1982 February 17

[LORIS, STYLIANIDES, PIKIS, JJ.]

CHRISTOFOROS CHRISTOFIDES, INFANT, THROUGH HIS NEAREST FRIEND AND GUARDIAN, HIS FATHER COSTAS CHRISTOFIDES,

Appellant–Plaintiff,

v.

XENOULLA CONSTANTINOU AND ANOTHER,

Respondents–Defendants.

(Civil Appeal No. 6086).

Civil Procedure—Trial in civil cases—Failure of trial Judge to evaluate the evidence before him—And to duly reason his findings—Retrial ordered.

5   Whilst respondent No. 1 was driving in a narrow street within the walled city of Nicosia she struck down the appellant–plaitiff, an infant aged 4. In her statement to the Police, shortly after the accident, the respondent estimated her speed at 25 m.p.h. but at the trial she said that her speed was about 10 m.p.h..
without giving any satisfactory explanation as to this change
10   of stand. The trial Judge overlooked this aspect of the evidence and did not direct his attention to it. His finding that the respondent was going at a low speed was not properly reasoned; and he failed to evaluate the evidence of a material witness for the plaintiff.

15   *Upon appeal by the plaintiff:*

Held, that in view of the failure of the trial Judge to sum up and evaluate the evidence before him and his failure to duly reason his findings there is no alternative but to order a retrial on the issue of liability.

20   *Appeal allowed.*
                                            Retrial ordered.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Papadopoulos, S.D.J.) dated the 24th January,

1980 (Action No. 1192/77) whereby his claim for damages for personal injuries sustained by him in a car accident was dismissed.

A. Markides, for the appellant.

St. Erotocritou (Mrs.), for the respondents.   5

LORIS J. gave the following judgment of the Court. On the 5th November, 1976, respondent No. 1 struck down and dragged with her car over a distance of 25 ft the infant plaintiff, aged 4 at the time. The accident occurred at a narrow street within the walled city of Nicosia, notably, Ayios Antonios   10 Street, where the width of the road ranges between 11 $^1/_2$–15ft.

It was the case for the plaintiff that the accident occurred because of the failure of the defendant to keep a proper look-out and her driving at a speed that created evident dangers in the circumstances.   15

The driver made conflicting statements as to her speed at the material time, the moment when she first noticed the infant and her overall look-out. In a statement to the Police shortly after the accident she estimated her speed to be in the region of 25 m.p.h., a statement from which she attempted to depart   20 at the hearing, reducing it at about 10 m.p.h. She gave no satisfactory explanation—in fact no explanation at all—as to this change of stand.

Regrettably the trial Judge totally overlooked this aspect of the evidence. He did not direct his attention to it and based   25 his findings on his impressions as to the credibility of the defendant. The finding of the trial Court that the defendant was going at a low speed at the material time is not properly reasoned. Further there is a total failure to evaluate the evidence of P.W.3, a material witness for the plaintiff.   30

Lastly the trial Judge paid no heed at all to the implications of the evidence of the driver as to when she first saw the child, a most material fact bearing on the state of her look-out. Manifestly the driver was driving in an inhabited area, in a very narrow street, and her look-out ought to have been correspond-   35 ingly high.

In view of the failure of the trial Court to sum up and evaluate

the evidence before it and the failure to duly reason his findings, there is no alternative but to order a retrial on the issue of liability.

5   The appellant abandoned the appeal against the quantum of damages. Therefore, the findings of the trial Court in this regard stand.

This appeal is accordingly partly allowed. A retrial by another Bench is hereby ordered.

10   Costs of this appeal against the respondents. Costs before the trial Court to be costs in the cause.

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