

1982 November 29

[TRIANTAFYLIDIS, P., A. LOIZOU & MALACHTOS, JJ.]

GEORGHIOS NEOFYTOU,

Appellant-Defendant.

v.

COLIN EDMONDS.

Respondent-Plaintiff.

(Civil Appeal No. 6225).

Findings of fact—Based on credibility of witnesses—Appeal—Principles on which Court of Appeal acts.

These proceedings arose out of a road accident in the course of which a car driven by the appellant collided with a car driven by the respondent. The trial Judge after believing the evidence of the respondent found that the appellant was entirely to blame for the accident. Upon appeal by the appellant the sole issue was whether the findings of the trial Judge, which depended on the credibility of the witnesses, could be sustained: 5

Held, that the findings of the trial Court will not be disturbed unless the appellant can satisfy the Court of Appeal that the reasoning behind such findings is unsatisfactory or that they are against the weight of evidence when considered as a whole; that when a Judge hears and sees witnesses and makes a conclusion or inference with regard to what is the weight of balance of their evidence, that judgment is entitled to great respect; that in the present case this Court has not been persuaded by counsel for the appellant, on whom the onus lies, that the reasoning behind the findings of the trial Judge is unsatisfactory or such findings are against the weight of evidence when considered as a whole; that it was entirely open to the trial Judge to accept the evidence of the respondent and reach the conclusion that the appellant was entirely to blame for the accident; accordingly the appeal must fail. 10 15 20

Appeal dismissed. 25

Cases referred to:

Watt or Thomas v. Thomas [1947] A.C. 484.

Appeal.

Appeal by defendant against the judgment of the District Court of Limassol (Artemis, D.J.) dated the 10th January, 1981 (Action No. 2322/79) whereby he was adjudged to pay to the plaintiff the sum of £303.- damages caused to his car as a result of a traffic accident.

N. Anastasiades, for the appellant.

Chr. Chrysanthou, for the respondent.

10 TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Malachtos.

MALACHTOS J. The appellant-defendant in the Court below, has appealed against the judgment of the District Court of Limassol by virtue of which he was ordered to pay to the respondent-plaintiff £303.- agreed damages on a full liability basis, caused to his car as a result of a collision with the car of the appellant.

20 The accident occurred on the 16th day of April, 1979 along the Korfi-Limassol road between the 11th and 12th milestone. The respondent was driving at the time his car under Registration No. HW871 towards the direction of Limassol town, and the appellant was driving his car under Registration No. DW384 in the opposite direction towards Korfi village.

25 According to the evidence of the police investigator the width of the asphalt road at the scene of the accident is 14 ft. with 4 ft. usable berms on either side but the berm on the left hand side, as one faces Limassol, was covered with wild vegetation. The car of the appellant was damaged on the front off side corner and the car of the respondent was damaged on the rear off side corner. The width of each car is 5 1/2 ft.

30 There was nothing on the spot to indicate as to the exact point of impact and each driver indicated a different one alleging that at the time of the collision was occupying 6 ft. of asphalt road.

35 It was the version of the respondent that he saw the car of the appellant from a distance of about 100 yards negotiating a bend and holding the middle of the road. He, himself, was at the time driving at a speed of about 30 mph and was holding

the left hand side of the road. As he was proceeding it became quite evident that the oncoming car would make no attempt to move from the centre of the road and so, when he was at a distance of about 50 yards away from it, in order to avoid a head on collision, he changed from third to second gear, swerved further to the left and applied gently his brakes and when he had almost come to a stand still the collision occurred. As the berm of the road on his left hand side was covered with wild vegetation he could not move further to the left as it was dangerous.

On the other hand, the version of the appellant was that he was holding the left hand side of the road as he was negotiating the bend and when he first saw the other car it was on the wrong side of the road. In order to avoid the collision he swerved to the right but the other car swerved to its proper side of the road and so he swerved again to the left but the collision could not be avoided.

As to how the accident occurred the trial Judge accepted the version of the the respondent and found that the appellant was entirely to blame.

The relevant part of the judgment of the trial Judge appears at page 18 of the record and is as follows:

“I have no hesitation to say that while the plaintiff made an excellent impression to me as to the truth of his version, the defendant, undoubtedly, appeared that he was in vain trying to justify his action in order to avoid liability. I cannot accept his version that during the few seconds he had at his disposal he could act in the way he related and, in addition, I do not accept that any driver could react in the circumstances described by the defendant, by driving his car to the right had side of the road. As regards the point of impact I accept the one indicated by the plaintiff. This corresponds more to the real evidence”.

And, further down at page 20 of the record, the trial Judge says:

“Having in mind in addition to the above, the fact that in the present case the berm on the left of the plaintiff was covered with wild vegetation, a factor which did not permit

5 him to be sure that it was usable, and the fact that the asphalt had sufficient width to accommodate the two vehicles if both were keeping their left hand side and since I find that the plaintiff was keeping his left hand side, I do not consider that it amounts to negligence not to drive his car partly on the berm".

10 Counsel for the appellant in arguing this appeal today before us submitted that the trial Judge wrongly accepted the evidence of the respondent and rejected the evidence of the appellant. He further submitted that even on the evidence as accepted by the trial Judge the appellant could not be found as entirely to blame for the accident but that the respondent contributed to it to a considerable degree.

15 The principles on which an appellate Court can interfere with the findings of fact by the trial Court, which depend on credibility of witnesses, are well known. It has been established in a line of cases both by this Court and the Courts in England, that the findings of the trial Court will not be disturbed unless the appellant can satisfy the Court of Appeal that the reasoning
20 behind such findings is unsatisfactory or that they are against the weight of evidence when considered as a whole. When a Judge hears and sees witnesses and makes a conclusion or inference with regard to what is the weight of balance of their evidence, that judgment is entitled to great respect. In *Watt* or *Thomas v. Thomas* [1947] A.C. 484, a House of Lords decision, it was decided that:

30 "When a question of fact has been tried by a judge without a jury and it is not suggested that he has misdirected himself in law, an appellate court in reviewing the record of the evidence should attach the greatest weight to his opinion, because he saw and heard the witnesses, and should not disturb his judgment unless it is plainly unsound. The appellate court is, however, free to reverse his conclusions if the grounds given by him therefor are unsatisfactory
35 by reason of material inconsistencies or inaccuracies, or if it appears unmistakably from the evidence that in reaching them he has not taken proper advantage of having seen and heard the witnesses or has failed to appreciate the weight and bearing of circumstances admitted or proved".
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In the present case we have not been persuaded by counsel for the appellant, on whom the onus lies, that the reasoning behind the findings of the trial Judge is unsatisfactory or such findings are against the weight of evidence when considered as a whole. It was entirely open to the trial Judge to accept the evidence of the respondent and reach the conclusion that the appellant was entirely to blame for the accident. 5

This appeal, therefore, is dismissed with costs.

Appeal dismissed with costs.