

1968
Nov 7

COSTAS
IOANNOU
TRIFTARIDES
v
THE POLICE

[VASSILIADES, P., TRIANTAFYLIDIS AND JOSEPHIDES, JJ.]

COSTAS IOANNOU TRIFTARIDES,

Appellant,

v

THE POLICE,

Respondents

(Criminal Appeal No 3009)

Road Traffic—Careless driving contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332—Duty of driver—Question of fact depending on the circumstances of each case—Foreseeability—Carelessness of the victim—Issues to be decided—Careless driving must be positively established as part of the conduct of the accused constituting the offence—Simultaneous negligence on the part of other persons concerned cannot affect the question of the guilt of the accused driver—It can only affect the sentence to be imposed in a case of conviction—Duty cast on the driver of a motor vehicle—It is to observe ordinary care towards persons using the road whom he could reasonably foresee as likely to be affected—No absolute duty on a driver to reduce speed in anticipation of any eventuality whenever he sees a stationary car parked on the side of the road It is always a question of fact depending on the circumstances of the case

Careless driving—Stationary car parked on the side of the road—Duty of the driver—Victim's negligence—Speed—Duty to reduce speed—See above

This is an appeal against a conviction under section 6 of the Motor Vehicles and Road Traffic Law, Cap 332, for driving a motor vehicle on a public road without due care and attention. The facts are briefly as follows.

While the appellant was driving his taxi on a public road in the outskirts of a village, he saw at some distance, another vehicle stationary on his (appellant's) off-side of the road. The road was about 19 feet wide, it was slightly wet apparently having rained some time earlier. The appellant was driving at about 30 miles per hour, which in the opinion of the trial Judge was a reasonable speed in the circumstances. When appellant's car was about to pass by the side of the stationary vehicle, a 10-year-old girl

1968
Nov. 7

COSTAS
IOANNOU
TRIFARIDES
v.
THE POLICE

dashed across the road from behind the stationary vehicle in an attempt to get to the other side of the road. The appellant, before this sudden and unexpected emergency, applied his brakes, but did not manage to avoid the girl whom he knocked down before he could stop his car. He duly helped the injured girl who was, eventually, taken to hospital suffering from serious injuries. There is no finding that the appellant noticed at all the presence of any children next to the road. On the above facts the trial Judge convicted the appellant as aforesaid (and imposed a fine of £5) for two reasons: (a) the driver-appellant failed to reduce his speed in anticipation and apprehension of any eventuality which might occur as he was approaching a car parked on the side of the road; and (b) he failed to give audible warning of his approach by sounding his horn. The latter point was not pressed on appeal by counsel for the police. Allowing the appeal and quashing the conviction, the Court:

Held, per VASSILIADES, P.:

(1) Careless driving must be positively established by the prosecution as part of the conduct of the accused, constituting the offence. Simultaneous negligence on the part of other persons concerned, cannot affect the question of guilt of an alleged careless driver. It can only affect the sentence to be imposed in case of conviction.

(2) The conviction in this case was rested on the fact that, in the circumstances, the appellant did not reduce his speed of 30 miles an hour, apprehending that a child might come suddenly across the road, from behind the stationary car. In my opinion there was nothing which should reasonably cause such apprehension in the circumstances; and the conviction based on the finding that the driver was careless because he did not have it, cannot be sustained.

Held, per TRIANTAFYLIDIS, J.:

(1) I agree with the view taken by the learned President of the Court, regarding the outcome of this appeal.

(2) In reaching my above conclusion I have been particularly influenced by the fact that there is no finding that the driver-appellant noticed at all the presence of any children next to the road—in which case he should, perhaps, have been more careful.

1968
Nov. 7
—
COSTAS
IOANNOU
TRIFTARIDES
v.
THE POLICE

Held, per JOSEPHIDES, J. :

(1) In the circumstances of this case, the Judge's conclusion, that the appellant "failed to reduce his speed in anticipation and apprehension of any eventuality in approaching a car parked on his offside", cannot be sustained. There is no absolute duty on a driver, as I see it, to reduce speed, in anticipation of any eventuality, whenever he sees a stationary car parked on his offside. It is always a question of fact depending on the circumstances of the case.

(2) The duty cast on the driver of a motor-vehicle is to observe ordinary care towards persons using the road whom he could reasonably foresee as likely to be affected.

Appeal allowed ; conviction and sentence quashed.

Appeal against conviction.

Appeal against conviction by Costas Ioannou Triftarides who was convicted on the 9th July, 1968 at the District Court of Nicosia (Criminal Case No. 5002/68) on one count of the offence of driving a motor-vehicle without due care and attention contrary to section 6 of the Motor-Vehicles and Road Traffic Law Cap. 332 and was sentenced by Stavrinakis, D.J., to pay a fine of £5.

Ph. Clerides, for the appellant.

A. Frangos, Senior Counsel of the Republic, for the respondents.

The following judgments were delivered :

VASSILIADES, P. : This is an appeal against a conviction under section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332, for driving a motor vehicle on a public road without due care and attention.

It is common ground that this is a borderline case ; and, as pointed out during the argument, this is, I think, clearly reflected in the sentence imposed by the trial Judge, who, after conviction for careless driving, resulting in serious injuries to a child of 10, imposed only a fine of £5.

The facts are simple ; and they are clearly stated in the careful judgment of the learned trial judge. They may be summarized as follows :—

While the appellant was driving his taxi on a public road in the outskirts of a village, he saw, at some distance, another vehicle stationary on his (appellant's) off-side of the road, that is facing in the direction from which the appellant was coming. The road, according to the plan prepared by the traffic police (and admitted in evidence as *exhibit* 1) was about 19 feet wide, *i.e.* 11 feet the asphalted part, with about 4 feet wide berms on each side.

The appellant was driving at about 30 miles per hour, which in the opinion of the trial Judge was a reasonable speed in the circumstances. The road was damp, or slightly wet ; apparently having rained some time earlier. When appellant's car was about to pass by the side of the stationary vehicle, a 10-year old girl dashed across the road from behind the stationary vehicle in an attempt to get to the other side of the road. The appellant, before this sudden and unexpected emergency, applied his brakes, but did not manage to avoid the girl whom he knocked down before he could stop his car. He duly helped the injured girl who was, eventually, taken to hospital.

The issue of fact, which the trial Judge had to decide, was whether, in the circumstances, the driver was guilty of careless driving. The judge came to the conclusion that this question should be answered in the affirmative for the two reasons stated in the judgment. These are: (a) that the driver failed to reduce his speed in anticipation and apprehension of any eventuality which might occur as he was approaching a car parked on the side of the road ; and (b) that he failed to give audible warning of his approach by sounding his horn. Very rightly, I think, learned counsel for the police did not press this latter point at the hearing of the appeal before us. In the circumstances, there was no real need for such unnecessary noise. In fact, there is positive evidence in this case, that the girl in question was actually warned by her teacher who had brought her home with two other girls from school in his car on that day. The teacher gave evidence to the effect that, having seen the approaching car, warned the girls of the danger. The sounding of the horn could not really do much more. The conviction, therefore, can only rest on the remaining finding that the appellant failed to reduce his speed in anticipation and apprehension of any eventuality in approaching a stationary car at the side of the road.

1968
Nov. 7
—
COSTAS
IOANNOU
TRIFTARIDES
v.
THE POLICE
—
Vassiliades, P.

1968
Nov. 7
—
COSTAS
IOANNOU
TRIFTARIDES
v.
THE POLICE
—
Vassiliades, P.

The value of such a finding must be assessed in the conditions prevailing in the country, as commonly known to the extent of being treated as notorious facts. I think it cannot be denied that it is common knowledge that there is now, in Cyprus, a heavy motor traffic which has to travel on roads mostly constructed when the traffic was much smaller ; roads which are too narrow for the present traffic and have to be gradually widened, as one can see it being done every day. In the meantime, drivers and pedestrians, who are making use of public roads in exercise of their legal right to do so, they must bear in mind that they owe a duty of care to other users of the road. They must make such careful and reasonable use of the road as is required for their own safety as well as for the safety of others, who are, likewise, entitled to use the road.

Pedestrians must bear in mind that they can only exercise their right to use a public road in a manner compatible with the right of other people using vehicles on the road in the exercise of a similar, or parallel right. And, although, it must be added that persons driving a motor vehicle must do so with all due care, bearing in mind that a pedestrian is exposed to a greater danger, it must also be stated, that a pedestrian, bearing in mind the existence of such danger must be, likewise, careful and mindful of motor traffic. In other words, everyone using a public road must do so with all due care, having regard to the actual circumstances at the material time. This is the background against which a case of this nature should, in my opinion, be approached.

Careless driving, when the subject of a prosecution is the main element of the offence charged ; and must be positively established by the prosecution as part of the conduct of the accused, constituting the offence. Simultaneous negligence on the part of other persons concerned, cannot affect the question of the guilt of a careless driver. It can only affect the sentence to be imposed in case of conviction.

In this particular case, when the driver of the vehicle, in the outskirts of a village, was only travelling at about 30 miles an hour, on a 19 feet wide straight road, with a small car stationary at the side, was suddenly faced with the emergency of a child dashing across his path in the road. He reacted immediately by taking forthwith avoiding action. There is no suggestion that he was careless or otherwise at fault in doing so. I cannot think that had he succeeded in avoiding the girl, the driver could have been prosecuted or convicted of careless driving. Nor do I think

that he could be prosecuted or convicted of careless driving, if the girl in question had remained with the other two girls. The carelessness of the victim cannot affect the guilt or the innocence of the driver which must be found in his own conduct.

The issue, which the Court has to decide is whether there is, or there is not, careless driving. The question whether, as a result, of careless driving there has been serious, trifling, or no injury at all, to another person is immaterial in a case of this kind.

In the present case, I am afraid, I cannot see how it can be said that the driver was shown to have been carelessly driving. The conviction was rested on the fact that, in the circumstances, the driver did not reduce his speed of 30 miles an hour, apprehending that a child might come suddenly across the road, from behind the stationary car. In my opinion there was nothing which should reasonably cause such apprehension in the circumstances; and the conviction based on the finding that the driver was careless because he did not have it, cannot be sustained.

I take the view that this unfortunate girl is the victim of her own childish and rash action, taken notwithstanding the warning of her teacher who had just let her off his car. The driver, in my opinion, did nothing which could constitute the offence of careless driving; nothing beyond his right to make proper use of a public road with reasonable care, expecting that all other persons using the road at the same time shall also take reasonable care for their own safety.

I am of the opinion that the appeal should be allowed and the conviction be set aside.

TRIANAFYLLIDES, J. : I agree with the view taken by the learned President of the Court, regarding the outcome of this appeal.

I need not repeat anything which he has said already; I would summarize my own views by stating that I cannot agree that the two reasons given by the learned trial Judge as to why he has convicted the appellant, namely, that he has failed "to reduce his speed in anticipation and apprehension of any eventuality in relation to a car parked on his offside" and that he failed "to give audible warning of his approach, by sounding his horn", do, in the circumstances of the present case, drive home to the appellant, with the certainty required in what is, after all, a criminal proceeding, his guilt in respect of the offence of driving a motor vehicle carelessly, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332.

1968
Nov. 7

—
COSTAS
IOANNOU
TRIFTARIDES
v.
THE POLICE
—
Triantafyllides,
J.

1968
Nov. 7
—
COSTAS
IOANNOU
TRIFTARIDES
v.
THE POLICE
—
Triantafyllides,
J:

In reaching my above conclusion I have been particularly influenced by the fact that there is no finding that the appellant noticed at all the presence of any children next to the road—and that, therefore, he should, perhaps, have been more careful than ordinarily.

Nor can I find that there was any lack of care on his part in not noticing the children concerned, because at the time, they were hardly within the normal limits of his vigilance, as they were between the car parked, as aforesaid, on his offside and the berm of the road ; and, actually, as found by the trial Court, the child knocked down dashed into the road, and in front of the oncoming car of the appellant, from behind the parked car.

I have no difficulty in allowing this appeal.

JOSEPHIDES, J. : I also agree that the appeal should be allowed. The conviction of driving without due care and attention cannot be sustained on the facts as found by the trial Judge.

He found that the appellant was driving at about 30 miles per hour, entering a village, and that the accident occurred when a child tried to cross the road from behind a car which was parked on the right-hand side of the road in relation to the direction he was proceeding at the time. The Judge further found that there was a driver in the stationary car, that the left door was open and this ought to have been seen by the appellant who should have been put on his guard. Stress should be laid on the finding of the trial Judge that the child dashed from behind the stationary car and that there is no finding by the learned Judge that there were any children either in the said car or alighting from it at the material time.

On those findings of fact, the Judge's conclusion, that the appellant " failed to reduce his speed in anticipation and apprehension of any eventuality in approaching a car parked on his offside ", cannot be sustained. There is no absolute duty on a driver, as I see it, to reduce speed, in anticipation of any eventuality, whenever he sees a stationary car parked on his offside. It is always a question of fact depending on the circumstances of the case. The duty cast on the driver of a motor-vehicle is to observe ordinary care towards persons using the road whom he could reasonably foresee as likely to be affected.

I would allow the appeal.

VASSILIADES, P. : Appeal allowed ; conviction set aside.

*Appeal allowed ; conviction
set aside.*