

1969  
May 23

[VASSILIADES P. STAVRINIDES, & HADJIANASTASSIOU JJ.]

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YIANNIS  
HADJIPETRI  
v.  
CHRISTOFIS  
HADJI GEORGHOU  
AND ANOTHER

YIANNIS HADJI PETRI,

*Appellant-Plaintiff.*

v.

CHRISTOFIS HADJI GEORGHOU AND ANOTHER,

*Respondents-Defendants.*

(Civil Appeal No. 4746).

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*Negligence—Road Traffic—Omnibus—Passenger's claim for injuries received while alighting from moving omnibus—Trial Court's findings that accident was due solely to passenger's (plaintiff's) own negligence, sustained—See also herebelow.*

*Omnibus—Rural omnibus—Omnibus conductor—In the absence of a conductor this officer's duties do not fall on the driver of the omnibus—Regulations 16(2) and 21 of the Road Traffic Regulations 1964—Driver's duties—Regulation 21.*

*Road Traffic—Omnibus—Rural Omnibus—Driver—Conductor not required in rural omnibus—Respective duties of driver and conductor—Regulations 16(2) and 21 of the Road Traffic Regulations 1964—See also hereabove.*

*Practice—Damages—Assessment of damages on the dismissal of a claim for injuries—A useful established practice.*

*Damages—Assessment—Made on dismissal of a claim for injuries and the like—Useful established practice.*

*Appeal—Findings of fact—Credibility of witnesses—Appeals turning on findings of fact and on matters going to the credibility of witnesses—Approach of the Court of Appeal—Principles applicable laid down in a line of cases decided since the enactment of the present Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960).*

*Witnesses—Credibility of—Appeals turning on credibility of witnesses—Approach of Court of Appeal—See above.*

*Credibility of witnesses—Appeals turning on—See above.*

This appeal is taken by the plaintiff against the judgment of the District Court of Nicosia dismissing his claim for damages

for personal injuries received in a road traffic accident while he was a passenger in the defendants' (now respondents') rural omnibus. The trial Court rejected the version of the plaintiff-appellant and, accepting the evidence of the driver and the passenger-witness called for the defence, found that:—"the plaintiff on seeing that the omnibus did not stop by the coffee-shops where he presumably wanted to alight, he found it opportune to jump out of the omnibus without giving any warning to the driver...". In the circumstances the trial Court held that there was "no liability whatsoever on the part of the omnibus-driver, as no reasonable driver would have foreseen the unpredictable conduct of the plaintiff".

Dismissing the appeal, the Supreme Court:—

*Held*, (1). The approach of this Court to the findings of the trial Court upon which a case falls to be determined, and the matters going to the credibility of witnesses called at the trial, have been stated in a line of cases decided since the enactment of the present Courts of Justice Law, 1960. We may refer to a few of them only (see the three cases quoted *infra*). We need not restate again the position.

(2) Far from being persuaded that the findings and conclusions of the trial Court, to the effect that the accident was due solely to the negligence of the passenger (appellant-plaintiff), are not warranted by the evidence, we feel confirmed in the view that the evidence was rightly assessed and that it fully establishes the facts as found by the trial Court.

(3) As regards the ground based on regulation 16(2) of the Road Traffic Regulations 1964, we find no merit whatsoever in the submission made on behalf of the appellant. Learned counsel quite properly conceded that the Regulations did not require the respondents to have an "εισπράκτορα" (conductor) on this rural omnibus. And we cannot accept the submission that such officer's duties under regulation 16(2) fell on the driver. The driver's responsibilities and duties are set out in regulation 21. At the material time the driver should attend to the driving of the vehicle; and not to the appellant or his reckless attempt to get off while the omnibus was in motion. A passenger in a travelling vehicle is expected to take reasonable care for his safety; and should not open the door or otherwise attempt to alight from a moving vehicle.

*Appeal dismissed with costs.*

1969  
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—  
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HADJIPETRI  
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Cases referred to:

*Charalambous v. Demetriou*, 1961 C.L.R. 14;  
*Patsalides v. Afsharian* (1965) 1 C.L.R. 134;  
*Imam v. Papacostas* (1968) 1 C.L.R. 207.

**Appeal.**

Appeal by plaintiff against the judgment of the District Court of Nicosia (A. Loizou P.D.C. and Stavrinakis D.J.) dated the 4th May, 1968 (Action No 4002/66) dismissing his claim for damages for personal injuries which he sustained whilst a passenger in an omnibus driven by the first defendant.

*E. Vrahimi (Mrs.)*, for the appellant.

*Chr. Chrysanthou*, for the respondents.

*Cur. adv. vult.*

The judgment of the Court was delivered by:

VASSILIADES, P.: The appellant before us (plaintiff in the action) is a farmer, 49 years of age, of Peristerona village, whose claim for personal injuries against the owner and the driver of the omnibus on which he received the injuries, was dismissed by the District Court of Nicosia on May 14, 1968, on the ground that his injuries were the result of appellant's own negligence; and not that of the defendants.

The appellant was one of the passengers in the omnibus of the second defendant while it was in the charge of its driver, the first defendant, running on its usual return trip, Morphou—Nicosia and back, via appellant's village, Peristerona, on October 26, 1966. As he was trying to get off the omnibus at his village, appellant's left hand got caught between the door of the vehicle and a tree at the side of the street, receiving very painful injuries; which, notwithstanding medical treatment for about a month and physiotherapy thereafter, eventually resulted in a degree of permanent incapacity in the use of his left hand.

The case for the appellant was that when the omnibus stopped at his village and while he was getting off the vehicle, the driver negligently caused it to reverse; and thus caused appellant's hand to be caught between the omnibus-door and the tree with the results described by the medical evidence.

1969  
May 23

—  
YIANNIS  
HADJIPETRI  
v.  
CHRISTOFIS  
HADJI GEORGHOU  
AND ANOTHER

The case for the defendants was that the accident was due to appellant's own negligence; which, if not the sole cause, had in any case greatly contributed to the accident. The defendants' version of the material facts was that where the accident occurred was not the usual omnibus stop at Peristerona village; or an omnibus stop at all. While the omnibus was going up a narrow village street leading to the omnibus stop, it came face to face with another vehicle going down the hill. As there was no room for the two vehicles to cross one another at that part of the street, they both stopped for a moment, when the defendant driver, taking the view that it was easier for him to reverse down the hill to a wider part of the street, than it was for the other vehicle to reverse up the hill, he engaged his reverse gear and was driving slowly and carefully down the street, when he suddenly heard the shouting caused by the accident; and stopped the omnibus.

According to the evidence of one of the passengers in the omnibus who actually saw what happened, the appellant left his seat while the omnibus was reversing; and proceeding to the door on the other side of the vehicle, opened it himself and tried to get off, while the omnibus was moving backwards. It was then that his hand got squeezed between the open door and a tree at the side of the street. The painful call of the appellant and the shouting of people to stop, caused the driver to stop the omnibus and to realize what had happened, as until then his attention was directed on the reversing manoeuvre.

The trial Court considered both versions of the facts; and rejected that of the appellant, accepting the evidence of the driver and the passenger-witness called for the defence. After dealing with the evidence before them and assessing the credibility of the witnesses, the trial Court say:—

“It is clear that the plaintiff on seeing that the omnibus did not stop by the coffee-shops where he presumably wanted to alight, he found it opportune to jump out of the omnibus without giving any warning to the driver, when the omnibus was compelled to stop and was reversing for the sake of the coming vehicle. In the circumstances we find that there is no liability whatsoever on the part of the omnibus-driver, as no reasonable driver would have foreseen the unpredictable conduct of the plaintiff”.

1969

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HADJIPETRI  
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CHRISTOFIS  
HADJI GEORGHOU  
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Upon these findings and conclusions, the trial Court decided to dismiss the claim; but before doing so, the Court, acting on the established practice the usefulness of which we need not stress here again, proceeded to assess the damages, which they found at £46.— the special damages and £700.— the general.

Against the judgment dismissing his claim, the plaintiff took the present appeal. In the notice filed, the appeal is put on eight grounds which, however, may well be summed up in three: (a) that the findings of the trial Court are against the weight of evidence and should not be sustained; (b) that the trial Court wrongly treated as a “custom”, the absence of a conductor on rural omnibuses, which in itself amounts to negligence on the part of its owner; and (c) that upon the evidence on record, both special and general damages ought to be increased.

Learned counsel for the appellant argued before us that the version of her client as to how the accident occurred, should be preferred to that of the driver and the passenger-witness. She stressed specially the point that there was no evidence whatever to suggest that the appellant tried to “jump out” of the omnibus, as the trial Court say. Regarding the absence of a conductor, counsel referred to Reg. 16(2) of the Road Traffic Regulations, 1964, made under the provisions of section 15 of the Road Transport Law 16 of 1964 and published on the 19th November, 1964. (Περὶ Ρυθμίσεως τῆς Τροχαίας Μεταφορᾶς Κανονισμοὶ τοῦ 1964, δημοσιευθέντες εἰς τὴν Ἐπίσημον Ἐφημερίδα τῆς Δημοκρατίας ὑπ’ ἀρ. 368 τῆς 19ης Νοεμβρίου, 1964. Θεσπισθέντες καὶ ἐκδοθέντες ἐπὶ τῇ βάσει τοῦ ἀρθρ. 15, τοῦ περὶ Ρυθμίσεως τῆς Τροχαίας Μεταφορᾶς Νόμου 16 τοῦ 1964. Κανονισμὸς 16(2) εἰς τὴν σελ. 617). It was submitted on behalf of the appellant that although the Regulations did not require a village-omnibus (such as the omnibus in question) to have a conductor, nevertheless the duties and responsibilities of a conductor towards the passengers, fell upon the driver; and any negligence on his part in connection with such duties, was the negligence of his employer, the owner of the omnibus.

The approach of this Court to the findings of the trial Court upon which a case falls to be determined, and the matters going to the credibility of witnesses called at the trial, have been stated in a line of cases decided since the enactment of the present Courts of Justice Law (14 of 1960). We may refer

to a few of them only. *Philippos Charalambous v. Sotiris Demetriou*, 1961 C.L.R. 14; *Patsalides v. Afsharian* (1965) 1 C.L.R. 134; *Imam v. Papacostas* (1968) 1 C.L.R. 207. We need not restate again the position.

After hearing counsel for the appellant on the first ground of the appeal (that the findings of the trial Court are against the weight of the evidence on record) we found it unnecessary to call on the respondents. Far from being persuaded that the findings and conclusions of the trial Court are not warranted by the evidence, we feel confirmed in the view that the evidence was rightly assessed; and that as accepted by the trial Court, the evidence fully establishes the facts as found in the Court's judgment.

As regards the ground based on regulation 16(2) of the Road Traffic Regulations, we find no merit, whatever, in the submission made on behalf of the appellant. Learned counsel quite properly conceded that the Regulations did not require the respondents to have an "είσπρακτορά" on this rural omnibus. And we cannot accept the submission that such officer's duties fell on the driver. The driver's responsibilities and duties are set out in reg. 21. At the material time the driver should attend to the driving of the vehicle; and not to the appellant or his reckless attempt to get off while the omnibus was in motion. A passenger in a travelling vehicle is expected to take reasonable care for his own safety; and should not open the door or otherwise attempt to alight from a moving vehicle.

Having come to the conclusion that appellant's allegations of negligence on the part of the respondents entirely fail, we need not deal with the quantum of damages raised by the appeal. We are unanimously of the opinion that the action was rightly dismissed; and that this appeal fails and must likewise be dismissed with costs.

*Appeal dismissed with costs.*

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