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Sept. 25

[VASSILIADES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

KYRIACOS  
PANAYIOTOU  
v.  
THE POLICE

KYRIACOS PANAYIOTOU,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 3164.*)

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*Motor Traffic—Driving without due care and attention—Section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332—Collision between motor car and a pedestrian in a pedestrian crossing—Conviction—Conviction set aside—Judgment not stating the conduct of the appellant which amounted to careless driving i.e. not stating what did the driver do, or what did he omit to do, which amounted to careless driving—Judge mis-directed himself by putting to himself the question of negligence as a question of law and answering it in the way he did—See further infra.*

*Pedestrian crossings—Duty of the driver of a motor vehicle to pedestrians using or about to use such crossing—In general—And, also, specifically under the Nicosia (Traffic) Bye-Laws 1952–1955, paragraph 6, sub-para. (l).*

*Road Traffic—See supra passim.*

The facts sufficiently appear in the first judgment delivered by Hadjianastassiou, J.

### **Appeal against conviction and sentence.**

Appeal against conviction and sentence by Kyriacos Panayiotou who was convicted on the 16th April, 1970, at the District Court of Nicosia (Criminal Case No. 18042/69) on one count of the offence of driving a motor vehicle without due care and attention contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332, and was sentenced by Pantelides, Ag. D.J., to pay a fine of £10 and £1.500 mils costs.

*Ph. Clerides*, for the appellant.

*V. Aristodemou*, Counsel of the Republic, for the respondents.

VASSILIADES, P.: Mr. Justice Hadjianastassiou will deliver the first judgment.

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HADJIANASTASSIOU, J.: The appellant in this case appeals to this Court against his conviction, by the District Court of Nicosia dated April 4, 1970, of driving without due care and attention in Nicosia, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332.

The facts are simple: On November 3, 1969, the accused was driving his car under Registration No. EH 112 proceeding along Evagoras Avenue at a speed of 20 m.p.h. on his way to Metaxas Square and when he approached a crossing which is controlled by traffic lights, the lights changed into red and he stopped. At the same time, the lights from Passiadou Street turned into red. When the lights turned into green again he proceeded at a pace of 5-8 m.p.h., intending to turn into Passiadou Street. He noticed on the pavement pedestrians standing but no one tried to cross over. He drove on and when he found himself within 10 or 12 feet inside Passiadou Street, and while the lights were still red from that side, he felt a bang on the left front door of his vehicle; immediately he applied his brakes and he stopped. When he alighted he realized that an accident took place when a pedestrian tried to cross to the other side of Passiadou Street, through a pedestrian crossing which was just after the traffic lights. In accordance with a plan prepared by P.C. 2819 Georghios Voutounos, the pedestrian was standing at point "A" when she was about to cross, and the pedestrian crossing is shown with two white lines.

The case for the prosecution before the trial Court is, that whilst prosecution witness No. 2, P.C.681 Antonios Xanthos, was driving his own car following another car, he stopped because of the traffic lights at Passiadou Street. He noticed a car coming from Evagoras Avenue, entering the cross-road and turning right into Passiadou Street. At the same time a young lady, as he described the pedestrian, was standing on the pavement at point "A" and tried to cross to the other side of Passiadou Street whilst the car of the accused was 20 ft. from her. When the complainant tried to cross in a hurry and when she was already four paces within the pedestrian crossing, she collided with the car of the accused.

The version of the complainant P.W. 3 Georghia Petrasitou is that when the lights at Passiadou Street became

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red she started crossing through the pedestrian crossing and collided with a car coming from Evagoras Avenue which turned into Passiadou Street. In cross-examination she said that she did not remember with what part of the vehicle she collided, and admitted that she was rather in a hurry to cross.

Accused in an unsworn statement repeated whatever he said in his statement to the police. The appellant's case before the trial Court and this Court was presented under two heads : First it was alleged that the appellant was not driving without due care and attention and secondly that a pedestrian has no priority in Cyprus because no specific regulation exists.

The learned trial Judge without in any way evaluating the evidence before him, and without making a finding of fact whether the appellant was guilty of driving without due care and attention, posed this question : " If a driver stops at traffic lights and when the light becomes green proceeds in the cross-road and then turns right and collides with a pedestrian who tries to cross the road within the two white lines, is he guilty of careless driving? ". He then proceeded to answer it in this way : " In the opinion of the Court, when the light became green for accused, he could proceed straight ahead and had priority over vehicles which wanted to cut his path. From the moment, however, that he intends to turn right and get into a different path, he must give priority to vehicles coming from the opposite direction, as well as to pedestrians who cross in the way that the pedestrian did. "

With due respect to the opinion of the learned trial Judge, it seems to me that he has misdirected himself as to the question of law. In my view, negligence may be said to consist in a failure to exercise due care in a case in which a duty to take care exists, and in each case this is a question of fact and not of law. The burden of proof, therefore, remains on the prosecution to satisfy the Court that the appellant was guilty of driving without due care and attention. In my opinion, the duty of a driver who was entering the crossing in obedience to the traffic lights is to take all reasonable steps to avoid coming into collision with another vehicle or pedestrian if he had noticed the pedestrian in time. But in the absence of a finding by the learned trial Judge as to what is the share of the blame cast on the appellant, I am left with no alternative but to allow the appeal. In any event, however, after reading the record of the Court, I have reached the view

that the only inference I can draw is that the complainant who, as she said was in a hurry to cross, began doing so without a proper look-out and without caring about the traffic on the road, with the result that she collided on the vehicle of the appellant which was already in Passiadou Street. Moreover, the fact that the complainant banged on the left front door of accused's car is consistent with the fact that she was crossing the pedestrian crossing in a hurry without looking before she started crossing.

Out of deference to learned counsel for the appellant, who was allowed to argue another point not included in his ground of appeal, I would like to state that I find myself in agreement with his argument that even if the accused was also charged under Nicosia Municipal (Traffic) By-Laws, 1952-1955, then again from the evidence before the trial Court the appellant could not possibly be found guilty, because the duty of the driver under paragraph 6 sub-para. (1) of the said Regulations is to stop his motor-car and yield the right of way to pedestrians using a pedestrian crossing or about to use a pedestrian crossing when a pedestrian has signalled or clearly indicated his or her intention to cross.

VASSILIADIS, P.: I agree that this appeal must be allowed. I reached this conclusion mainly on two considerations :—

The first is that the appellant, charged on section 6 of the Motor Vehicles and Road Traffic Law (Cap. 332) for driving without due care and attention, was convicted accordingly in a judgment which does not state the conduct of the accused which amounted, in the view of the trial Judge, to driving without due care and attention; what did the driver do, or what did he omit to do, which amounted to careless driving.

Secondly, that the trial Judge has misdirected himself by putting to himself the question of negligence as a question of law and answering it in the way he did. A conviction based on such foundation cannot be sustained. I would allow the appeal.

STAVRINIDES, J.: I agree that for the reasons given by the learned President of the Court the appeal should be allowed.

VASSILIADIS, P.: Appeal allowed. Conviction set aside. Accused discharged.

*Appeal allowed.*