

[TRIANAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

1972
Mar. 3

CHRISTAKIS PANAYIOTOU,

Appellant,

CHRISTAKIS
PANAYIOTOU
v.
THE POLICE

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3314*).

Road Traffic—Careless driving—Section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332—Question of fact whether driving without due care and attention—Question always being whether driver exercised that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances—Collision at cross-roads not controlled by traffic lights or halt signs—In the light of the principles of law applicable and of the particular circumstances of the case Appellant's conduct not inconsistent with that of a reasonably prudent driver—Conviction quashed.

Driving without due care and attention—Contrary to section 6 of Cap. 332 (supra)—Question of fact whether in the particular circumstances the driver exercised or not that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances—See further supra.

Cases referred to:

Simpson v. Peat [1952] 2 Q.B. 24, at pp. 27–28;

R. v. Gosney [1971] 3 All E.R. 220.

The Supreme Court allowing this appeal quashed the Appellant's conviction of the offence of driving without due care and attention contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332, holding that the Appellant's conduct was not inconsistent with that of a reasonably prudent driver in the circumstances. The full facts appear in the judgment of the Court.

Appeal against conviction.

Appeal against conviction by Christakis Panayiotou who was convicted on the 22nd December, 1971 at the District Court

1972
Mar. 3
—
CHRISTAKIS
PANAYIOTOU
v.
THE POLICE

of Limassol (Criminal Case No. 10009/71) on one count of the offence of driving without due care and attention contrary to sections 6 and 13 of the Motor Vehicles and Road Traffic Law, Cap. 332 and was sentenced by Kronides, Ag. D.J. to pay a fine of £15.—

A. Lemis, for the Appellant.

V. Aristodemou, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:—

TRIANTAFYLIDIS, P.:— In this case the Appellant has appealed against his conviction of the offence of driving a motor car without due care and attention, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332.

He was prosecuted after a car which he was driving in Gladstone Street, in Limassol, collided with another car coming out of Kolokotroni Street, which forms a cross-roads with Gladstone Street.

The trial Judge has found correctly, on the basis of the facts before him, that the cross-roads was not controlled either by traffic lights or by halt signs; but, in our view, he failed to give due weight to the factor that Gladstone Street, which is 34 feet wide, is a major road in comparison to Kolokotroni Street, which is 20 feet wide and is, in effect, a side-road of Gladstone Street. Had due regard been paid to this factor by the Court below it could not, in our opinion, have held, as it has done, that the facts that the Appellant failed to reduce his speed, and did not keep to his left-hand side of Gladstone Street but was driving near the middle of such street, when approaching the cross-roads with Kolokotroni Street, amounted to proof establishing beyond reasonable doubt the commission of the criminal offence with which the Appellant had been charged; because, in our view, in the absence of any evidence that a vehicle was coming in Gladstone Street from the opposite direction, it was not proof of lack of due care and attention on the part of the Appellant the fact that he was not keeping to the extreme left-hand side of the street; nor was such proof the fact that he did not reduce his speed to below the speed of 25 miles per hour, at which he was travelling at the time.

Moreover, we think that the trial Judge wrongly found that the Appellant was guilty of the offence because he did not look at the time towards Kolokotroni Street to see if there was any vehicle emerging from it; there is evidence on record showing that there existed no possibility of seeing in time another car coming from there towards the cross-roads, because of lack of adequate visibility.

It is useful to recall that in *Simpson v. Peat* [1952] 2 Q.B., 24, Lord Goddard, C.J., presiding over a bench of five Judges and dealing with a case like the present one, that is one of driving without due care and attention, under section 12 of the Road Traffic Act, 1930, which corresponds to our section 6 of Cap. 332, stated at p. 27):

“The question for the justices is: Was the defendant exercising that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances? If he was not they should convict; if, on the other hand, the circumstances show that his conduct was not inconsistent with that of a reasonably prudent driver, the case has not been proved”.

And he proceeded to add (at p. 28):—

“..... if the driver was in fact exercising the degree of care and attention which a reasonably prudent driver would exercise, he ought not to be convicted, even though another and perhaps more highly skilled driver would have acted differently”.

In *R. v. Gosney* [1971] 3 All E.R. 220, the Court of Appeal (Criminal Division) in England referred with approval to the view of Lord Goddard in *Simpson v. Peat* (*supra*).

In the light of the principle of law applicable, as above, and of the particular circumstances of this case, we have reached the conclusion that as the conduct of the Appellant was not inconsistent with that of a reasonably prudent driver he ought not to have been convicted and, therefore, this appeal is allowed.

Appeal allowed.