

1985 January 22

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

OMIROS DIONYSSIOU,

Appellant-Defendant,

v.

PARASCHOS METAXAS,

Respondent-Plaintiff.

(Civil Appeal No. 6710).

Road Traffic—Collision—Apportionment of liability—Principles upon which this Court will interfere with such apportionment.

On the 15.5.81 the appellant was driving his car along Aeschylus street in Nicosia and on reaching the junction of that street with Lefkonos street, he collided with a motor cycle driven by the respondent along Lefkonos street against one way traffic. The motor cyclist was coming from the left of the appellant.

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In order to see the traffic moving along Lefkonos street a car moving along Aeschylus street has to enter the junction for five feet from the Halt at Aeschylus street. The point of impact was found to be 7' 6" from the Halt sign.

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The trial Court held that the appellant was 40% to blame for the collision. Hence the present appeal.

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Held, allowing the appeal: (1) This Court will neither interfere with findings of fact nor it will disturb the apportionment of liability unless a very strong case is made out that the trial Court erred in principle or has made the apportionment on an erroneous basis.

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(2) In this case the Court is unable to agree with the apportionment of liability made by the trial Court. In

the circumstances respondent's liability should be fixed at 75% in that although he was travelling against one way traffic and he knew that a driver coming from Aeschylus street and entering the junction has limited visibility, he failed to take such precautionary measures as to avoid a possible collision.

Judgment varied accordingly.

No order as to costs.

Appeal.

10 Appeal by defendant against the judgment of the District Court of Nicosia (Kronides, S.D.J.) dated the 21st February, 1984 (Action No. 5301/81) whereby he was adjudged to pay to the plaintiff the sum of £440.- as special and general damages for personal injuries sustained by
15 the defendant as a result of a traffic accident.

St. Erotocritou (Mrs), for the appellant.

L. Parparinos, for the respondent.

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Demetriades.

20 DEMETRIADES J.: By this appeal the appellant-defendant complains that the finding of the trial Court that he was 40% to blame for the accident in which he was involved with the respondent was wrong.

The events that led to this appeal are the following:

25 On the 15th May, 1981, the appellant was driving his car along Aeschylus street in Nicosia and on reaching the junction of that street with Lefkonos street, he collided with a motor cycle driven by the respondent along Lefkonos street. The motor cyclist was driving his motor cycle against
30 one way traffic and was coming from the left of the appellant.

At the end of Aeschylus street there was painted on the surface of the road a HALT sign.

35 According to the evidence of the Police Constable who investigated the accident, the visibility to the left, for the

driver of a car that stops with its front on the HALT, is limited to fifteen feet towards Lefkonos street and that in order to see the traffic moving along Lefkonos street a car has to enter the junction for five feet from the HALT.

The point of impact, as found by the Police Constable who investigated the accident, was 7' 6" from the HALT sign and it was approximately in the middle of the junction. The front part of the car was 11' 6" from the point of impact. The Police Constable did not measure the length of the car but he estimated it to be 12' - 13'. In other words the car after the collision travelled an approximate distance equal to its length and then came to a standstill. 5
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The trial Court having heard the evidence apportioned liability between the parties at 60% on the part of the plaintiff and 40% on the part of the defendant and in reaching its decision stated the following: 15

"In his case the defendant failed to stop at the halt and entered the cross-road without having proper look-out and without being sure that it was safe to proceed. For the above reasons I find the defendant negligent. On the other hand the plaintiff was riding his motorcycle against the one-way. Though the violation of Rules and Regulations is not actionable per se the plaintiff contributed in the accident. Though the plaintiff knew that he was riding against one-way he failed to take the precautions which were necessary under the circumstances on entering the cross-road. The plaintiff had the duty to take extraordinary precautions under the circumstances, whereas he failed to do so for his own safety." 20
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It is against this finding of the trial Court that the appellant complains. His grounds of appeal are five and are the following:

- (a) The trial Court wrongly found that the appellant was negligent and/or that his liability amounts to 40%. 35
- (b) The judgment of the trial Court was not sufficiently or at all reasoned.

- (c) The trial Court failed to consider the totality of the evidence.
- (d) The finding of the trial Court that the appellant failed to stop at the HALT is arbitrary and is not supported by the evidence. And
- (e) The finding of the Court that the appellant failed to keep a proper look out was arbitrary.

Counsel for the appellant argued before us that there was no evidence before the trial Court that the appellant failed to stop at the HALT sign, except that of the respondent whose evidence was, however, contradicted by that of the appellant. Counsel further submitted that in the light of the evidence of the Police Officer who investigated the accident and who stated that a driver entering the junction could have clear visibility to his left if he travelled a distance of five feet into the junction from the halt sign, that the accident occurred at a distance of 7' 6" from the sign and that the front part of the car, as he found it on arriving at the scene, was only 11' 6" from the point of impact, the length of the car being 12' - 13', no Court could, in the circumstances, have found the appellant so much to blame for the accident, nor could it have found that he had failed to stop at the HALT sign.

It is well settled by now that this Court will neither interfere with findings of fact nor it will disturb the apportionment of liability as found by the trial Court unless a very strong case is made out that the trial Court erred in principle or has made an apportionment of liability on an erroneous basis.

After considering the evidence that was before the trial Court and its findings as to the circumstances that led to the collision, we find ourselves unable to agree as to the extent of the liability of the appellant and we find that, in the circumstances, the respondent's liability was 75% in that although he was travelling against one way traffic and he knew that a driver coming from Aeschylus street and entering the junction has limited visibility, he failed to take such precautionary measures to avoid a possible collision.

In the result, we find that the judgment of the trial Court should be varied.

The appellant is hereby found to be blamed for the collision at 25% and the respondent at 75%.

The appeal is allowed and the amount of damages awarded by the trial Court is reduced accordingly. 5

We make no order as to costs.

Appeal allowed with no order as to costs.