

1985 June 17

[A. LOIZOU, MALACHTOS, LORIS, JJ.]

CHRISTAKIS MICHAEL,

*Appellant-Plaintiff,*

v.

GEORGHIOS EFREM PALALAS,

*Respondent-Defendant.*

*(Civil Appeal No. 6759).*

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*Negligence—Road accident—Collision during overtaking—Duty of driver of overtaking vehicle.*

5           Whilst the appellant was in the process of overtaking at  
some speed the respondent, who was driving his car on  
the left hand side of the road, he hit with the left side of  
his motor-cycle the right front side of the car of the res-  
pondent. The trial Judge did not accept the version of  
the appellant to the effect that the respondent on seeing  
a patch on the road swerved to his right to avoid it and  
10           so hit him with the front of his motor-car.

*Upon appeal by the motor-cyclist:*

15           *Held*, that there is nothing to show that the findings of  
the learned trial Judge based on the credibility of witnesses  
leave any room for interference by this Court on appeal;  
that the appellant was rightly found to be solely to blame  
for the accident inasmuch as the driver of a vehicle over-  
taking another has to do so by giving a reasonable clear-  
ance and has also to make sure that before he takes to  
the near side again in front of the overtaken vehicle he  
20           will not bump into that vehicle's side or obstruct its  
course.

*Appeal dismissed.*

**Appeal.**

Appeal by plaintiff against the judgment of the District

Court of Limassol (Korfiotis, D. J.) dated the 18th April, 1984 (Action No. 634/82) whereby his claim for damages for the personal injuries he suffered and damage caused to his motor-cycle as a result of a road accident was dismissed.

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*C. Hadjipieras*, for the appellant.

*A. Neocleous*, for the respondent.

*A. Loizou J.* gave the following judgment of the Court. This is an appeal from the judgment of a Judge of the District Court of Limassol by which the claim of the appellant for damages for the personal injuries he suffered and damage caused to his motor-cycle in a road accident, was dismissed with costs.

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On the 15th March, 1981 the respondent was driving his motor-car under registration No. BW 157 along Franklin Roosevelt Avenue on the left hand side of the road. At a point near the entrance of the KEO factory he was followed by the appellant who was riding his motor-cycle under registration No. JV 765. Behind these two vehicles there followed on his bicycle Police Constable A. Savva, who witnessed the happenings leading to the accident. At the same time motor-car BF 108 driven by Theodoros Goufiotis, a plaintiff's witness was coming from the opposite direction. When the on coming vehicle was side by side with that of the respondent and with their rear bumpers more or less in line the appellant, who obviously seemed to be in a hurry was getting ready to overtake the motor-car of the respondent and he did so as soon as the oncoming vehicle cleared the way. Whilst in the process of overtaking at some speed he took to his left but he hit with the left side of his motor-cycle the right front side of the car of the respondent. His motor-cycle then swerved and overturned and as a result he was injured and his motor-cycle damaged.

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The learned trial Judge, after summing up the evidence adduced by both sides, did not accept the version of the appellant to the effect that the respondent on seeing a patch on the road swerved to his right to avoid it and so hit him with the front of his motor-car. On the contrary the ver-

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sion of the respondent which was supported by the independent evidence of P.C. Savva to the effect that it was the sudden swerve to the left of the appellant that caused the impact of the two vehicles was accepted.

5 Having heard the arguments advanced on behalf of the appellant and having examined the evidence adduced we have come to the conclusion that there is nothing to show that the findings of the learned trial Judge based on the  
10 credibility of witnesses leave any room for interference by this Court on appeal.

No doubt it is upon a plaintiff claiming damages for personal injuries to prove that his injury was due to the defendant's fault. But the present case is not one of those  
15 instances where the plaintiff has failed to discharge same by establishing by preponderance of evidence his version but it is a case where the defendant established overwhelmingly his own version. It is unfortunate that the appellant was not content with the outcome of a rather long trial  
20 and the testing of the credibility of witnesses with lengthy cross-examination but felt that he had to pursue in this Court as well a hopeless, in view of the circumstances, case.

In our view he was rightly found to be solely to blame for the accident inasmuch as the driver of a vehicle over-  
25 taking another has to do so by giving a reasonable clearance and has also to make sure that before he takes to the near side again in front of the overtaken vehicle he will not bump into that vehicle's side or obstruct its course.

30 For all the above reasons the appeal is dismissed with costs.

*Appeal dismissed  
with costs.*