

1986 December 12

[A. LOIZOU, DEMETRIADES, STYLIANIDES, JJ.]

DEMETRIS PANAYI KANARIS ALIAS DEMETRIS  
P. STYLIANOU,

*Appellant-Defendant*

v.

PANAYIOTIS A. SAVISTIKKI,

*Respondent-Defendant,*

v.

1. ANDREAS KLEANTHOUS,
2. ZENON G. MICHAELIDES,
3. CYBARCO LTD.,

*Respondents-Plaintiffs.*

*(Civil Appeal No. 6715).*

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5 *Appeal—Power of Court Appeal to draw its own conclusions from the evidence adduced—Road traffic collision—Failure of trial Judge to evaluate evidence of independent witness—In the circumstances the Court of Appeal can draw its own conclusions from the evidence adduced at the trial.*

10 *Negligence—Road traffic collision—Overtaking vehicle swerving to the left forcing driver of overtaken vehicle to fall on the berm—Effort of driver of overtaken vehicle to come back to the asphalted part of the road resulting in going to the wrong side of the road—Collision with an oncoming vehicle—Driver of overtaking vehicle solely to blame for the collision.*

15 *Evidence—Road traffic collision—Conclusion that said collision was due to appellant's inexperience—No positive evidence to that effect—Trial Judge turned himself into an expert—Ground for allowing the appeal.*

This appeal raises the issue of appellant's liability in respect of a traffic accident, which occurred on the 17.9.81 on the Limassol-Platres road. The version of the appellant was that whilst he was driving his motor-car Reg. No. HX 547 proceeding towards Platres the driver of motor-car Reg. No. MD 581 overtook him and got suddenly to the left in such a way in front of the appellant that the latter was forced to fall on the berm and in his effort to come back to the asphalt his car veered from its normal course and went to the right hand side of the road and collided with an oncoming vehicle, namely motor car Reg. No. ME 852. 5 10

The trial Judge found that the version of the appellant was neither sincere or correct and that all his actions showed an inexperienced driver. As a result he reached the conclusion that the appellant was to blame for the said collision. 15

Hence the present appeal. It should be noted that at the trial the version of the appellant was confirmed by the evidence of an independent witness, namely Georghios Xinaris, who had witnessed the accident in its entirety. 20

Held, allowing the appeal: (1) This is a proper case for this Court to draw its own conclusions from the evidence adduced.

(2) The trial Judge failed to evaluate the evidence of Xinaris. His version taken together with the rest of the evidence was the only reasonable and reliable one in the circumstances. It established that the driver of the overtaking vehicle was the only one to blame. Moreover, the trial Judge turned himself into an expert in attributing without positive evidence and beyond the sphere of common knowledge the collision to appellant's inexperience. 25 30

Appeal allowed with costs.

**Appeal.**

Appeal by defendant 2 against the judgment of the District Court of Limassol (Korfiotis, D.J.) dated the 27th March, 1984 (Action No. 4436/81, consolidated with actions 4341/81 and 4435/81) whereby he was 35

adjudged to pay to the plaintiffs in the said actions special and general damages as a result of a traffic accident.

C. *Demetriades*, for the appellant.

5 E. *Vrahimi (Mrs.)*, for the respondents.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment of the Court. The appellant was one of the defendants in three consolidated actions which arose out of a traffic accident that  
 10 occurred on the 17th September 1981, on the Limassol-Platres road. The plaintiff in action No. 4341/81 Andreas Cleanthous, was travelling from Patres to Limassol as a passenger in vehicle under Registration No. ME 852, owned by Cybarco Limited, driven by Zenon Michaelides,  
 15 plaintiff in action No. 4435/81. Defendant 1 in action No. 4341/81, Demetris Panayi Kanaris, alias Demetrios P. Stylianos, of Pelendri, the present appellant—who was also defendant 2 in actions Nos. 4435/81, 4436/81—was the owner and driver of motor-car under Registration No.  
 20 HX 547, and was driving his said motor-car along the same road proceeding towards Platres. At the same time defendant No. 2, in action No. 4341/81, Panayiotis Savistikki—who was also defendant 1 in actions Nos. 4435/81 and 4436/81—was the owner and driver of motor vehicle  
 25 under Registration No. MC 581 and driving same along the same road following the appellant's motor-car proceeding towards Platres.

Before proceeding any further it may conveniently be mentioned here that the general and special damages were  
 30 agreed between the parties in all actions and there remained for determination the question of the liability of the drivers of the vehicles.

The learned trial Judge after finding the appellant solely to blame adjudged him to pay

35 “(1) In Action No. 4341/81 to the plaintiff the sum of £1,200 with interest thereon at 6% p. a. from 27th March, 1984 to date of payment, plus

£250 costs of the action and dismissed the action against defendant 2 Savistikki with no order as to costs.

(2) In Action No. 4435/81, to the plaintiff the sum of £838 with interest thereon at 6% p. a. as from 27th March, 1984 to date of payment, plus £175 costs of the action and dismissed same against defendant 1, Savistikki with no order as to costs. 5

(3) In Action No. 4436/81 to pay to the plaintiff the sum of £1,000 with interest thereon at 6% p. a. from 27th March, 1984, to date of payment plus £155.25 costs of the action and dismissed the action against defendant 1, Savistikki, with no order as to costs." 10

The appellant appealed against the above judgment but he later discontinued his appeals against respondents Andreas Cleanthous Zenon C. Michaelides and Cybarco Ltd. There remains therefore the appeal in Action Nos. 4341/81, 4435/81 and 4436/81 against the aforesaid respondent Savistikki and by which he complains for his having been found to blame for the accident. 15 20

The learned trial Judge after referring to the versions of the various parties concluded that "when after vehicle MD 581 overtook vehicle HX 547, this fell on the berm and in its effort to come back to the asphalt it veered from its normal course and went to the right-hand side of the road as one proceeds to Limassol and collided at point 'X' with vehicle ME 852". He then went on to say that from the totality of the evidence it was clear to him that the driver of vehicle ME 852 had no liability whatsoever for the accident and "very rightly the advocates did not insist on the subject throughout the hearing of the case as the impact occurred on that vehicle's proper side of the road". 25 30

As regards the final conclusion the learned trial Judge 35

had this to say. "Since from the aforesaid evidence which I accept as correct vehicle ME 852 coming from the opposite direction was at a distance of 300 to 350 meters. the Court does not find as correct and sincere the view of defendant No. 1 that the other vehicle got in front of him in such a way that he was compelled to fall on the berm, run the risk to fall in the precipice as he testified and then make a sudden swerve to the right in his effort to bring his vehicle on the asphalt and find himself on the right hand side of the road where he collided with vehicle ME 852. All his actions show an inexperienced driver. From the plan, exhibit 1, the berm had a useful space of 25 ft. sufficient length, the width of the road 19'6" and his speed small in accordance with his evidence.

15 Under the circumstances I find that defendant 1 was not justified to make the swerve he did nor that he did it in the agony of the moment or on account of the fault of defendant No. 2."

20 Having examined the totality of the evidence before the Court and in particular that of witness Georghios Xinaris who was an independent witness and who witnessed the accident in its entirety and who testified that he saw the overtaking vehicle take suddenly to the left in front of that of the appellant, force him out of the road so that the latter swerved back and collided with the oncoming vehicle, we have come to the conclusion that this is a proper case for us to draw our own conclusions on the evidence adduced and allow this appeal on the ground that the appellant was not to blame for this accident, having been forced in a situation which was not the result of his own lack of care.

35 The learned trial Judge failed to evaluate this piece of evidence. The version of Xinaris taken together with the rest of the evidence was the only reasonable and reliable one in the circumstances and it established that the driver of the overtaking vehicle was wholly to blame for the accident. Moreover he turned himself into an expert in attributing without a positive evidence to that effect and beyond the sphere of common knowledge that the cause of

the sudden swerve of the appellant was his lack of experience as a driver.

For all the above reasons this appeal is allowed with costs here and in the Court below.

*Appeal allowed with costs.* 5