

1970
June 2

[TRIANTAFYLIDIS, LOIZOU, HADJIANASTASSIOU, JJ.]

—
SOLOMOS
KYRIACOU
v.
NICOS
ARISTOTELOUS

SOLOMOS KYRIACOU,
Appellant-Defendant,
v.
NICOS ARISTOTELOUS,
Respondent-Plaintiff.

(Civil Appeal No. 4765).

Negligence—Contributory negligence—Road traffic accident—Collision at cross-roads controlled by traffic lights—Findings of trial Court to the effect that the defendant (appellant) was solely to blame for the collision and the resulting personal injuries suffered by the plaintiff (respondent)—Sustained on appeal—See further infra.

Appeal—Findings of fact made by trial Courts—Appeals turning on findings of fact and credibility of witnesses—Approach of the Appellate Court—Principles upon which the Court of Appeal acts well settled; restated.

Findings of fact—Credibility of witnesses—Appeals—See supra.

Apportionment of liability—Negligence—Contributory negligence—Appeal against such apportionment—Principles on which the Court of Appeal will intervene—Well settled; restated.

Appeal—Apportionment of liability—See supra.

This is a personal injuries case arising out of a road accident. The trial Court accepted the evidence on behalf of the plaintiff (now respondent) and found that the defendant (now appellant) was solely to blame for the road accident in question viz. a collision at cross-roads controlled by traffic lights; and adjudged the defendant (appellant) to pay £6,000 general damages, plus £593 special damages.

Against this judgment, the defendant took the present appeal complaining, to put it shortly, that the findings made by the trial Court were against the weight of evidence, unreasonable and not properly reasoned.

The Court of Appeal, after reviewing the evidence on record, found that no sufficient reasons were shown by the appellant for the Court to interfere with the findings of fact made by the trial Court and mainly based on the credibility

of witnesses ; and the Court of Appeal after restating the well settled principles upon which it approaches and determines appeals turning on such findings and on the issue of the apportionment of liability, dismissed the appeal with costs.

1970

June 2

—
SOLOMOS

KYRIACOU

v.

NICOS

ARISTOTELOUS

Cases referred to :

- Charalambous v. Demetriou*, 1961 C.L.R. 14 ;
Imam v. Papacostas (1968) 1 C.L.R. 207 ;
HadjiPetri v. HadjiGeorghou (1969) 1 C.L.R. 326 at p. 331 ;
Pyrgas v. Stavridou (1969) 1 C.L.R. 332 at p. 342 ;
HjiAntoni v. Theocharis (1969) 1 C.L.R. 512 at p. 514 ;
Gregoriadou v. Kyriakides (reported in this Part at p.84 *ante*) ;
Ponou v. Ibrahim (reported in this Part at p.78 *ante*) ;
Paraskevopoulos v. Georghiou (reported in this Part at p.116 *ante*) ;
Patsalides v. Yiapani and Another (1969) 1 C.L.R. 84 ;
British Fame (Owners) v. Macgregor (Owners) [1943] A.C. 197 at p. 201 per Lord Wright ;
Brown and Another v. Thompson [1968] 2 All E.R. 708 ;
Quintas v. National Smelting Co., Ltd. [1961] 1 All E.R. 630 at p. 643 per Willmer, L.J. ;
Kerry v. Carter [1969] 3 All E.R. 723 ;
Baker v. Willoughby [1969] 2 All E.R. 549 ; and also the same case on appeal to the House of Lords in [1969] 3 All E.R. 1528 at p. 1530 per Lord Reid ;
Economides v. Zodiatis, 1961 C.L.R. 306 at p. 307.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Ioannides, Ag. P.D.C. and Santamas, Ag. D.J.) dated the 24th September 1968 (Action No.3594/66) whereby he was adjudged to pay to the plaintiff the sum of £6,593.500 mils as damages for the injuries he sustained in a road accident due to the negligence of the defendant.

L. Demetriades with *D. Liveras*, for the appellant.

L. Papaphilippou, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES, J.: Mr. Justice Hadjianastassiou will deliver the first judgment of the Court.

HADJIANASTASSIOU, J.: In this case the plaintiff claimed damages for injuries sustained by him in a collision whilst

1970
June 2
—
SOLOMOS
KYRIACOU
v.
NICOS
ARISTOTELOUS
—
Hadjiana-
stassiou, J

he was riding motor cycle AB 418 by the negligent driving of the defendant who was driving motor-car TAK 67. The Full District Court of Nicosia found that the defendant was solely to be blamed for the accident, and assessed both the general and the special damages amounting to £6,000 and £593.500 mils respectively.

The defendant argued the appeal on two grounds :—

(1) that the finding of the District Court that the traffic lights were green on the side of the plaintiff immediately before the collision is :

- (a) against the weight of evidence ;
- (b) unreasonable ; and
- (c) not properly reasoned ;

(2) that the District Court did not take into consideration the fact that the plaintiff failed to take avoiding action immediately before the collision, although the plaintiff had ample time to do so and, as a result, the Court neither examined, nor gave effect to the defence of contributory negligence on the part of the plaintiff on this particular point.

On September 20, 1966, in the evening, the plaintiff, Mr. Nicos Aristotelous was riding a motor cycle, being on patrol duty. He was attached to the traffic branch of the police. He was proceeding to Metaxas Square in Nicosia, when he met a car driven by the defendant, who was coming from Antonios Theodotou Street towards the cross-roads, which are controlled by traffic lights of Salamis/Stassinou Avenues, Evgenia A. Theodotou and Archbishop Makarios II Streets. The plaintiff collided with the car driven by the defendant who was crossing against the traffic lights from Theodotou Street towards Arch. Makarios II Street. As a result of this accident, the plaintiff suffered serious injuries.

Shortly after the accident, and whilst still unconcious, the plaintiff was taken to the general hospital. He was found by Dr. Kammitsis to be suffering from a severe shock ; he had a compound fracture in the area of his forehead ; he was X-rayed at once. He was operated on by Dr. Christopoulos assisted by Dr. Kammitsis, and the operation confirmed the radiological findings and showed that the plaintiff had a compound fracture which resulted in some damage to the brain substance. His treatment

lasted until October 1, 1966, and after his discharged from the hospital, he continued visiting the out-patients department once a week. He was complaining of dizziness and other post-concussional syndromes.

On October 13, 1966, the plaintiff was examined by Dr. Lapithis and his findings were that the right eye was normal, but the left eye was completely blind. It could not perceive light and could not be cured. Probably he had a distraction, *i.e.* an injury of the optic nerve which led to its complete blindness. He had also received some injuries of the orbit, the bones round the eye, and these injuries are the cause of the injury to the optic nerve.

On April 12, 1967, he was also examined by Dr. Takis Evdokas, a psychiatrist/neurologist, neurologically, and his findings were that the vision of the plaintiff's eye has been destroyed and that the deep tenton reflexes were brisk, (hyperactive) in all extremities. The post-traumatic brain syndrome of the plaintiff was rather severe and, psychologically, he has been affected also by the loss of vision of his left eye.

As usual, in these accidents, there were two sharply conflicting versions before the trial Court.

It was the plaintiff's version that at about 8.00 p.m. on the evening of the accident, he was in Archbishop Makarios II Street on duty inspecting the traffic together with another police officer, Mr. Christodoulides. He saw a motor cycle without a rear light, and after mounting his motor cycle, went after him ; he caught up with him at Digenis Akrita Street, reported him, and went on along Digenis Akrita Street, turned left into part of Theodotou Street ; then turned right into Royko Street and left again into Salamis Avenue. He proceeded along Salamis Avenue towards Metaxas Square. He entered the junction of Salamis/Stassinou Avenues and Theodotou/Archbishop Makarios II Streets, when the lights were green on his side. He had engaged the second gear and was going at about 10 m.p.h. He noticed a car coming along Theodotou Street at a high speed, and as he was applying his brakes he noticed that the lights opposite were turning into green and amber. In cross-examination he said that he noticed that car just as he had passed the traffic lights, but he could not say whether at that time that car had already entered the junction or not. He applied his brakes as soon as he saw the car coming from his left. He could not have noticed the car earlier.

1970
June 2
—
SOLOMOS
KYRIACOU
v.
NICOS
ARISTOTELOUS
—
Hadjiana-
stassiou, J.

1970
June 2
—
SOLOMOS
KYRIACOU
v.
NICOS
ARISTOTELOUS
—
Hadjianna-
stassiou, J.

According to the evidence of Panayiotis Polycarpou who had made the installation of the traffic lights, the traffic lights at the junction where the accident took place, were operating in 1965 as follows :—Red, then amber alone, then green and amber and then red again. At the beginning of 1966, he was ordered to carry out some alterations to the traffic lights in question and, as a result of this alteration, they operate as follows :—Red-green, green and amber for three seconds, and then red again.

It was the defendant's version that on the date of the accident, whilst he was driving his car TAK 67, he was involved in an accident which occurred at the junction of Salamis/Stassinou Avenues and Archbishop Makarios/ Theodotou Streets. He was driving at a speed of 10–25 m.p.h. along Theodotou Street towards that junction at about 8.30–9.00 p.m. When he reached the junction, the lights were green. As soon as he passed the traffic lights he heard the noise of a motor cycle engine, he turned to his right and saw the plaintiff about 15 paces away coming towards him. He applied the brakes, but as the plaintiff was going at a high speed, he hit the front offside mudguard, the driver's door and the offside door of his car ; the car stopped in the middle of the junction.

With regard to the traffic lights at the junction, he stated that they were operating as follows : First red, then red and amber, then green, then amber and then red again.

The trial Court, after considering the conflicting evidence, and after weighing the evidence of the plaintiff and witness Panayiotis Polycarpou, as against that of the defendant, and after considering the evidence of Charalambos Lakerides and Kokos A. Konissis, accepted and preferred the version of the plaintiff to that of the defendant ; *viz.* that the traffic lights were green in favour of the plaintiff when he was crossing the junction.

Undoubtedly, matters of findings based on credibility are within the province of the trial Judge, and this has been laid down in a number of cases by this Court. I need only refer to a few which summarize this position : *Charalambous v. Demetriou*, 1961 C.L.R. 14 ; *Imam v. Papacostas* (1968) 1 C.L.R. 207 at p. 208 ; *HadjiPetri v. HadjiGeorghou* (1969) 1 C.L.R. 326 at p. 331 ; *Pyrgas v. Stavridou* (1969) 1 C.L.R. 332 at p. 342 ; *Costas HjiAntoni v. Georghios Theocharis* (1969) 1 C.L.R. 512 at p. 514 ; *Maroulla Gregoriadou v. Evangelos Kyriakides* (reported in this Part at p. 84 *ante*) ; *Ponou v. Ibrahim* (reported in this Part at p. 78 *ante*) and

Michalakis Paraskevopoulos v. Georghios Georghiou, (reported in this part at p. 116 *ante*). However, that does not mean that if the reasoning behind the learned trial Judge's finding is wrong this Court will not interfere with such finding.

Counsel for the appellant has contended that the version of the plaintiff that the traffic lights were green on his side immediately before the collision should not have been accepted by the trial Judges, because it was against the weight of evidence. I have no doubt that counsel who appeared in the Court below did put the same argument before the learned trial Judges, but he has failed to persuade the two Judges to accept the defendant's version that the traffic lights were red on the side of the plaintiff immediately before the collision.

This Court, sitting as a Court of Appeal, has to be satisfied that the learned Judges were wrong in their conclusions or in the reasons which they gave for such conclusions, and the burden of proving that the trial Judges were wrong remains on the appellant. Having heard learned counsel on this point, and having gone through the record of the Court, I am not satisfied that the learned trial Judges were either wrong in their findings or in their reasons which they gave for such findings. Since the onus of satisfying this Court is on the appellant, in my view, in this case, he has failed to discharge the burden cast upon him.

The appellant next contends that the trial Court has failed to examine the question of contributory negligence of the plaintiff, but with respect to counsel's argument, I do not agree that the trial Judges have failed to consider the question of contributory negligence, because the trial Court has made a clear reference to this point.

In this respect, it has been agreed that the plaintiff has failed to take evasive action ; but in view of the fact that the speed of the plaintiff was not excessive and that he had applied his brakes in order to avoid the collision, I am satisfied that the plaintiff's lookout was not faulty because, as the plaintiff stated, he only noticed the car just as he had passed the traffic lights, and that he could not have noticed the car earlier. Since the trial Court accepted the evidence of the plaintiff, and as there is on record evidence that the plaintiff applied his brakes, I cannot impute negligence to him for not seeing the defendant's car approaching until the last moment. In any event, from the material before me, the appellant has failed to discharged the burden cast upon him that the trial Court has failed to make a

1970
June 2
—
SOLOMOS
KYRIACOU
v.
NICOS
ARISTOTELOUS
—
Hadjiana-
stassiou, J.

1970
June 2
—
SOLOMOS
KYRIACOU
v.
NICOS
ARISTOTELOUS
—
Hadjiana-
stassiou, J.

finding that the plaintiff was guilty of contributory negligence; see *Odyseas Patsalides v. Kiki Yiapani and Another*, (1969) 1 C.L.R. 84.

I would like further to add that the question of the apportionment of blame is often one of impression and not susceptible to precise calculation. As Lord Wright said in *British Fame (Owners) v. Macgregor (Owners)* [1943] A.C. 197 at p. 201 :—

“ It is a question of the degree of fault depending on a trained and expert judgment considering all the circumstances, and it is different in essence from a mere finding of fact in the ordinary sense. It is a question not of principle or of positive findings of fact or law, but of proportion, of balance and relative emphasis, and of weighing different considerations ; it involves an individual choice or discretion, as to which there may well be differences of opinion by different minds.”

Finally, I would like to say that the same considerations make this Court extremely reluctant to interfere with the apportionment of blame, as it appears from the authorities reviewed by Winn, L.J., in *Brown and Another v. Thompson* [1968] 2 All E.R. 708, and I would like to adopt the following passage from the judgment of Willmer, L.J. in *Quintas v. National Smelting Co., Ltd.* [1961] 1 All E.R. 630 at p. 643 :—

“ The problem of apportioning blame where there has been fault on both sides is one that has been familiar in the Admiralty jurisdiction for fifty years. It has long been held to be a matter primarily for the discretion of the trial judge, who finds the facts, and who has the advantage of seeing the participants at first hand and assessing the degrees of their responsibility. It is well settled that, in the absence of any error of principle, an appellate tribunal will interfere with the trial judge’s apportionment only in exceptional cases, and then as a rule, only where it can be seen that the trial judge has failed to give effect to some material fact or has failed to take into account some material consideration.”

See also *Kerry v. Carter* [1969] 3 All E.R. 723.

For the reasons I have endeavoured to explain, I would not interfere in the present case, as I think no error in the

Judges' approach is clearly discernible. See *Baker v. Willoughby* [1969] 2 All E.R. 549 ; also the judgment of Lord Reid in the same case reported in [1969] 3 All E.R. 1528 at p. 1530.

I would, therefore, dismiss this appeal.

TRIANAFYLLIDES, J.: I agree with the decision reached by my learned brother Mr. Justice Hadjianastassiou that this appeal should be dismissed.

I must confess that, *prima facie*, I was somewhat favourably impressed by arguments advanced by learned counsel for the appellant in commenting on the evidence adduced before the trial Court ; but as stated by Josephides, J., in delivering the judgment of the Court in *Economides v. Zodhiatis*, 1961 C.L.R. 306, at p. 307 :

“ Undoubtedly a Court of Appeal has the power to set aside the findings of fact of a trial Court where the trial Judge has failed to take into account circumstances material to an estimate of the evidence, or where he has believed testimony which is inconsistent with itself, or with indisputable fact. And since the enactment of the Courts of Justice Law, 1960, under section 25 (3) this Court is not bound by any determinations on questions of fact made by the trial Court and has power to rehear any witness already heard by the trial Court, if the circumstances of the case justify such a course. But this provision has to be applied in the light of the general principle that a Court of Appeal ought not to take the responsibility of reversing the findings of fact by the trial Court merely on the result of their own comparisons and criticism of the witnesses, and of their own view of the probabilities of the case.”

Thus, not without some difficulty, I have concurred in dismissing the appeal.

LOIZOU, J.: I also agree that the appeal should be dismissed. Quite clearly there was evidence upon which the trial Court could reach their findings ; and no sufficient reason has been shown to warrant interference by this Court with those findings.

TRIANAFYLLIDES, J.: In the result this appeal is dismissed with costs against appellant.

Appeal dismissed with costs.

1970
June 2
—
SOLOMOS
KYRIACOU
v.
NICOS
ARISTOTELOUS
—
Hadjiana-
stassiou, J.