

KYPROS KYRIAKIDES,

Appellant-Plaintiff,

v.

MICHAEL A. LAPOURTAS AND ANOTHER,

Respondents-Defendants.

(Civil Appeal No. 4641).

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KYPROS
KYRIAKIDES
v.
MICHAEL A.
LAPOURTAS
AND ANOTHER

Road traffic—Negligence—Running down case—Motorist running down and causing injury to pedestrian who did not keep proper look out in crossing a busy thoroughfare, at a place which was not a controlled crossing—And at a time when the motorist was lawfully proceeding along it with the traffic lights in his favour—And at a proper speed—No liability of the motorist—Accident due solely to the negligence of the pedestrian.

Negligence—See above.

Civil Wrongs—Negligence—See above.

Running down cases—See above.

The facts sufficiently appear in the judgment of the Court.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Loizou P.D.C. & Mavrommatis D.J.) dated the 23rd May, 1967 (Action No. 2764/65) by virtue of which his claim for damages for personal injuries was dismissed.

G.M. Platritis, for the appellant.

L. Demetriades, for the respondents.

The judgment of the Court was delivered by:-

TRIANTAFYLIDIS, J.: In this appeal the appellant-plaintiff appeals against the judgment of the District Court Nicosia, in civil action 2764/65, by means of which his claim for damages, for personal injuries, against the respondents-defendants, was dismissed. The appellant had based his claim on the, allegedly, negligent driving of respondent 1,

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while acting in the course of his employment as a servant of respondent 2.

The facts of this case are shortly as follows:

On the 3rd April, 1965, in the afternoon, respondent 1 was driving, in Stassinos Avenue, Nicosia, a land-rover, towing a van by means of an iron shaft. While proceeding away from Metaxas Square, he had to stop at the traffic lights at the junction of Stassinos Avenue and Boumboulina Street. Then the lights changed in his favour and he started to cross the junction; when he had reached a point about its middle, he noticed the appellant, who, at the time, was standing beyond the junction, in Stassinou Avenue, near the pavement to the left of respondent 1, and was talking to another person.

Either as soon as respondent 1 had noticed the appellant, or immediately thereafter, the appellant started crossing Stassinou Avenue to go to its opposite side; in doing so he kept on talking to the said other person and was looking away from the junction, wherefrom were coming the vehicles under the control of respondent 1.

As found by the learned trial Judges, respondent 1, on seeing the appellant crossing the road, blew his horn and applied his brakes, but he did not manage to stop short of hitting the appellant who, as a result, was knocked down and suffered injuries; it is correct that respondent 1 did not swerve in order to try to avoid the appellant.

On the basis of the foregoing, and in the light of the undisputable fact that the speed of respondent 1, who had just started at the traffic-lights, could not have been, in any sense, excessive, the trial Court found that the appellant was solely to blame for his predicament, in that he did not exercise reasonable care by keeping a proper look out while crossing the road; it found, on the other hand, that respondent 1 had exercised all reasonable care in the circumstances, and that the fact that he did not swerve to the right or to the left did not amount to negligence on his part, in view of the sudden emergency by which respondent 1 was faced, because of appellant's negligent conduct, without being able to tell how appellant would react on noticing the land-rover coming towards him.

We have heard carefully the submissions of learned counsel

for the appellant and we have borne duly in mind the legal principles on which he relied, and which are really not in dispute, having been repeatedly applied by this Court in similar cases.

The onus of satisfying us that the conclusions reached by the trial Court were not warranted by the evidence before it was on the appellant; having considered all the points raised by his counsel, and having given due weight to the factor that respondent 1 was in charge of two vehicles and he ought to have exercised, in the circumstances, the maximum possible care, we are, nevertheless, not satisfied that the conclusions reached by the trial Court were not reasonably open to it on the material before it.

We have no doubt in our minds that the accident, in which the appellant has suffered his injuries, is attributable wholly to his own negligence, in crossing a busy thoroughfare, at a place which was not a controlled crossing, without keeping a proper look out, at a time when respondent 1 was lawfully proceeding along it with the traffic lights in his favour and at a proper, in the circumstances, speed.

We, therefore, hold that it is neither possible nor necessary for us to disturb the judgment under appeal, and we dismiss this appeal with costs.

Appeal dismissed with costs.

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