[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

DEMETRIS IOANNOU,
Appellant-Defendant,

v.

ELENI NEOPHYTOU MAVRIDOU,
Respondent-Plaintiff.

(*Civil Appeal No.* 4990).

Contributory negligence—What constitutes contributory negligence—Lack of reasonable care by plaintiff for his own safety—Section 57 of the Civil Wrongs Law, Cap. 148*—Planks resting on side of lorry falling and injuring plaintiff upon reversal of the lorry and whilst she (plaintiff) was busy with her work very near the said lorry—Accident happening within seconds when lorry reversed—Hardly any time for the plaintiff (respondent) to take precautions for her own safety—Conduct of plaintiff not such as to indicate that she has exhibited lack of reasonable care for her own safety.*

Findings of fact—Appeal—Appeals turning on findings of fact and credibility of witnesses—Principles on which the Court of Appeal acts—Findings of fact as regards negligence in the instant case, clearly open to the trial Court on the evidence before them—Supreme Court not persuaded that the reasoning behind such findings is either unsatisfactory or defective.

Negligence and contributory negligence—Apportionment of liability—Appeal—Principles upon which the Court of Appeal will interfere with such apportionment—View taken by the trial Court that the defendant (appellant) was solely to blame not so erroneous in law or unwarranted—Appeal dismissed.

Apportionment of liability—Appeal—Principles upon which the Court of Appeal acts.

The facts sufficiently appear in the judgment of the Court dismissing this appeal by the defendant held to be solely to blame for the accident in question in this case.

Cases referred to :

Kyriacou v. *Aristotelous* (1970) 1 C.L.R. 172 at pp. 176–177 ;

Roussou v. *Theodoulou and Others* (reported in this Part at p. 22, *ante*, at pp. 26–27 *et seq*) ;

Davies v. *Swan Motor Co.* (*Swansea*) *Ltd.* [1949] 1 all E.R. 620, at p. 627 ;

Ekrem v. *McLean* (1971) 1 C.L.R. 391 ;

Ingram v. *United Automobile Services Ltd. and Another* [1943] 2 All E.R. 71, at p. 73 ;

British Fame v. *MacGregor* [1943] A.C. 197.

Appeal.

Appeal by defendant against the judgment of the District Court of Famagusta (Savvides and Pikis, D.JJ.) dated the 22nd March, 1971, (Action No. 1904/70) whereby the defendant was ordered to pay to the plaintiff the sum of £600 as damages for the injuries sustained by her while being employed in a packing store in Famagusta and struck by a wooden bar due to the negligent driving of the defendant.

Z. Katsouris, for the appellant.

Chr. Dermosoniades, for the respondent.

The judgment of the Court was delivered by :—

HADJIANASTASSIOU, J. : In this case the plaintiff, Eleni Neophytou Mavridou, claimed damages for injuries sustained by her whilst working in a packing store in Famagusta, when she was struck down by a wooden bar, because of the negligent driving of defendant No. 1 who was reversing his lorry in order to approach the counter for the further unloading of a load of potatoes in the said stores.

The Full District Court of Famagusta after hearing evidence on both sides came to the conclusion that defendant was solely to blame for the accident and gave judgment in favour of the plaintiff in the sum of £600 agreed damages, viz. £220 special damages and £380 general damages. The defendant appealed against the judgment of the trial Court and the appeal was argued on behalf of the defendant on two grounds :

(*a*) That the finding of the trial Court that defendant was wholly to blame was erroneous and was not supported by the evidence ; and

(*b*) That in any event the finding of the trial Court that the plaintiff was not guilty of contributory negligence was wrong in law and against the weight of evidence.

On May 23, 1969, the plaintiff, a labourer, was working at the packing store of N. K. Shakolas (Merchants) Ltd. (ex defendant No. 2), removing empty baskets, keeping a position behind the potato selection counter, to the side of the store and near the wire fence. At the same time the lorry of the defentant was unloading potatoes for selection at the counter. As the plaintiff was bending down engaged in her work, she heard the sound of the engine of the lorry when reversing and suddenly a wooden bar fell from the lorry and hit her on the head.

As usual in these accidents, there were two sharply conflicting versions before the trial Court. It was the plaintiff's version, through the evidence of Anthoulla Ioannou who witnessed the accident, also working in the same stores engaged in the collection of selected potatoes ; and who saw the lorry of the defendant unloading baskets of potatoes from the flap door of the said vehicle, that just before the accident, defendant entered the driver's seat and she heard the starting of the engine of the car and realized that it was reversing. In a matter of seconds a long wooden bar which was resting on the side of the lorry fell down and struck the plaintiff on the head when she was at the side of the counter bending down in order to pick up baskets. The counter has a height of about 5 ft. and its length was about 5-6 meters.

There was further evidence by Sophia P. Karanicola corroborating the evidence of the previous witness in almost every material respect with this exception only that she placed the plaintiff nearer to the lorry in question.

It was the defendant's version that on the day of the accident he had transported potatoes to the stores of the said company, and although his lorry was fitted with rails on the sides only, he denied that he placed any load of potatoes on the rear flap door. He further denied that he reversed his lorry, adding that on that date he was engaged with the unloading of the potatoes assisted by a certain Kyriakos Karpassitis and that he had never left the body of the lorry before the accident. However, he explained that the wooden planks which were secured on the rails of the lorry in order to separate one row of baskets from another, had been removed and placed on the ground but resting against the lorry. He said further that at all material times he was on the lorry which did not move either before or after the accident, and there was no necessity to reverse and get nearer to the counter as he was carrying no load on the rear flap door.

In cross-examination the defendant said that the accident happened in the morning before they started unloading. The engine was switched off, he said, and it was kept switched off at all material times. No-one entered the driver's seat other than himself, on that date. Karpassitis had placed the planks on the floor resting against the lorry on his own instructions. Questioned by the Court, he said, " I did not witness the accident ; when my attention was drawn to the accident the planks were not resting against the lorry but they had all fallen down on the ground. The plaintiff was at a distance of 2—3 ft. from the car. Before the accident I saw no one approaching the car. I did not realize how the planks fell on the ground. I did not see how the planks had earlier on been secured against the car by the said Karpassitis."

There was further evidence by Kyriakos Karpassitis corroborating the version of the defendant. He added that though he did not witness the accident, he saw defendant stepping down from the lorry and attended with others to the injured woman.

According to D.W. Loukas A. Koutsou, a potato producer who had instructed the defendant to transport a quantity of his potatoes to the store in question, and who went there to supervise the delivery, the accident happened at 11 a.m. when both the defendant and Karpassitis were in the body of the lorry. They had in the meantime freed 4 wooden planks which they placed on the side of the car. The empty baskets were placed at a point near the planks some touching them. Though he did not say who placed the empty baskets there, he went on to say that he saw the plaintiff in the course of her picking up the empty baskets touch on those planks and as a result the accident occurred.

The trial Court after weighing carefully the evidence given by both sides, and after giving their assessment of each witness (being impressed particularly with the evidence of Anthoulla Ioannou) made their findings of fact that the defendant was guilty of negligence because in reversing his lorry failed, due to lack of reasonable foreseeability, in his duty of care towards the plaintiff, viz. : That the plank or planks resting on the side of the lorry would fall and injure the plaintiff. Mr. Katsouris today, on behalf of the defendant, has tried to show that these findings of the trial Court were wrong or not supported by the evidence.

The approach of this Court in such matters is well settled both as regards the question of findings of fact and the credibility of witnesses which are within the province of the trial judge. Needless to say that, from the trend of the authorities that does not mean that, if the reasoning behind the trial judge's finding is wrong, this Court will not interfere with such findings. Two recent decisions on this point are : Those in *Kyriacou* v. *Aristotelous* (1970) 1 C.L.R. 172, at pp. 176—177 ; *Roussou* v. *Theodoulou and Others*, (reported in this part at p. 22, *ante*, at pp. 22-67, *et seq*). These cases summarize the principles and refer to the previous decisions of this Court.

Having heard counsel for the appellant (defendant) and having considered the whole evidence and the very careful *ex tempore* judgment of the trial Court, we are satisfied that the findings of fact as regards negligence were clearly open to the Court, on the evidence before them, and we have not been persuaded that the reasoning behind such findings is either unsatisfactory or defective. For these reasons we would dismiss the submission of counsel on this point.

Coming now to the question of contributory negligence, we think that s. 57 of our Civil Wrongs Law, Cap. 148, reproduces the provisions of the English Law Reform (Contributory Negligence) Act, 1945 on this point. It has been said judicially in a number of cases that in order to constitute contributory negligence it is not necessary to show that the conduct of the person injured amounted to a breach of any duty which that person owed to the defendant, but it is sufficient to show a lack of reasonable care by the plaintiff for her own safety. The principles which govern the appellate Court in determining whether to vary the apportionment in cases of this nature are well settled and have been laid down in a number of decisions.

In a recent case in *Ekrem* v. *McLean* (1971) 1 C.L.R. 391 the Court dealing with the question of contributory negligence in assessing degrees of liability and in apportioning blame, and after reviewing both the Cyprus authorities as well as the English, had this to say at page 403 : " For the reasons we have tried to explain and directing ourselves by the authoritative pronouncements which bear out the principle in various differences of circumstances, we do not think that the view taken by the trial Court that the appellant was solely to blame is so erroneous or unwarranted and, as we did not find any cause in the instant case for interfering with the apportionment of blame, we would dismiss this appeal."

In *Davies* v. *Swan Motor Co. (Swansea) Ltd.* [1949] 1 All E.R. 620, Evershed, L.J. (as he then was), in considering the question of apportionment of blame said at p. 627 : " In arriving at the conclusion at which I do arrive, I conceive it to be my duty to look at the whole facts of the case as they emerged at the trial, both of the action and of the third party proceedings, and then, using common sense, to try fairly to apportion the blame between the various participants in the catastrophe and the damage which the deceased suffered."

In *Ingram* v. *United Automobile Services Ltd. and Another* [1943] 2 All E.R., 71 at p. 73 du Parcq. L.J. said : " I agree that it seems to follow from the decision of the House of Lords in *British Fame* v. *MacGregor* [1943] A.C. 197, that the Court ought not to interfere with the apportionment of responsibility and damages by the judge at the trial unless there is some error in law or fact in his judgment. I come to that conclusion particularly because of the reasons which are given by Lord Wright in his speech at p. 121, All E.R. It is, perhaps, a matter rather of academic interest in this particular case as far as I am concerned because I should not have been prepared to differ from the judge on this point, although I do not mean by that, that, if I had tried the case, I should necessarily have come to the same conclusion as that to which he came upon the facts, and would have apportioned the damages in precisely the same way ; but this Court has never, I think, taken the view, apart from the decision in the case in the House of Lords, that it would alter the apportionment unless there was, in its view, something necessarily wrong with it. I should certainly not be prepared to say that there was anything seriously wrong with the view that the judge took about it in this case, so that, even apart from that decision of the House of Lords, I do not think we ought to interfere with that part of the judgment."

Reverting now to the present case, the trial Court dealing with the question of contributory negligence, said at pp. 29 and 30 : " Should the plaintiff a labourer with definite duties in the store, busy with her work, anticipate and guard against the possibility of the defendant reversing the car, at a time when the planks were insecurely resting on the side of his car for the journey and thereby cause her injury ? Given the distance that the car did cover, the accident must have happened seconds after the engine was switched on. Therefore, the warning that plaintiff had was not such as to put her on her guard even

though on the whole we find that she was not unreasonable in not taking any definite precautions against this particular eventuality. On the totality of the evidence, we find as a fact that plaintiff did not fail to take any precaution that reasonable foresight made necessary for her safety and we find that she is not guilty of contributory negligence."

Learned counsel for the appellant (defendant) invited our attention to extracts from the evidence in support of his submission that the finding of the trial Court that the plaintiff was not guilty of contributory negligence, was not supported by the evidence.

Having fully considered counsel's submission and having read the record of the evidence on this question, we are of the view that in this case there was ample evidence to support the findings made by the trial Court that the plaintiff was not guilty of contributory negligence for the following reasons : That though the plaintiff heard the engine of the lorry whilst bending down to collect empty baskets, the accident happened within seconds when the lorry reversed ; and that there was hardly any time to take precautions for her own safety ; and because of the short distance she found herself working away from the lorry and in view of the fact that the counter was protecting her, it cannot be said that she ought to have reasonably foreseen that the lorry by reversing might injure her and she ought to have moved away for her own safety.

For the reasons we have tried to explain and directing ourselves with those judicial pronouncements, we think that in these circumstances, the defendant has failed to show that the conduct of the plaintiff was such as to indicate that she has exhibited lack of reasonable care for her own safety. We further think that the view taken by the trial Court that the appellant was solely to blame is not so erroneous in law or unwarranted and, having found no cause for interfering with the apportionment of blame, we affirm the judgment of the trial Court and dismiss the appeal with costs.

Appeal dismissed with costs.