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PANOS  
KYRIAKIDES  
AND ANOTHER  
v.  
ANDREAS  
PAPASAVVAS

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

PANOS KYRIAKIDES AND ANOTHER,

*Appellants-Defendants,*

v.

ANDREAS PAPASAVVAS,

*Respondent-Plaintiff.*

(Civil Appeal No. 5397).

*Retrial—Claim for damages for negligent driving—Contributory negligence—Pleaded—Not considered by trial Judge—Proper case for retrial, on the issue of contributory negligence, by the same judge and in the light of the evidence already adduced—Section 25(3) of the Courts of Justice Law, 1960 (Law 14 of 1960).* 5

*Negligence—Contributory negligence—Pleaded but not considered by trial Court—Order of retrial.*

The appellant-defendant, in this traffic accident case appealed against the judgment of the trial Court on the ground, *inter alia*, that the trial Court was wrong in not finding “contributory negligence on the part of the plaintiff in that contributory negligence was pleaded by paragraph (8) of the defence and ample evidence was before it to this effect”. 10

The trial Court did not consider the question of contributory negligence because, as it stated, it “has neither been pleaded nor argued”. 15

This statement of the trial Court was obviously wrong because in so far as the pleadings went, the contributory negligence was clearly pleaded at paragraph 8 of the defence. The Court of Appeal was not in a position to say with any degree of certainty whether the question of contributory negligence was argued, mainly because it did not have before it the addresses of counsel. 20

Counsel for the appellants submitted and counsel for the respondent conceded that this was a proper case for retrial. 25

*Held*, that this Court is in full agreement with the view that this is a proper case for retrial; and that in the exercise of its powers under section 25 of the Courts of Justice Law, 1960

it orders that this case be retried on the issue of contributory negligence by the same Judge and in the light of the evidence already adduced at the trial.

*Appeal allowed.*  
*Retrial ordered.*

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**Appeal.**

10 Appeal by defendants against the judgment of the District Court of Nicosia (Kourris, S.D.J.) dated the 15th February, 1975, (Action No. 5250/73) whereby the plaintiff was awarded the sum of £880.- as damages for injuries sustained by him in a traffic accident.

*L. Papaphilippou*, for the appellants.

*St. Erotokritou (Mrs.)*, for the respondent.

*Cur. adv. vult.*

15 The judgment of the Court was delivered by:-

L. LOIZOU, J.: This is an appeal from the judgment of the District Court of Nicosia in a traffic accident case. The learned trial Judge found for the plaintiff and awarded a total of £880.- by way of damages with costs. The defendants appealed against this judgment on three grounds: (1) the trial Court was wrong both in law and in fact; (2) the trial Court was wrong in not finding contributory negligence on the part of the plaintiff in that contributory negligence was pleaded by paragraph (8) of the defence and ample evidence was before it to this effect; and (3) the award of general damages is excessive.

The respondent cross-appealed on the ground that the damages awarded are very low.

30 In the course of the hearing of this appeal learned counsel for the appellants abandoned ground 3 of his grounds of appeal.

35 Going through the judgment, there appears at p. 23 the following passage: "Bearing in mind the evidence of the plaintiff, I would have been prepared to consider the question of contributory negligence, but as this has neither been pleaded nor argued, I am not prepared to consider it". This statement is obviously wrong because in so far as the pleadings go, the contributory negligence is clearly pleaded at paragraph 8 of the defence. We are not in a po-

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sition to say with any degree of certainty whether the question of contributory negligence was argued, mainly because we do not have before us the addresses of counsel, all we can say is that in the brief hand-written note of the addresses made by the trial Judge no mention is made of contributory negligence. 5

It has been submitted by learned counsel for the appellants and conceded by learned counsel for the respondent that this is a proper case for retrial. We are in full agreement with this view and in exercise of our powers under s.25 of the Courts of Justice Law 1960, we order that this case be retried on the issue of contributory negligence by the same Judge and in the light of the evidence already adduced at the trial. 10

The costs of this appeal which we fix at £14.- will follow the event. In so far as the cross-appeal is concerned, counsel for the respondent is at liberty to pursue it after the determination of the case before the District Court. We think it would be in the interest of justice that every possible priority should be given to this case. 15 20

*Appeal allowed.*  
*Retrial ordered.*  
*Order for costs as above.*