. To this application counsel for appellant did not object; neither did he object when the case came up for hearing before two other Judges of the District Court of Nicosia.

In any case, the demeanour of respondent 1 could not be of a really decisive importance in this case, in view of the fact that no witness was called by appellant's side to give evidence as to how the accident happened. The only other witness who gave evidence on the point was called by the defence; she is witness Mouyiasou and her evidence tallies, in all material respects, with the evidence of respondent 1; and this witness was seen and heard and believed by the trial Court.

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This appeal has to be determined in the light of the particular circumstances of the case, only; it does not involve any difficulty in applying the relevant principles of law; and it has to be borne in mind that it is up to the appellant to satisfy us that the conclusion reached by the trial Court is wrong.

We are of the view that there exists nothing requiring us to disturb the findings of the trial Court regarding the essential facts of the case.

What has, next, to be examined is whether or not, on the facts as found by the trial Court, this Court should draw inferences leading to the conclusion, in disagreement with the trial Court, that respondent 1 was negligent, in that he was driving without such care and attention as was required on his part after he had noticed the three children ahead of him, at the side of the road.

We see no reason to disagree, in this respect, with the trial Court, the evidence of witness Mouyiasou, who stated that she saw the children quarrelling just before one of them, the appellant, took something from the others and dashed across the road, shows that the appearance of the appellant in front of the motor-car was an unexpected and very sudden event, which respondent 1 could not have anticipated; and in such a predicament the appellant behaved as best as he could; the mere fact that, in spite of his efforts, he knocked down the appellant does not render him guilty of negligent driving in the circumstances.

This appeal, therefore, fails and is dismissed accordingly with costs.

Appeal dismissed with costs.