

1972
July 28

[TRIANTAFYLIDIS, P., STAVRINIDES, MALACHTOS, JJ.]

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MICHAEL
HJI GEORGHIOU
v.
THE POLICE

MICHAEL HJI GEORGHIOU,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 3354).

Road Traffic—Conviction of driving without reasonable consideration for other road users—Contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332—Based on a finding of excessive speed—Such finding based on Police Constable's evidence about 'length' and 'distinctiveness' of brake marks—Not safe for trial Judge to form an opinion regarding speed on the basis of the brake marks, in the absence of expert evidence explaining the correct and full significance of brake marks—Conviction quashed.

Evidence—Brake marks—Absence of expert evidence explaining their correct and full significance—Cf. also supra.

Brake marks—Expert evidence needed as to the full explanation and significance of such brake marks regarding the speed of the vehicle at the material time.

The facts sufficiently appear in the judgment of the Court, allowing this appeal and quashing the Appellant's conviction of the offence of driving without due consideration for other road users, because the finding of the trial Judge was solely based on evidence about 'length' and 'distinctiveness' of brake marks but in the absence of expert evidence explaining the full and correct significance of brake marks regarding the speed of the vehicle at the material time.

Appeal against conviction.

Appeal against conviction by Michael HjiGeorghiou who was convicted on the 7th June, 1972 at the District Court of Nicosia (Criminal Case No. 11105/71) on one count of the offence of driving without due care and attention contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap.

332 and was sentenced by Papaioannou, Ag. D.J. to pay a fine of £10.-.

Z. Katsouris, for the Appellant.

N. Charalambous, Counsel of the Republic, for the Respondents.

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The judgment of the Court was delivered by:-

TRIANTAFYLIDIS, P.: The Appellant appeals against his conviction, by the District Court of Nicosia, on a count charging him with driving a motor vehicle without reasonable consideration for other persons using the road, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332.

We would like to point out that in the light of the facts of this case the Appellant could have been convicted of the said offence only if it were found that he had been driving without due care and attention, because there was no other conduct on his part which could have been treated as amounting to lack of reasonable consideration for other road users; we think, therefore, that in a case such as the present one the better course was to charge the accused directly with driving a motor vehicle without due care and attention.

The Appellant, on the 7th May, 1971, while driving his motor car, No. EU602, collided with another motor car, No. FB643, which entered the avenue from a side road; the trial Court convicted the Appellant on the ground that he drove "at excessive speed..... by far more than 30 miles per hour" at the cross-roads in question.

This conclusion of the trial Court was based primarily on the fact that as a result of the application of the brakes by the Appellant there were left brake marks 43 feet long before the point of impact and 13 feet and 6 inches long after such point; according to the evidence of the police constable who investigated the case the brake marks were at the beginning "light" and at the end "more distinct", indicating that the Appellant applied at first the brakes "lightly" and later with "more strength". The trial Judge says in his judgment that these brake marks "speak so fluently for themselves".

We are unable to agree with the above view of the trial Judge: As no expert evidence has been adduced in order to

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explain the correct and full significance of the said brake marks in the light of the particular circumstances of this case, we are of the view that it was not safe for the trial Judge to form any distinct opinion on the basis thereof regarding the speed at which the Appellant was driving at the material time; and since the Appellant's conviction was, as stated, based on the finding that he was driving at an excessive speed we have to set aside the conviction and the sentence imposed as a result thereof.

Appeal allowed.