

[TRIANTAFYLLIDES, P., STAVRINIDES, MALACHTOS, JJ.]

1973
Mar. 9

ANDREAS LOUCA AND COSMAS AGATHANGELOU,
AS ADMINISTRATORS OF THE ESTATE OF
THE DECEASED ELENI A. LOUCA,

—
ANDREAS
LOUCA
AND ANOTHER
v.

Appellants,

v.

ELENI I.
CHRYSANTHOU
AND OTHERS

ELENI I. CHRYSANTHOU AND OTHERS,

Respondents.

(Civil Appeal No. 5081).

Negligence—Contributory negligence—Road accident—Collision between two vehicles—The driver of car Reg. No. U962 (now deceased) rightly held to be solely to blame for the accident.

Costs—Discretion of trial Court—Negligent driving case—Two consolidated actions—Said deceased, defendant in one action and third party in the other—Failing in both—Order for costs against said (deceased) driver and in favour of all other parties—Open to the trial Court in the circumstances of the case—Cf. Bullock v. The London General Omnibus Co. and Others [1907] 1 K.B. 264 ; Civil Procedure Rules, Order 10, rule 10.

The facts of the case are set out in the judgment of the Court, dismissing this appeal by the representatives of the deceased E. L. held by the trial Court to be solely to blame for the road accident in question.

Cases referred to :

Bullock v. The London General Omnibus Co. and Others [1907]
1 K.B. 264 ;

Salsbury v. Woodland and Others [1969] 3 All E.R. 863.

Appeal.

Appeal by defendant No. 3 in Action No. 4365/70 (third party in Action No. 5738/70) against the judgment of the District Court of Nicosia (Stavrinakis, Ag. P.D.C. and Evangelides, Ag. D.J.) dated the 31st March, 1972, by virtue of which she was ordered to pay damages to the

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ANDREAS
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plaintiffs for the personal injuries they sustained in a road traffic accident.

E. Lemonaris with T. Eliades, for the appellants.

E. Vrahimi (Mrs.), for the respondent-plaintiff in Action No. 4365/70.

C. Velaris, for the respondent-plaintiff in Action No. 5738/70.

G.I. Pelaghias, for respondents-defendants in both actions.

Chr. Chrysanthou, for respondents-third parties, in action No. 5738/70.

The judgment of the Court was delivered by :—

TRIANTAFYLIDIS, P.: In this case the appellants, who are the administrators of the estate of the deceased Eleni Louca, challenge the judgment of the District Court of Nicosia by virtue of which the deceased (who was alive when this appeal was lodged) was ordered to pay damages to the plaintiffs in two consolidated actions, Nos. 4365/70 and 5738/70, before the District Court of Nicosia. She was a defendant in the former action and was joined as a third party in the latter.

The facts of the case are, in brief, that on the 9th April, 1970, the deceased was driving her car, No. U962, on the Nicosia to Kyrenia road, in the direction of Myrtou. She was following a lorry, No. EA501, on which there was loaded a bulldozer ; the lorry belonged to, and was driven by, respectively, the two other third parties in action No. 5738/70, Elia and Xeni. The deceased overtook the lorry and then a bus, No. TCA712, which was following the car of the deceased and in which the two plaintiffs, Chrysanthou and Shiakkidou, were passengers (and which was driven by Miltiadou, a defendant in both actions, and belonged to another defendant in both actions, Lambousa Ltd.) started overtaking the lorry.

The trial Court found that after the deceased had overtaken the lorry she slowed down considerably in front of it, as she was about to turn left into a side-road, and the driver of the lorry, in an effort to avoid hitting her car, swerved to his right and collided with the bus ; and as a result both the plaintiffs suffered injuries.

It was held by the trial Court that the deceased was solely to blame for what happened, in that by her careless driving she put the lorry driver in a situation in which he found himself suddenly compelled to swerve to his right.

It has been contended by counsel for the appellants that there was contributory negligence on the part of the driver of the lorry. We have not deemed it necessary to call on counsel for the other parties to address us in this respect, because we have found no merit at all in the appellants' contention; it is clear, on the material before us, that, as already stated, the deceased, with her sudden slowing down and swerve to the left, caused the collision between the other two vehicles and neither of the other two drivers was negligent in any way.

It was, next, argued on behalf of the appellants that it was wrong for the trial Court to burden the deceased with all the costs of the other aforementioned parties in both actions. The making of the order as to the costs of the trial was a matter within the discretion of the trial Court and once the deceased was a defendant in one of the two consolidated actions (being only a third party in the other) it was open, in the circumstances, to the trial Court, in view, *inter alia*, of the case of *Bullock v. The London General Omnibus Co. & Others* [1907] 1 K.B. 264, and of rule 10 of Order 10 of the Civil Procedure Rules, to make the order of costs complained of; and we can find no reason for which to interfere with it. The case of *Salsbury v. Woodland and Others* [1969] 3 All E.R. 863, which has been relied upon in support of the contention of the appellants to the contrary, is clearly distinguishable.

In the result this appeal is dismissed with costs.

Appeal dismissed with costs.

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