

1975
Sept. 16

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, JJ.]
SOCRATIS GEORGHIOU MATHEOS AND ANOTHER,

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SOCRATIS
GEORGHIOU
MATHEOS
AND ANOTHER

Appellants-Defendants,

v.

MARIA PANAYI,

v.
MARIA PANAYI

Respondent-Plaintiff.

(Civil Appeal No. 5386).

Negligence—Contributory negligence—Apportionment of liability—Lorry knocking down pedestrian whilst being driven in reverse in an open space—And after covering a distance of about seventy feet—Pedestrian not entirely free from blame—Because had she kept a proper lookout she would have been in a position to take in time measures for her safety—Her blameworthiness assessed at 20%. 5

Whilst the plaintiff was crossing an open space in Astromeritis village she was run down by a motor-lorry which was being driven by defendant No. 1 in reverse. The open space where this accident occurred is one that roads lead into it or out of it. It is also used by private and public transport and also by pedestrians. 10

The appellants challenged the finding of the Court below that the lorry driver was solely to blame for the accident in question. They contended that the respondent was equally to blame, because the lorry which was being driven backwards across an open space, had covered a distance of about seventy feet before it hit the respondent, who was crossing the open space, and, so, had she been keeping a proper lookout she would have seen the lorry coming towards her and she could have tried to avoid being hit by it. 15 20

Held, 1. Having taken into account the distance which was covered by the lorry up to the place where the accident occurred we have reached the conclusion that the respondent cannot be regarded as being entirely free from blame, because had she kept a proper lookout she would have been in a position to take in time 25 30

measures for her safety; so to that extent she is responsible, also, for the accident.

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2. We assess her blameworthiness at 20%, reducing thus the liability of the appellant to 80%, and varying accordingly the judgment of the Court below.

Appeal allowed.

v.
MARIA PANAYI

Cases referred to :

Kleovoulou and Another v. Andrea (1974) 1 C.L.R. 120;

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

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Demetriades, P.D.C. and Evangelides, Ag. D.J.) dated the 31st January, 1975, (Action 15 No. 5339/72) by virtue of which the plaintiff was awarded the sum of £1,495.300 mils special and general damages as a result of a traffic accident.

L. Papaphilippou, for the appellants.

G. Ladas with *A. Paikkos*, for the respondent.

20 The facts sufficiently appear in the judgment delivered by:

TRIANTAFYLLIDES, P.: In this appeal the appellants (defendants at the trial) challenge the finding of the trial Court that appellant 1 was solely to blame when he 25 knocked down and injured the respondent (the plaintiff before the Court below) while driving in reverse a lorry belonging to appellant 2.

The salient facts, as they were found by the trial Court, are as follows :-

30 "At about 5.30 a.m. on 29th May, 1972, the plaintiff was crossing an open space in Astromeritis village and whilst doing so, she was run down by motor-lorry Reg. No. TDV358 which was at the time being driven by defendant No. 1 in reverse. 35 The open space where this accident occurred is one that lead into it or out of it roads. It is also used by private and public transport and also by pede-

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strians. On practically all sides of this space there are houses, the main doors of which open into it.

As to how the accident occurred, we have before us only the version of the plaintiff. Neither defendant No. 1, who was the driver of the lorry, nor anybody on his behalf was called to give evidence as to how the accident occurred.

In giving evidence the plaintiff said that she left her house in order to take a bucket with milk to Sokratia Andreou (P.W.4) whose house is at a distance of approximately two domums from her (plaintiff's) house. The house of Sokratia adjoins the open space where the accident occurred and the main door of her house opens into this space. On her way, the plaintiff said, she saw the lorry parked on the space where the accident occurred. The plaintiff said that the lorry belongs to defendant No. 2 but is driven by defendant No. 1. The lorry, the plaintiff said, is usually parked in the space where the accident occurred. As she was proceeding to go towards Sokratia's house, the lorry was on her left and there was no driver in it. When she was approximately in line with the middle of the rear of this lorry, it suddenly backed and hit her with its rear part. As a result the plaintiff was injured and was taken to the Nicosia General Hospital by the driver of the lorry. The lorry, however, was, according to the evidence before us, not moved from its resultant position until after the police arrived at the scene and investigated the accident.

Sokratia Andreou (P.W.4) was in her house when she heard the noise of the engine of the lorry and she went out. She saw the lorry travelling in reverse. She looked in case her goats got under it and saw the plaintiff under the lorry. She then started shouting and as a result her husband, Andreas, (P.W.5), who was at the time in the house, heard her shouts, got out of it and went near the lorry. He then saw the plaintiff under it. He and defendant No. 1 pulled the plaintiff from under the lorry where she was and placed her on a chair. Under the lorry Sokratia noticed a bucket which had been run over by the

lorry. This bucket was later found by Ktoras (P.W.3), the police constable who investigated the accident and who prepared the plan of the scene which is exhibit No. 1 before us.

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5 As we have already mentioned, the driver of the lorry did not come to give evidence and explain how the accident occurred."

It has been contended by counsel for the appellants—who did not dispute that appellant 1 had been negligent and was, thus, responsible for the accident—that the respondent was equally to blame, because the lorry, which was being driven backwards across an open space, had covered a distance of about seventy feet before it hit the respondent, who was crossing the open space, and, so, had she been keeping a proper lookout she would have seen the lorry coming towards her and she could have tried to avoid being hit by it.

In *Kleovoulou and Another v. Andrea*, (C.A. 5223, not reported yet) * an excavator was being driven forward and backwards in the course of loading a lorry with excavated soil and the driver of the lorry was knocked down by the excavator while he was waiting for the lorry to be loaded; the trial Court found that the driver of the excavator was liable to the extent of 70% and the driver of the lorry to the extent of 30%, but we held that, as the driver of the lorry ought to have anticipated the danger involved in the excavator being driven forward and backwards—in the area where he was standing—and should, therefore, have kept a proper lookout, the degree of his liability had to be increased to 45% and of the driver of the excavator had to be reduced to 55%.

In *Ioannou v. Mavridou* (1972) 1 C.L.R. 107, the plaintiff was struck by some planks which fell off a lorry while it was being driven backwards; the trial Court found that the driver of the lorry was solely to blame; this Court refused to intervene on appeal because of the very short distance, and the very short time, which intervened between the time when the lorry's engine was started and the time when the plaintiff was hit; it was

* Now reported in (1974) 1 C.L.R. 120.

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held that the decision as regards liability was reasonably open to the trial Court.

In the present case we have reached the conclusion, having taken into account the distance which was covered by the lorry up to the place where the accident occurred, that the respondent cannot be regarded as being entirely free from blame, because had she kept a proper lookout she would have been in a position to take in time measures for her safety; so, to that extent she is responsible, also, for the accident. We assess her blameworthiness at 20%, reducing thus the liability of the appellant to 80%, and varying accordingly the judgment of the Court below.

This appeal is, therefore, allowed to the above extent; the respondent should pay half the costs of the appellants in this appeal and the appellants should pay half her costs at the trial.

Appeal allowed.
Order for costs as above.