

1971
June 24

[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

LEFKI
PETRIDOU AND
OTHERS AS
ADMINIS-
TRATORS OF
THE ESTATE
OF THE
DECEASED
SOCRATES
PETRIDES
v.
COSTAS
PAPOUI

LEFKI PETRIDOU AND OTHERS,
AS ADMINISTRATORS OF THE ESTATE OF
THE DECEASED SOCRATES PETRIDES,

Appellants-Plaintiffs,

v.

COSTAS PAPOUI,

Respondent-Defendant.

(Civil Appeal No. 4951).

Negligence—Road accident—Collision—What has to be examined and decided in cases of this nature—Whether or not the party who has allegedly been negligent did take sufficient, in the circumstances, precautions to avoid the collision—Also whether the burden cast on the plaintiff to establish negligence was discharged—Court of Appeal not satisfied, in the circumstances of this case, that the defendant need have taken any specific action to avoid the collision or that he was not driving with due and sufficient care.

Road accident—Collision—Negligence—See supra.

Findings of fact made by trial Courts—Approach of the Supreme Court to appeals against such findings—Court of Appeal not prepared to reverse such findings because it could not say that they were reached without there being evidence to support them or that the trial Court erred in believing such evidence.

Appeal—Findings of fact made by trial Courts—See supra.

The facts of this case sufficiently appear in the judgment of the Court whereby they dismissed this appeal by the plaintiff in this road accident case.

Cases referred to :

Panayiotou v. Mavrou (1970) 1 C.L.R. 215 ;

Michael v. Kyriacou (1969) 1 C.L.R. 463 ;

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

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Nicosia (Evangelides and Ioannou, Ag. D.JJ.) dated the 17th December, 1970, (Action No. 4373/69) whereby their claim, as administrators of the estate of the deceased Socrates Petrides, for damages in respect of the death of the said deceased was dismissed.

N. Pelides, for the appellants.

D. Liveras, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :—

TRIANFAYLLIDES, P. : In this case the appellants-plaintiffs appeal from the decision of a Full District Court in Nicosia, in Civil Action No. 4373/69, by virtue of which there was dismissed a claim of theirs, as administrators of the estate of the deceased Socrates Petrides, in respect of the death of the said deceased, which occurred in a traffic collision at about 7 p.m. on the 17th March, 1969, between a car, which was being driven by the deceased from Limassol to Nicosia, and a lorry, which the respondent-defendant was driving in the opposite direction.

The respondent stated, in giving evidence before the Court below, that he was driving in a proper manner at a speed of about 25 m.p.h. ; and that his lorry was occupying the left side of the road. Actually, it is not in dispute that at no time did the lorry occupy any part of the road other than the respondent's proper side of such road. He testified, also, that his lights were dipped at the material time, because he was meeting a number of vehicles coming from the opposite direction. He said that while he was approaching a curve the deceased's car, in which there was another passenger, came towards, and collided with, his lorry ; he explained that he could not have foreseen the collision and that as he did not expect the accident to happen he did not take any avoiding action.

The trial Judges accepted as correct the evidence of the respondent and did not find him in any way responsible for the collision.

Learned counsel for the appellants has submitted, in the course of the hearing of this appeal, that the respondent should have been driving even further to his left side and

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that if he had been keeping a proper look-out he would have realized that a collision was imminent and have tried to avoid it.

In each case of this nature it has to be decided, on the basis of its particular facts, whether or not the party who has allegedly been negligent did take sufficient, in the circumstances, precautions to avoid a collision (see, *inter alia*, *Panayiotou v. Mavrou* (1970) 1 C.L.R. 215).

Also, it has to be examined whether or not the burden cast on the plaintiff to establish negligence was discharged (see *Michael v. Kyriacou* (1969) 1 C.L.R. 463).

In relation to the question as to when an appeal Court can interfere with the conclusions regarding material facts which have been reached by a trial Court, a case which may be usefully referred to is that of *Pourikkos v. Fevzi* (1963) 2 C.L.R. 24, where (at p. 31) it is stated that “the difficulty here is not whether the defendant took any precautions to avoid the collision, but whether he took sufficient precautions. This is a question of fact, upon which the trial Court has made a finding and it is not to be reversed when, as here, there is evidence to support it”.

In the present case we are asked to reverse findings of fact which were based on evidence which the trial Court accepted as being correct. We are not prepared to do so because we cannot say that such findings were reached without there being evidence to support them or that the Court below erred in believing such evidence. We are, also, not satisfied—and it was up to the appellants to satisfy us—that the respondent, in the circumstances of this particular case, need have taken any specific action to avoid the collision or that he was not driving with sufficient care.

For these reasons this appeal is dismissed with costs.

Appeal dismissed with costs.