

1974
April 25

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

MELIS
CHRISTODOULOU
v.
THE POLICE

MELIS CHRISTODOULOU,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 3553).

Road Traffic—Careless driving—Section 8 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86 of 1972)—Appellant entering main road from pavement intending to cross it—Not proceeding at once to cross it but stopping on entering it whilst waiting for two lorries to pass—Colliding with motor-cycle which came up to him before he had started driving across the road—Appellant's version accepted by trial Court—But such version is entirely inconsistent with any lack of due care on his part—Conviction quashed.

The facts sufficiently appear in the judgment of the Supreme Court allowing this appeal and quashing the Appellant's conviction of the offence charged *i.e.* driving without due care and attention contrary to section 8 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86 of 1972).

Appeal against conviction.

Appeal against conviction by Melis, Christodoulou who was convicted on the 12th February, 1974 at the District Court of Limassol (Criminal Case No. 10949/73) on one count of the offence of driving without due care and attention contrary to section 8 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72) and was sentenced by Korfiotis, D.J. to pay a fine of £5 and £3.300 mils costs.

Y. Agapiou, for the Appellant.

No appearance for the Respondents.

The judgment of the Court was delivered by:

TRIANTAFYLLIDES, P.: This is a case in which, taking, *inter alia*, into account that it is of rather minor importance, we

have decided, in view of section 143 (4) of the Criminal Procedure Law, Cap. 155, to proceed to deal with it without the assistance of counsel for the Respondents, who has failed to appear, though duly notified that this appeal was fixed for hearing today.

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The appeal was made against the conviction of the Appellant of the offence of driving a motor-vehicle without due care and attention, contrary to section 8 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72).

The Appellant was prosecuted after he had been involved in a collision with a motor-cycle in a main road in Limassol town.

He was sentenced to pay a fine of £5, plus £3.300 mils costs of the prosecution.

The main facts of the case are briefly as follows:—

The Appellant had driven his vehicle across a pavement, from the direction of his shop, in order to enter a main road, and, after he had entered such road, he collided with the motor-cycle which was coming along the road from his right. He stated in evidence that, having entered the road, he did not proceed at once to cross to its other side and turn to his right in order to proceed eastwards, as it was his intention to do, but that he stopped at once on entering the road, because he saw coming from his left two lorries, and he waited until they would pass. As soon as they had done so, he noticed the motor-cycle coming from his right, and at a distance of seventy feet away from him; the motor-cycle came up to, and collided, with his vehicle before he had started driving across the road.

The motor-cyclist was called as a witness; and he gave a description of how the accident happened, which is not compatible at all with the version of the Appellant.

The trial Judge found the Appellant guilty as charged, because he had entered, as above, a road, which was much frequented by traffic. From, however, the material before us it is clear that there could be no question of the Appellant, by having acted as he had done, being guilty of any lack of due care and attention in relation to the traffic on that road; there is no evidence that there was any other traffic there at the time except the two lorries and the motor-cyclist; and, in relation to the motor-cycle, the version of the Appellant, which the Judge

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appears to have accepted, is, in our opinion, entirely inconsistent with any lack of due care and attention on appellant's part; therefore, his conviction has to be set aside in the exercise of our powers under section 145 (1) (b) of Cap. 155.

This appeal is allowed accordingly.

Appeal allowed.