1969
Nov. 20
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ROLANDIS LOUCA & SOTERIADES LTD.
v.
MELIS MARINOU AND CHARALAMBOS GREGORIADES

[TRIANTAFYLLIDES, STAVRINIDES, HADJIANASTASSIOU, JJ.]

ROLANDIS LOUCA & SOTERIADES LTD.,
Appellants-Defendants,

v.

MELIS MARINOU,
Respondent-Plaintiff,

and

CHARALAMBOS GREGORIADES,
Respondent-Third Party.

(*Civil Appeal No.* 4796).

Master and Servant—Duty of master to his servant—To provide safe system of working—Lorry in bad state of repair—Driver, employed by the appellants, injured in road accident due to the bursting of one of the tyres of the said lorry—Employers not ignorant of the essence of the state of tyre—Solely to blame for not providing a safe system of work—Consequently solely liable in damages for the injuries sustained by their servant-driver—Their agent-third party in these proceedings-who allowed the lorry on the road not guilty of any negligence in the circumstances—Rightly absolved by the trial Court.

Safe system of work—Duty of the employer in this respect—Breach—Damages—See supra.

The facts sufficiently appear in the judgment of the Court dismissing the appeal against the judgment of the trial Court adjudging the appellants-defendants to pay damages to the respondent-plaintiff their employee, for breach of their duty to provide a safe system of work and absolving the respondent-third party the employers' agent of any liability in the matter.

Appeal.

Appeal by defendants against the judgment of the District Court of Famagusta (Savvides & Pikis D. JJ.) dated the 24th January, 1969 (Action No. 545/66) whereby they were ordered

to pay to the plaintiff the amount of £1,807 as damages for the injuries he suffered in a road accident as a result of a breach of duty of the defendant.

L. Demetriades, for the appellants-defendants.

M. Montanios with *A. Lemis*, for the respondent-plaintiff.

Cl. Antoniades, for the respondent-third-party.

The judgment of the Court was delivered by:

TRIANTAFYLLIDES, J.: At the commencement of the hearing of this appeal counsel for the appellants-defendants has declared that he abandoned the appeal in so far as it relates to the respondent-plaintiff; counsel for this respondent has stated that he raised no objection to such a course and that he claimed no costs. As a result we grant leave for the withdrawal of this appeal, to that extent, and we dismiss it without any order as to costs in so far as it relates to respondent-plaintiff.

We are, now, only concerned with the appeal of the appellants against the judgment of the District Court of Famagusta, in civil action 545/66, in so far as by such judgment was found that the respondent-third party, the agent of the appellants in Famagusta, was not to blame for a road accident, on the 27th March, 1965, on the Famagusta-Nicosia road, in which the respondent-plaintiff, an employee of the appellants, was injured.

Learned counsel for the appellants presented his case in a very clear and concise manner: He has accepted the findings of the trial Court regarding the agency relationship between the appellants and the third party and he has not in any way complained against the view of the law taken by such Court in its judgment.

He has based his case on the contention that the agent – (as we shall hereinafter refer to the third party) – did not communicate correctly to his principals, the appellants, and particularly, to Mr. Louca, one of the senior employees of the appellants in Nicosia, what he had been told by a mechanic in Famagusta, at the material time, regarding the condition of the tyres of the lorry of the appellants, which lorry the agent allowed to be driven by the respondent-plaintiff from Famagusta to Nicosia, with the result that the accident took place on the way, through the bursting of a tyre.

It has been argued on behalf of the appellants that if we were to find in their favour on this point then part of the liability for the damages payable to the respondent-plaintiff ought to be borne by the agent.

The aforesaid Mr. Louca was dead at the time of the trial and, therefore, his evidence was not available for the trial Court; it heard the evidence of the agent and accepted it, to the effect that, after he was told by the mechanic that one of the tyres, of the lorry in question, had burst, he telephoned Mr. Louca but did not manage to obtain his approval for replacing the tyre with a new one (there not being available on the lorry a spare tyre); as a result it was decided that the mechanic should patch up the tyre, and once this was done the lorry left, driven by the respondent-plaintiff, for Nicosia; on the way the tyre burst again causing the accident in which the respondent was injured.

It is in evidence that the other three tyres of the lorry were worn out, too, and in a very bad condition, and, as the mechanic, himself, has stated, he, consequently, did not even think that it would be of any use to put the patched tyre at the rear of the vehicle, and not to leave it at the front, where it was potentially more dangerous.

In order to find out whether or not the agent did, in fact, substantially mislead, over the phone, Mr. Louca, about what he had been told by the mechanic, we have looked carefully at the evidence of the mechanic, who was a witness called by the appellants. In our opinion, after reading such evidence as a whole and construing it fairly, the conclusion to be drawn is that the mechanic thought the tyre concerned to be usable (once it had been patched up) for three to six months, but usable with care.

There is nowhere in his evidence anything to show that he ever told the agent that, after the tyre had been patched up, it was dangerous for the lorry to be driven to Nicosia for that one journey; the mechanic stated only that he told the respondent-plaintiff, who was to drive the lorry to Nicosia, to be careful, because the tyre would be dangerous even after it had been patched up; but when one reads this part of the mechanic's evidence in its proper context it is quite clear that what he meant to convey, and did convey to the respondent-plaintiff (and assuming that it was relayed by him to the agent)

was that the patched up tyre, like all the other tyres of the lorry, was in a bad state, and, therefore, there was danger involved in driving the lorry until all the tyres had been changed; and, consequently, the person driving it had to be careful.

We had, also, to look at this incident, regarding the patched up tyre, against the background of the fact that the lorry in question came to be delivered by the appellants to the agent, for use by him, only a week before the accident so that the appellants must have had ample knowledge of the worn out state of its tyres; and it is in evidence, too, that the agent had protested that the lorry was given to him in a bad state of repair.

On an examination of the material before us as a whole, we have not been satisfied, as the trial Court was quite rightly not satisfied either, that the lorry was driven to Nicosia by the respondent-plaintiff in circumstances in which the appellants could have been, or in fact were, ignorant of the essence of the situation, or that they were ignorant about such situation, in a material respect, through their agent not informing Mr. Louca, their service manager, about the substance of the matter in relation to the tyre concerned.

We find that the trial Court quite rightly found the appellants solely to blame for not providing the respondent-plaintiff with a safe system of work and, thus, to be solely liable to him in damages for the injuries he suffered through the accident.

We, therefore, have to dismiss this appeal with costs.

Appeal dismissed with costs