

1974
Oct. 4

COSTAS
NICOLAOU

v.

ROBERT
ZAYER

[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

COSTAS NICOLAOU,

Appellant - Defendant,

v.

ROBERT ZAYER,

Respondent - Plaintiff.

(Civil Appeal No. 5198).

Negligence—What constitutes negligence—Negligence is a failure to take reasonable care in the particular circumstances—And the question in each case whether a person has been negligent is a question of fact. (See, inter alia, Patsalides v. Yiapanis and Another (1969) 1 C.L.R. 84; Panayiotou v. Mavrou (1970) 1 C.L.R. 215; Ioannou v. Mavridou (1972) 1 C.L.R. 107).

Road traffic accident—Finding that defendant did not keep a proper look out and/or failed to take sufficient precautions to avoid the accident open to trial Court on the evidence.

Cases referred to :

Patsalides v. Yiapanis and Another (1969) 1 C.L.R. 84;

Panayiotou v. Mavrou (1970) 1 C.L.R. 215;

Ioannou v. Mavridou (1972) 1 C.L.R. 107.

The facts of the case sufficiently appear in the judgment of the Supreme Court dismissing this appeal by the defendant motorist in the action brought against him by the respondent cyclist who, whilst attempting to turn to his right, was knocked down by the former. The Supreme Court held that the finding to the effect that the motorist (defendant-appellant) was wholly to blame for the accident was reasonably open to the trial Court.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Kourris, S.D.J.) dated the 31st May, 1973 (Action No. 2276/72) whereby he was ordered to pay to the plaintiff the sum of £1,002.- by

way of special and general damages for injuries he received in a road traffic accident.

D. Liveras, for the appellant-defendant.

E. Vrahimi (Mrs.), for the respondent-plaintiff.

The judgment of the Court was delivered by :

HADJIANASTASSIOU, J. : On March 15, 1972, the plaintiff, Robert Zayer, was injured in a road accident, when he was riding his bicycle at the cross-road of Stelios Mavrommatis and Photi Pittas Streets in Engomi. He was, in fact, knocked down by a motor car driven by the defendant Costas Nicolaou. As a result of this accident, the plaintiff suffered injuries and brought an action against the defendant claiming damages.

On May 31, 1973, a Judge of the District Court of Nicosia found that the defendant was wholly to blame for the accident and awarded to the plaintiff an amount of £900 general damages and an agreed sum of £102 special damages. The defendant appealed and the notice of appeal raised one ground only: that the finding of the trial Court that the defendant was wholly to blame for the accident and that the defendant was not guilty of contributory negligence, was wrong in law as being contrary to the preponderance of evidence.

The facts are these :- As usual in these traffic accident cases, there were two sharply conflicting versions. It was the version of the plaintiff that on the date of the accident he was riding his bicycle along Gregoris Afxentiou Street and was proceeding to the cross-roads of Stelios Mavrommatis and Photi Pittas Streets intending to turn right to Photi Pittas Street with a view to taking his son—who was riding on the frame of the bicycle—to the kindergarten. When he was approximately 15 metres from point "X". (the point of impact), he looked back, and when he saw that the road was clear, he signalled with his right hand his intention to turn right. He then started pulling to his right in a diagonal way, and at point "X" he felt an impact on the rear of his bicycle and as a result he lost control of his bicycle and fell on the ground. In cross-examination, he said that he kept his hand extended until the time of the accident, and he

1974
Oct. 4

COSTAS
NICOLAOU

v

ROBERT
ZAYER

1974
Oct. 4
--

COSTAS
NICOLAOU

v.

ROBERT
ZAYER

denied that the defendant at the time of overtaking him sounded the horn of the car.

On the other hand, the version of the defendant was that whilst he was driving motor car under registration AW. 922 (belonging to his brother) along Gregoris Afxentiou Street towards the cross-road, he was keeping the left side of the road, and he saw the plaintiff cycling 30-40 metres ahead of him. He also saw two women standing on the left berm of the road, and another one at the side of the road; and when the plaintiff was 15 metres away, he pulled to the right in order to overtake him. He sounded the horn, but at that time the plaintiff signalled with his hand his intention to turn right, and although he applied his brakes in order to avoid him, it was too late, and the collision occurred.

According to the police witness who visited the scene of the accident and prepared a sketch, (*exhibit 1*), the agreed point of impact was "X". This point is approximately 33' from the junction; the width of the road at that point is 11'6", and point "X" is 5' from the right edge of the road and 6'6" from the left edge. The cross-road in question is uncontrolled. In cross-examination, he said that the front left headlamp of the car was damaged and the bicycle of the plaintiff was also slightly damaged on the casing of the chain and the rear mud-guard. Furthermore, he said that when the bicycle was hit, it must have been in an oblique position on the road.

The learned trial Judge who had the advantage—denied to us—of seeing and hearing the witnesses, came to the conclusion to accept the version of the plaintiff as to the primary facts, that is to say, that he had signalled his intention to turn right in time, and found that the defendant was wholly to blame for failing to take sufficient precautions to avoid the accident.

It is well-settled that negligence is a failure to take reasonable care in the particular circumstances, and in each case the question whether a person has been negligent is a question of fact. The principles underlying the principle of negligence were discussed in many decisions of this Court, including *Patsalides v. Yiapanis and Another* (1969) 1 C.L.R. 84; *Panayiotou v. Mavrou* (1970) 1

C.L.R. 215, and *Ioannou v. Mavridou* (1972) 1 C.L.R. 107.

It has been submitted by counsel on behalf of the defendant that the trial Judge was wrong in accepting the plaintiff's version as to the primary facts, because, his version was contradicted by the evidence of the police witness who said that when the bicycle was hit it must have been in an oblique position.

Having regard to all the circumstances of this case, and especially that the plaintiff signalled his intention to turn right and kept his hand extended until the accident, we are of the view that the finding of the trial Judge that the defendant did not keep a proper look-out and/or failed to take sufficient precautions to avoid the accident, was open to him on the evidence, and such finding should not, therefore, be disturbed. We would affirm the judgment of the trial Judge that the defendant was wholly to blame for the accident and dismiss the appeal with costs.

Appeal dismissed with costs.

1974
Oct. 4

—
COSTAS
NICOLAOU

v.

ROBERT
ZAYER —