[JOSEPHIDES, STAVRINIDES, LOIZOU, JJ.]

ELPINIKI PANAYIOTOU,
Appellant-Plaintiff,

v.

GEORGHIOS KYRIACOU MAVROU,
Respondent-Defendant.

(*Civil Appeal No.* 4862).

Road accident—Running down case—Negligence—Avoiding action—Whether driver (respondent) took sufficient precaution to avoid the accident—See also infra.

Negligence—Users of the road—Duty of users of the road (whether drivers or pedestrians) to one another—Principles applicable—Duty to guard against the possible negligence of others, when experience shows such negligence to be common—See also infra.

Negligence—Question of fact in each particular case—Omission to take care for the safety of others—General principles applicable—See also supra.

This is an appeal by the plaintiff against the judgment of the District Court of Paphos dismissing her claim against the defendant (respondent) for damages for negligent driving.

Dismissing the appeal the Court, after reviewing the facts of the case :—

Held, (1). Having regard to all the circumstances especially to the shortness of the distance (5 or 6 metres) from the respondent when she (the appellant) started crossing the street, we are of the view that the finding of the trial Judge, that the respondent took sufficient precautions to avoid the accident, was open to him on the evidence and such finding should not be disturbed.

(2) It is well settled that negligence is the failure to take reasonable care in the particular circumstances, and in each case the question whether a person has been negligent is a question of fact.

(*b*) If the possibility of the danger emerging is reasonably apparent, then to take no precautions is negligence ; but if the possibility of danger emerging is only a mere possibility

which would never occur to the mind of a reasonable man' then there is no negligence in not having taken extraordinary precautions (see *Fardon* v. *Harcourt-Rivington* [1932] All E.R. Rep. 81 at p. 83 per Lord Dunedin).

(*c*) This statement is regarded as applying generally to actions in which the negligence alleged is an omission to take due care for the safety of others ; and it must follow that a prudent man will guard against the possible negligence of others, when experience shows negligence to be common. (See *Grant* v. *Sun Shipping Co., Ltd.* [1948] 2 All E.R. 238 at p. 247 H.L.).

(3) In the result the appeal is dismissed with costs.

Appeal dismissed with costs.

Cases referred to :

Pourikkos v. *Fevzi* (1963) 2 C.L.R. 24 at p. 31 ;

Nance v. *British Columbia Electric Railways Co. Ltd.* [1951] A.C. 601 at p. 611 ;

Fardon v. *Harcourt-Rivington* [1932] All E.R. Rep. 81, at p. 83 per Lord Dunedin ;

Grant v. *Sun Shipping Co., Ltd.* [1948] 2 All E.R. 238 at p. 247 H.L.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Paphos (Pitsillides, D.J.) dated the 8th December, 1969 (Action No. 440/68) dismissing her claim against the defendant for damages for negligent driving.

P. Sivitanides, for the appellant.

L. Papaphilippou, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :

JOSEPHIDES, J. : This is an appeal by the plaintiff against the judgment of the District Court of Paphos dismissing her claim against the defendant (respondent) for damages for negligent driving.

In the morning of the 24th February, 1968, the respondent was riding his motor-cycle along Kanaris Street in Ktima. That street is a one-way street running eastwards, and

the respondent was going in the permitted direction. As the appellant was walking in the street, she was knocked down by the respondent's motor-cycle near the pavement on the right-hand side of the respondent, opposite the T-junction of Kanaris Street and Demetris Papamiltiades Street. Kanaris Street is 15 1/2 feet wide and the impact took place some six inches from the pavement. The brake-marks on the street were seven feet, and the beginning of these brake-marks was about 1 –1 1/2 feet from the middle of the road towards the pavement on the off-side of the respondent. It is common ground that there was no other vehicle on the road at the time of the accident, and there was no eye-witness other than the parties to this action.

The appellant's version was that she was proceeding on foot westwards along Kanaris Street near the pavement on the left side when she was knocked down by the respondent's vehicle.

The respondent admitted knocking down the appellant with his motor-cycle. His version, however, was that he was cycling at a speed of 20 to 25 miles an hour, in the middle of Kanaris Street, possibly one or two feet on the left ; that, as he was proceeding, and before he reached the T-junction of Demetrios Papamiltiades Street, he saw the appellant from a distance of 5 to 6 metres. At the time she was about half to one metre from the pavement on his left-hand side and she was crossing Kanaris Street from the corner of Demetrios Papamiltiades Street. He then sounded his horn, applied his brakes and swerved to his right in order to avoid the appellant. The latter, who had been proceeding at a normal pace, hastened suddenly to such an extent that she " almost ran " towards the pavement across the street. At the time of the accident the appellant was trying to cross Kanaris Street at right angles.

The trial Judge rejected the appellant's version as he found that it was uncorroborated by the real facts and it appeared to be palpably untrue. We must say that we are in agreement with the trial Judge on that point.

We are then left with the defendant's version which was accepted by the trial Judge. That version is to the following effect :—

(*a*) that he was riding his motor-cycle in the middle the street,

(*b*) that his speed was between 20 and 25 miles an hour,

(*c*) that he first saw the appellant when she started crossing the street ; at that moment she was 5 to 6 metres away from him, and

(*d*) that he sounded his horn, applied brakes and took avoiding action by driving away from the appellant towards his (respondent's) righthand side where the impact occurred (about six inches from the pavement).

This version is corroborated to a great extent by the policeman (P.C. 1498 Philippos Avgousti) who saw him a few moments before the accident, and who was called as a witness by the appellant. This policeman stated that—

(*a*) the respondent was driving in the middle of the street,

(*b*) that he (the witness) heard the screeching of brakes soon after the respondent had passed him,

(*c*) that he turned back and went to the scene of the accident, and

(*d*) that there and then the respondent immediately told him his version as given to the trial Court.

This policeman did not state that the respondent was speeding in any way.

It is true that when the respondent was charged at the Police Station on the 1st March, 1968, with driving without due care and attention and causing an accident (presumably under section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332), he replied " I admit it ". But it should be noted that immediately before he was formally charged at the Police Station he had given an open statement to the same police officer, giving the version which he eventually put before the trial Court. On being charged before the criminal Court with driving without due care and attention he pleaded not guilty. In answer to questions put to him by the trial Judge in the present case, the respondent explained that the reason why he admitted, in answer to the formal charge at the police station, was that he took the whole matter very lightly and that he would have no more trouble than paying a fine of £2 or £3. But, subsequently, his insurance company required him to plead not guilty to the criminal charge before the Court, which he did. Finally, the respondent said that the true version of the facts is the one given by him before the trial Court in the present case. This explanation was accepted by the trial Judge and we see no reason to disagree with him.

In the circumstances we are of the view that the trial Judge was not wrong in accepting the respondent's version as to the primary facts.

The question which now falls to be determined is whether on these facts the respondent took sufficient precautions to avoid the accident. That he did take precautions to avoid it there is no doubt ; but were those precautions sufficient in the circumstances? See *Pourikkos* v. *Fevzi* (1963) 2 C.L.R. 24 at page 31, where reference is also made to the oft-quoted case of *Nance* v. *British Columbia Electric Railways Co. Ltd.* [1951] A.C. 601 at page 611, regarding the duty of users of the road (be it pedestrians or drivers) to one another.

It is well settled that negligence is the failure to take reasonable care in the particular circumstances, and in each case the question whether a person has been negligent is a question of fact. We could usefully refer to the principle enunciated by Lord Dunedin in the House of Lords in *Fardon* v. *Harcourt-Rivington* [1932] All E.R. Rep. 81, at page 83, to the effect that if the possibility of the danger emerging is reasonably apparent, then to take no precautions is negligence ; but if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extraordinary precautions. This statement is regarded as applying generally to actions in which the negligence alleged is an omission to take due care for the safety of others ; and it must follow that a prudent man will guard against the possible negligence of others, when experience shows such negligence to be common (see *Grant* v. *Sun Shipping Co., Ltd.* [1948] 2 All E.R. 238, at page 247 H.L.).

To revert to the present case, the appellant started crossing the road when the respondent was 5 to 6 metres from her, driving in the middle of the street at 20 to 25 miles an hour. The respondent sounded his horn, applied his brakes and took avoiding action by swerving to his right. It should also be borne in mind that the appellant damaged her case by giving an untrue version of the facts to the Court.

Having regard to all the circumstances, especially to the shortness of the distance (5 to 6 metres) from the respondent when she started crossing the street, we are of the view that the finding of the trial Judge, that the respondent took sufficient precautions to avoid the accident, was open to him on the evidence and such finding should, not, therefore, be disturbed.

In the result, the appeal is dismissed with costs.

Appeal dismissed with costs.