[TRIANTAFYLLIDES, STAVRINIDES AND HADJIANASTASSIOU, JJ.]

ANTONAKIS A. VASSILIADES,

Appellant-Plaintiff,

v.

1. MILTIADES G. PATA,
2. FRANGOPOULLOS ANTONIOU,

Respondents-Defendants.

(Civil Appeal No. 4777).

Civil Procedure—Appeal—Withdrawal of appeal against one of two respondents—Court of Appeal has power to allow such respondent to be heard in support of appeal, filed by appellant, against the other respondent—Notwithstanding that the former respondent did not appeal himself against the judgment of the trial Court absolving the other respondent from any liability—Civil Procedure Rules, Order 35, *rule* 8.

Appeal—Withdrawal of appeal against one of two respondents—Leave granted to such respondent to be heard on the issue concerning the other respondent—See, also, supra.

Appeal—Findings of fact—Negligence—Road accident—Verdict of the trial Court properly open to it—Court of Appeal, therefore, will not interfere.

Road accident—Negligence—Collision between two motor vehicles moving in the same direction—The driver of the one such motor vehicle found solely to blame—Verdict and findings of the trial Court reasonably open to it—Left undisturbed.

This is a road accident case involving the collision of a lorry driven by respondent 1, and a motor car, driven by respondent 2. As a result, the appellant who was at the time a passenger in the car, suffered injuries. He instituted an action in the District Court of Nicosia claiming damages against both drivers. The trial Court found that respondent 1, the driver of the lorry, was solely to blame, adjudged him to pay general (and special) damages to the appellant (plaintiff) and dismissed the claim against respondent 2, the driver of the car. The plaintiff took this appeal against respondent 1 in respect of the amount of general damages awarded as afore-

said; and against the respondent 2 in respect of the trial Court's finding that he (respondent 2 the driver of the car) was not guilty of any negligence.

At the opening of the appeal, the appellant has withdrawn the appeal as to the quantum of damages thus in effect withdrawing the appeal in so far as respondent 1 (the driver of the lorry) was concerned. Thereupon counsel for this respondent 1 asked leave to be heard regarding the issue of liability of respondent 2, his case (respondent's 1 case) as well as that of the appellant being throughout that respondent 2 should also have been found to blame for the accident in question. Counsel for respondent 2 objected to such a course pointing out that respondent 1 had not appealed against the finding of the trial Court that it was respondent 1 (the driver of the lorry) who was solely to blame.

Granting leave the Court:—

Held, (1). Under rule 8 of Order 35 of the Civil Procedure Rules we have all the powers and duties of the trial Court, which include the power to make an order of apportionment under section 64(2) of the Civil Wrongs Law, Cap. 148 in case respondent 2 were found to be liable too; and the said rule expressly provides that the powers of the Court of Appeal "may also be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have appealed from or complained of, the decision."

(2) We are of opinion that in view of the aforesaid rule 8 we have the power to allow respondent 1 to be heard in this appeal; and that we should do so in the interests of justice. (In re *Whiston. Whiston* v. *Woolley* [1924] 1 Ch. 122, at p. 134 *followed* and *applied.*)

Order accordingly.

As to the merits of the case the Court after reviewing the facts dismissed the appeal and:

Held: After reading the judgment of the trial Court, perusing the evidence on which it was based, examining the sketch, measurements and other material relied upon by the trial Court, we are quite satisfied that the findings and verdict of the trial Court were, in the circumstances, properly open to it and that we should not disturb them.

Appeal dismissed.

Cases referred to:

In re Whiston. Whiston v. *Woolley* [1924] 1 Ch. 122, at p. 134 *followed*;

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (A. Loizou, P.D.C. & Stavrinakis, D.J.) dated the 29th October 1968 (Action No. 3097/67) whereby respondent No. 1 was adjudged to pay to him the sum of £3,400 as damages for the injuries he sustained in a road accident and the action against respondent 2 was dismissed.

L. Papaphilippou, for the appellant.

D. Liveras, for respondent No. 1.

G. Pelagias, for respondent No. 2.

The following ruling was delivered by:—

TRIANTAFYLLIDES, J.: In this case the appellant has appealed both against the finding of the trial Court – in District Court of Nicosia Civil Action No. 3097/67 – that respondent 2, who was defendant 3 in the Court below, was not guilty of negligence at all, and, also, in respect of the amount of general damages awarded by the Court against respondent 1, who was found to be solely liable to pay to the appellant damages for negligence.

Both respondents were served with the notice of appeal and have appeared before us through their respective counsel.

Today, the appellant has withdrawn the appeal as to damages, thus withdrawing, in effect, the appeal in so far as respondent 1 is concerned.

As it appears from the pleadings that respondent 1 has blamed respondent 2 for the collision in which the appellant was injured and that, respondent 2, on the other hand, has blamed respondent 1 for such collision, counsel for respondent 1 has asked for leave to be heard regarding the issue of the liability of respondent 2, notwithstanding the fact that the appeal as to damages against respondent 1 was withdrawn;

counsel for respondent 2 has objected to such a course, pointing out that respondent 1 has not appealed against the finding of the trial Court that it was respondent 1 who was solely to blame.

We are of the opinion that, in view of rule 8 of Order 35 of the Civil Procedure Rules, we have the power to allow respondent 1 to be heard in this appeal; and that we should do so in the interests of justice.

Under rule 8 we have all the powers and duties of the trial Court, which include the power to make an order of apportionment under section 64(2) of the Civil Wrongs Law (Cap. 148), in case respondent 2 were found to be liable too; and the said rule expressly provides that the powers of the Court of Appeal " may also be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have appealed from or complained of the decision".

A useful example regarding the need for a Court of Appeal to hear all necessary parties, even if any one of them has not even appealed, is the case of *In re Whiston. Whiston* v. *Wooley* [1924] 1 Ch. 122, at p. 134; but, of course, in each case the Court has to exercise its relevant discretionary powers according to the justice of the matter.

We have decided, in the circumstances, to proceed to allow counsel for respondent 1 to be heard, too.

Order accordingly.

The judgment of the Court was delivered by:—

TRIANTAFYLLIDES, J.: By the present appeal the appellant-plaintiff complains against the decision of the District Court of Nicosia, in Civil Action No. 3097/67, by virtue of which respondent 2 was absolved of blame in relation to the causing of a collision, on the 24th September, 1966, as a result of which the appellant suffered injuries. For the reasons given in a ruling which we have just delivered, respondent 1, who was found liable for such collision, has been allowed to be heard in support of the appeal filed by the appellant as against respondent 2.

The short facts of the case are as follows:—

On the said date respondent 1 was driving a lorry from Nicosia to Famagusta, being followed by a car driven by respondent 2, in which the appellant, a young man about to graduate from a secondary education school, was a passenger.

Whilst respondent 2 was about to overtake respondent 1, the latter, without giving any signal to that effect, swerved across the road to his right, in order to enter into a country lane which was not visible from the position at which respondent 2 was at the time.

In the circumstances, the negligence, and consequent liability of respondent 1, have not been disputed; and the trial Court did not find that respondent 2 was negligent in any way.

It has been strenuously argued by counsel for the appellant and by counsel for respondent 1 that respondent 2 should also have been found to blame, to a certain extent, for the collision, because of the manner in which he tried to overtake respondent 1; it was submitted that he saw the lorry blocking his way so long enough in advance as to cast a duty on him, and give him time, to stop or to take avoiding action, to avert the collision.

After reading the judgment of the trial Court, perusing the evidence on which it was based, examining the sketch, measurements and other material relied upon by the trial Court, we are quite satisfied that the verdict of the trial Court was, in the circumstances, properly open to it and that we should not interfere with it.

Learned counsel for the appellant and respondent 1, in attacking the decision of the Court below, have advanced ingenious arguments against it, which if looked upon in isolation they might seem, at first sight, to be of some significance; but the case has to be looked upon as a whole; and when one bears, especially, in mind that at the vital point of time both vehicles were moving in one and the same direction, then what have been described by counsel as discrepancies between the brakemarks and other measurements, on the one hand, and the evidence accepted by the trial Court, on the other hand, lose, indeed, their importance and cannot prove fatal to the conclusion, as to liability, reached by the said Court, which had the opportunity to see the witnesses testifying – and in particular the persons mainly involved in this collision – and

to weigh the reliability of their versions. In this respect the fact should not be lost sight of that from the evidence of the appellant himself it appears that he had, at the material time, the same impression as the driver – respondent 2 – of the car in which he was travelling, *viz.* that their way was blocked in such a manner that there was very little, or nothing, that could be done to avoid the collision; in other words that they were faced with a sudden emergency due to the conduct of respondent 1.

In the result this appeal fails, as we have not been convinced that we should interfere with the relevant finding of the Court below.

There shall be an order for costs, in the appeal, against the appellant and in favour of respondent 2; but we think it is only fair that there should be no order as to costs as against respondent 1, because in so far as he was concerned the appeal was withdrawn and he has merely requested, and been granted, a chance to address us regarding the already in dispute issue of liability.

Appeal dismissed. Order for costs as above.