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Oct. 10

[JOSEPHIDES, LOIZOU, HADJIANASTASSIOU, JJ.]

CHRISTODOULOS  
N. LAGOS  
v.  
ANDREAS  
DEMETRIOU  
YIASOUMIS

CHRISTODOULOS N. LAGOS,  
*Appellant-Plaintiff,*

v.

ANDREAS DEMETRIOU YIASOUMIS,  
*Respondent-Defendant.*

*(Civil Appeal No. 4697).*

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*Civil Wrongs—Negligence—Contributory negligence—Apportionment of liability—Appeal—Approach of the Appellate Court to findings regarding apportionment of liability—Principles applicable.*

*Appeal—Findings of fact resting on credibility of witnesses—Principles on which the Appellate Court acts.*

*Findings of fact—Appeal—Principles upon which Court of Appeal decides appeals against findings of fact resting on credibility of witnesses.*

*Negligence—Contributory negligence—Apportionment of liability—See above.*

*Contributory negligence—Apportionment of liability—See above.*

*Road Traffic—Road traffic accident—See above.*

*Appeal—Contributory negligence—Apportionment of liability—Approach of the Court of Appeal to the matter—See, also, above.*

*Witness—Credibility—Appeal—See above.*

This is an appeal by the plaintiff from the judgment of the District Court of Nicosia, whereby he was awarded the sum of £156 as damages for personal injuries received in a road accident. The special damages had been agreed at £120 and the general damages at £400, on the basis of full liability and the trial Court had to determine the question of liability. After hearing evidence the trial Court delivered their reserved judgment apportioning the liability at 70 per cent on the part of the plaintiff and 30 per cent on the part of the defendant. Counsel for the appellant strongly contested certain findings of the trial Court.

Dismissing the appeal, the Court:

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*Held*, (1) this is an appeal which turns mainly on the credibility of witnesses as reflected in the findings of fact and the inferences from the facts drawn by the trial Court. The principles on which this Court decides appeals on the credibility of witnesses and findings of fact are well settled and we need not in this appeal elaborate on them. There is a series of judgments on this point beginning with *Christodoulou v. Menicou* (1966) 1 C.L.R. 17, and ending with the most recent one, that of *Christodoulou v. Angeli* (reported in this Vol. at p. 338 *ante*).

(2) Regarding the question of apportionment of liability, the learned President of the Court delivering the judgment in *Christodoulou v. Angeli* (*supra*) makes reference to a recent English case, *Brown v. Thompson* [1968] 1 W.L.R. 1003, in which the question of the apportionment of liability is fully considered. We humbly subscribe to the views expressed in the *Brown* case and we commend it to the attention of the legal profession.

(3) We have not been persuaded that the findings complained of were not reasonably open to the trial Court on the evidence nor that they were not warranted by the evidence as a whole.

*Appeal dismissed with costs.*

Cases referred to:

*Christodoulou v. Menicou* (1966) 1 C.L.R. 17;

*Christodoulou v. Angeli* (reported in this Vol. at p. 338 *ante*);

*Brown v. Thompson* [1968] 1 W.L.R. 1003.

### Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Mavrommatis & Stavrinakis D.JJ.) dated the 29th December, 1967 (Action No. 2102/66) whereby he was awarded the sum of £156.- as damages for personal injuries which he received in a road traffic accident.

*Fr. Kyriakides*, for the appellant.

*J. Mavronicolas*, for the respondent.

The judgment of the Court was delivered by:

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JOSEPHIDES, J.: This is an appeal by the plaintiff from the judgment of the District Court of Nicosia, whereby he was awarded the sum of £156 as damages for personal injuries received in a road traffic accident.

The special damages had been agreed by the parties at £120 and the general damages at £400, on the basis of full liability, and the trial court had to determine the question of liability. After hearing evidence on both sides the court delivered their reserved judgment apportioning the liability at 70 per cent on the part of the plaintiff and 30 per cent on the part of the defendant.

*Plaintiff's counsel* today attacked the finding of fact of the trial court both as regards the way in which the accident occurred and the apportionment made by the trial court. The plaintiff's version was that at the time immediately before the accident he was walking with another labourer, HadjiLoizou, along Constantinos Palaeologos Avenue, Nicosia, on the left side of the asphalted part of the road near the Lyssarides building, proceeding towards the "OXI" kiosk, when he was knocked from behind by a car driven by the defendant. Both the plaintiff and his friend HadjiLoizou were walking on the asphalted part of the road, near the pavement, which they did not use. The plaintiff's version was supported by his friend HadjiLoizou.

The defendant's version, on the other hand, was that the plaintiff was on the pavement at the time and that he stepped down suddenly, with the result that the pedestrian (plaintiff) hit the car near the edge of the front door of the vehicle. The defendant in his evidence was not quite positive as to whether the plaintiff was on the pavement at the time, and the trial court came to the conclusion, accepting the plaintiff's version on that point, that he was walking on the asphalted part of the road next to his friend HadjiLoizou, who was next to the pavement but not on it.

It was the plaintiff's version that he was hit on the right shoulder and the trial court observed that this was consistent with defendant's evidence, who stated that the plaintiff hit the side of the car near the edge of the front door of the vehicle.

The trial court, after weighing the evidence adduced on behalf of the plaintiff on the one side, and the evidence on behalf of the defendant on the other side, made the following

findings: (a) that the defendant was negligent in not giving a safely wide berth to the pedestrian (plaintiff); (b) that the plaintiff, whilst walking probably on the asphalted part of the road, made a sudden movement to his right and hit the passing vehicle of the defendant; (c) that the plaintiff was negligent because he was not using the pavement, and that he was walking on the left side of the road instead of the right, and that he did so during the rush-hour with heavy traffic; and (d) that the plaintiff was negligent in that he made a sudden movement to his right without first ascertaining whether it was safe for him to do so; this was to the mind of the trial court the most decisive cause of the accident.

Learned counsel for the plaintiff (appellant) challenged very strongly before us the last finding of the trial court. The fact remains, however, that this is an appeal which turns mainly on the credibility of the witnesses as reflected in the findings of fact and the inferences from the facts drawn by the trial court. The principles on which this Court decides appeals on the credibility of witnesses and findings of fact are well settled and we need not in this appeal elaborate on them. There is a series of judgments on this point, beginning with *Christodoulou v. Menicou* (1966) 1 C.L.R. 17, and ending with the most recent one (delivered last week), that of *Christodoulou v. Angeli*, (reported in this Vol. at p. 338 *ante*). The learned President of this Court in the latter case refers to some of these authorities, to which we need not refer, and he also makes reference to a recent English case, that of *Brown v. Thompson* [1968] 1 W.L.R. 1003, in which the question of the apportionment of liability is fully considered. We humbly subscribe to the views expressed in the *Brown* case and we commend it to the attention of the legal profession.

Having heard learned counsel for the appellant in this case submitting the grounds on which this Court should reverse the findings of fact of the trial court, we have not been persuaded that such findings were not reasonably open to them on the evidence nor that they were not warranted by the evidence as a whole.

For these reasons we are not prepared to interfere with the judgment of the trial court.

In the result the appeal is dismissed with costs.

*Appeal dismissed with costs.*

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