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KYRIACOS
ACHILLEOS

v.
THE POLICE

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

KYRIACOS ACHILLEOS,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 3662).

Findings of fact—Made by trial Courts—Appeal turning on such findings—Principles on which Court of Appeal interferes—It must be satisfied to the extent of reaching a decision that the reasoning behind a finding is unsatisfactory or that the finding is not warranted by the evidence considered as a whole—Onus rests on the appellant to bring Court to such a decision—Appeal against conviction for careless driving—Appellant failed to discharge said onus—Appeal dismissed. 5

The appellant was convicted of the offence of driving 10 without due care and attention contrary to sections 8 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86 of 1972). Whilst he was driving his motor-cycle along Makarios III Avenue and coming from the direction of the Hilton Hotel towards the cross roads 15 by the High Life confectionery, he knocked down a pedestrian, the complainant, who was at the time crossing the road from his left to the right.

The trial judge, after considering the evidence and taking into account the point of impact, which was indicated to the police by the appellant himself, accepted the evidence of the complainant, which was, as he said, corroborated by the evidence of prosecution witness 3 and rejected the evidence of the appellant, whom he found that he failed to have a proper lookout, otherwise he ought to have seen the pedestrian. 20 25

Counsel for the appellant argued that the findings of the trial judge are against the weight of evidence and are not warranted by the evidence adduced and also

that the inferences drawn from such evidence were wrong.

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5 The Court of Appeal after restating the principles on which it can interfere with the findings of the trial Court as stated, *inter alia*, in *Simadhiakos v. The Police*, 1961 C.L.R. 64 and a line of subsequent cases such as *Varnava v. The Police* (1973) 2 C.L.R. 317 and *Petsas v. The Police* (1973) 2 C.L.R. 278.

10 Held, we are of the view that the appellant did not discharge the onus which rests on him to persuade us that the reasoning behind the findings of the trial judge is unsatisfactory or that such findings are not warranted by the evidence. On the contrary, we are satisfied that from the evidence adduced the trial judge was justified
15 in arriving at the conclusions he did.

Appeal dismissed.

Cases referred to :

Simadhiakos v. The Police, 1961 C.L.R. 64;

Varnava v. The Police (1973) 2 C.L.R. 317;

20 *Petsas v. The Police* (1973) 2 C.L.R. 278.

Appeal against conviction.

25 Appeal against conviction by Kyriacos Achilleos who was convicted on the 8th October, 1975 at the District Court of Nicosia (Criminal Case No. 11594/75) on one count of the offence of driving without due care and attention contrary to sections 8 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72) and was sentenced by Laoutas, D.J. to pay a fine of £6.-.

P. Lyssandrou with *A. Drakos*, for the appellant.

30 *S. Nicolaidis*, Counsel of the Republic, for the respondents.

L. LOIZOU, J. : The judgment of the Court will be delivered by Mr. Justice Malachtos.

35 MALACHTOS, J. : This is an appeal against the judgment of a District Judge of the District Court of Nicosia whereby the appellant was convicted on a charge under sections 8 and 19 of the Motor Vehicles and Road

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Traffic Law, 86/72, that on the 10th day of May, 1975 at Nicosia did drive motor cycle HK 202 in Makarios III Avenue without due care and attention.

The salient facts of this case are that the appellant whilst driving his aforesaid motor cycle along Makarios III Avenue and coming from the direction of the Hilton Hotel towards the cross roads by the High Life confectionery, knocked down a pedestrian, the complainant, who was at the time crossing the road from his left to the right.

The version of the complainant as to how this accident occurred was that on that day after having his lunch in a restaurant, which is situated on the left hand side of the Makarios III Avenue, as one faces the traffic lights by the cross roads near the High Life confectionery, proceeded to cross to the other side of the road. On the left hand side of the Avenue as one faces the traffic lights, there were stationary cars and next to these cars there was a convoy of cars facing the direction of the High Life confectionery waiting for the traffic lights to change. The complainant passed the stationary cars and proceeded through the convoy of cars that were waiting for the traffic lights to change and started crossing after having a lookout to both directions of the road. According always to his evidence, he only saw the motor cycle of the appellant coming from the direction of Hilton, which was at the time at a distance of nearly fifty metres away. As he was proceeding he was knocked down and the next thing he remembered he found himself in the Nicosia Hospital.

The driver of the car in front of which the complainant passed, gave evidence as prosecution witness No. 3, and she stated that at about one o'clock in the afternoon of the 10th May, 1975, she was driving her car along Makarios III Avenue, towards the High Life confectionery. She was in a convoy of cars which stopped at the traffic lights. On the left hand side of the Avenue there was a line of stationary cars. While she was stationary a pedestrian passed in between the stationary cars in front of her car and proceeded to cross to the other side of the road. At the same time in her reflecting mirror she saw a motor cyclist coming from behind on her right

hand side. This motor cyclist knocked down the pedestrian who had by that time reached the middle of the distance between her car and the right hand side pavement.

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5 The version of the appellant on the other hand, was that as he was following the line of traffic coming from the direction of Hilton and since he had in mind to turn right, he pulled out and proceeded towards the traffic lights. As he was doing so a pedestrian walking
10 in a rapid pace emerged from in front of a stationary car and as he was at a distance of about 2 ft. away from him he could not avoid him and knocked him down.

The trial judge, after considering the evidence and taking into account the point of impact which was indicated to the police by the appellant himself and which
15 is at a distance of about 16 ft. away from the left hand side of the road as one faces the traffic lights, the road being 31 ft. wide at the point of impact, accepted the evidence of the complainant, which was, as he said, corroborated by the evidence of prosecution witness 3 and
20 rejected the evidence of the appellant, whom he found that he failed to have a proper lookout, otherwise he ought to have seen the pedestrian in time and found him guilty as charged and sentenced him to £6.- fine.

25 It has been argued today before us by counsel for the appellant that the findings of the trial judge are against the weight of evidence and are not warranted by the evidence adduced and also that the inferences drawn from such evidence were wrong. He invited us
30 to interfere and disturb the said findings.

The principles on which this Court can interfere with the findings of the trial Court are well known and are stated, *inter alia*, in the case of *Stelios Michael Sina-*
dhiakos v. The Police, 1961 C.L.R. 64, and a line of
35 subsequent cases that were decided by this Court, such as *Varnava v. The Police* (1973) 2 C.L.R. 317 and *Petsas v. The Police* (1973) 2 C.L.R. 278.

It is clear from the above authorities that the Court on hearing an appeal has the power to review the whole
40 evidence without feeling fettered by determinations on question of fact made by the trial Court; but in doing

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so, the Court should still be guided by the principles which have grown and developed in the light of practical experience, as to the value of trial Court findings. However, before such findings are disturbed, the Appellate Court must be satisfied to the extent of reaching a decision that the reasoning behind a finding is unsatisfactory or that the finding is not warranted by the evidence considered as a whole, and the onus rests on the appellant to bring the Court to such decision.

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In the present case, we are of the view that the appellant did not discharge the onus which rests on him to persuade us that the reasoning behind the findings of the trial judge is unsatisfactory or that such findings are not warranted by the evidence. On the contrary, we are satisfied that from the evidence adduced the trial judge was justified in arriving at the conclusions he did.

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For these reasons we dismiss the appeal.

Appeal dismissed.