1978 January 31

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, JJ.]

CHRISTOS PRODROMOU,

Appellant–Plaintiff,

v.

STYLIANOS CHRISTOU,

Respondent–Defendant.

(*Civil Appeal No.* 5612).

Negligence — Contributory negligence — Apportionment of liability — Appeal—Approach of Appellate Court—Road accident—Collision of motor-cycle and motor-car moving in opposite directions—Trial Court erred in principle in expecting motor-cyclist to take avoiding action when he first saw the approaching car from a distance of 100 *metres at a time when the said car was travelling on its proper side of the road—Trial Court's apportionment interfered with—Motor-cyclist not taking sufficient avoiding action, though trying to do so at a distance of about* 25 *to* 30 *miles from car—Not absolved altogether from liability.*

Whilst the appellant–plaintiff was riding his motor-cycle from Neon Chorion towards Mia Milia he collided with a motor car driven by the respondent–defendant in the opposite direction. The asphalted part of the road was 10'6" wide with berms on either side 4 feet wide. The trial Court found that responsibility for the accident lay with the defendant; but after finding that the plaintiff saw the approaching car from a distance of a hundred metres, which could afford him the opportunity of taking evasive action, it apportioned the liability by holding that the defendant was liable to the extent of 60% and the plaintiff to the extent of 40%.

Upon appeal by the plaintiff against the apportionment of liability:

Held, (after referring to the principles governing the approach of the Court of Appeal to an appeal of this nature).

(1) That this is a proper case in which to interfere with the apportionment of liability, because the trial Court erred in

principle in expecting the appellant to have taken avoiding action when he first saw the approaching car of the respondent from a distance of a hundred metres, at a time when, according to the evidence, the said car was travelling on its proper side of the road.

(2) That though when the two vehicles were at a distance of 25 to 30 metres from each other the appellant was dazzled by the switching of two more headlamps of the car of the respondent and he tried then to take avoiding action by veering off to his left towards the berm of the road, he did not take avoiding action at that stage, though he did try to do so; and that, accordingly, he cannot be absolved altogether from liability for what happened, but he cannot be held responsible to an extent of more than 25%.

Appeal allowed.

Cases referred to:

Theophanous v. *Markides & Another* (1975) 1 C.L.R. 199 at p. 206.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C. and Orphanides, S.D.J.) dated the 16th July, 1976, (Action No. 1023/74) whereby he was found liable to an extent of 40% in respect of a collision between a car driven by him and a motor car driven by defendant.

D. Papachrysostomou, for the appellant.

X. Syllouris, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:

TRIANTAFYLLIDES P.: The appellant has appealed in respect of the apportionment of liability for a traffic accident, in which he was seriously injured when his motor-cycle collided with a motor-car driven by the respondent.

Certain facts related to the occurrence of the accident are set out as follows in the judgment of the trial Court:

" The accident occurred along Mia Milia—Neon Chorion road during the hours of darkness. At the material time the plaintiff was riding a motorbike under Registration No. FM542 and the defendant motor car under Registration No. DN115. The two vehicles were proceeding in opposite directions to each other; the plaintiff from Neon Chorion

towards Mia Milia (from east to west) and the defendant from Mia Milia to Neon Chorion (from west to east). The asphalted part of the road is 10'6" wide with berms on either side 4 to 5 feet wide".

The damages, general and special, were agreed at C£4,300, and the trial Court apportioned the liability by finding that the respondent, who was the defendant in the action, was responsible to the extent of 60%, and the appellant, who was the plaintiff, to the extent of 40%. This appeal relates only to such apportionment.

We have borne duly in mind the principles which should guide us in approaching an appeal of this nature, as they have often been expounded in decisions of this Court such as that in *Theophanous* v. *Markides and another*, (1975) 1 C.L.R. 199, 206, where some of our relevant case-law is referred to.

In the light of these principles we have reached the conclusion that this is a proper case in which to interfere with the apportionment of liability, because we think that the trial Court erred in principle in expecting the appellant to have taken avoiding action when he first saw the approaching car of the respondent from a distance of a hundred metres, at a time when, according to the evidence, the said car was travelling on its proper side of the road. It is true that later on, when the two vehicles were at a distance of 25 to 30 metres from each other, the appellant was dazzled by the switching on of two more headlamps of the car of the respondent and he tried then to take avoiding action by veering off to his left towards the berm of the road.

As it appears from his own evidence, and from the point of impact, which is about 1½ feet away from the berm, he did not take sufficient avoiding action at that stage, though he did try to do so; therefore, we cannot absolve him altogether from liability for what happened, but we cannot hold him responsible to an extent of more than 25%.

We, therefore, vary the judgment of the trial Court so that the amount of damages payable to the appellant on the basis of a 75% to 25% apportionment of liability is increased to C£3,225.-

This appeal is, therefore, allowed accordingly, with costs against the respondent.

Appeal allowed with costs.