

YIANNIS CHRISTODOULOU,  
*Appellant-Plaintiff,*

v.

NICOLAS GEORGHIADES,  
*Respondent-Defendant.*

YIANNIS  
CHRISTO-  
DOULOU  
v.  
NICOLAS  
GEORGHIADES

(Civil Appeal No. 5062).

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*Civil Procedure—Appeal—Findings of fact resting on credibility of witnesses—Principles upon which the Court of Appeal will interfere well settled—Road accident—Negligence—Findings made by trial Court satisfactory—Two conflicting versions—Driver's version preferred by the trial Court—This was the only reasonable conclusion which the trial Court could have reached.*

*Findings of fact—Credibility of witnesses—Approach of the Court of Appeal—See supra.*

*Witnesses—Credibility—See supra.*

*Road Traffic—Road accident—Negligence—See supra.*

The facts sufficiently appear in the judgment of the Court dismissing this appeal by the plaintiff in the action and holding that the trial Court rightly disbelieved the version of the appellant (plaintiff).

Cases referred to :

*Kyriacou v. Aristotelous* (1970) 1 C.L.R. 172.

## **Appeal.**

Appeal by plaintiff against the judgment of the District Court of Nicosia (Kourris, D.J.) dated the 7th February, 1972, (Action No. 2522/71) dismissing plaintiff's claim for damages for injuries he sustained as a result of a road accident.

*E. Emilianides* with *Ch. Loizou*, for the appellant.

*Ph. Clerides*, for the respondent.

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The judgment of the Court was delivered by :—

L. LOIZOU, J.: The accident which gave rise to these proceedings occurred at the controlled cross-roads of Evagoras Avenue and Makarios III Avenue and Leonidas Street, in Nicosia.

The respondent—defendant in the Court below—was driving his car under registration No. U385 along Evagoras Avenue from the direction of Metaxas Square towards the Stadium. The appellant—plaintiff in the action—was walking along Makarios III Avenue with the intention of crossing Evagoras Avenue into Leonidas Street on the other side of the road. The accident occurred as the appellant started to cross the road at a point some 12 feet from a pedestrian crossing. The width of the road at that spot, according to the evidence is 17 feet.

The undisputed real evidence shows that after the accident respondent's vehicle came to a standstill at a point near its nearside pavement with its front part 4 feet 7 inches from the pavement and the rear part 3 feet 7 inches from the same pavement ; it left brake-marks 5 feet 7 inches long before it came to a standstill. Soon after the accident, which occurred at about 2.45 p.m. on the 12th November, 1970, P.W.1 a traffic branch policeman arrived at the scene took measurements and prepared a sketch which is *exhibit 1*. By the time the policeman arrived at the scene appellant had been removed to the hospital. The respondent's car was still at its resultant position when the policeman arrived. The point of impact as shown by the respondent is point 'X' on the sketch which is at a distance of 4 feet 7 inches from the pavement.

On the 1st December, 1970, *i.e.* 18 days after the accident, the appellant accompanied by the same traffic branch policeman visited the scene of the accident and there pointed out to him where, according to him the point of impact was. Such point is point 'X1' on the sketch and it is at a distance of about 9 feet from the nearside pavement. On the same day the appellant made a statement to the police.

In his evidence before the trial Court the appellant said that just before he started to cross the road at the scene of the accident he was standing on the pavement outside the Chartered Bank waiting for the traffic lights of Evagoras Avenue to turn red so that the traffic coming along that avenue would stop. He looked to his left, he saw the

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traffic lights red and the vehicles coming from the direction of the Stadium stop at the traffic lights. Then he looked to his right and he saw respondent's car coming from the direction of Metaxas square towards the red traffic lights at a short distance from the said traffic lights and thinking that he would stop he started to cross the road ; but when he had covered about five or six feet the respondent's car hit him on the right thigh and he fell on the ground. After that he was taken to the Nicosia General Hospital.

Respondent's version before the trial Court was to the effect that at that time he was driving his car along Evagoras Avenue from the direction of Metaxas Square and he passed the traffic lights when they were green following three or four other cars at a low speed. When he had approached the pedestrian crossing outside the Chartered Bank, he saw a man stepping from the pavement into the street and dashing across the road in order to go to Leonidas Street on the other side. When he saw him doing this he was about ten feet away from the pedestrian, and he immediately applied his brakes and blew his horn but nevertheless he could not avoid the accident. The pedestrian, he said, came and hit on the front nearside of his car and fell on the road in a sitting position with his feet stretched and almost touching the nearside pavement.

The trial Court without any hesitation accepted the respondent's version and disbelieved the appellant. One of the reasons why the trial Court disbelieved the appellant and believed the respondent was that his version before them was different from the version he gave in his statement to the police which was produced before the Court as *exhibit 2*. In his statement he said that he had not seen respondent's car before it hit him nor did he see from which direction it was coming. One other reason why the Court chose to believe the evidence of the respondent was that his evidence was consistent with the real evidence as it appeared from the sketch produced.

Having accepted the respondent's version the Court came to the conclusion that he was not guilty of any negligence and dismissed the action with costs but nevertheless following the established useful practice they went on and assessed damages ; but as this part of the judgment is not challenged by this appeal we need not deal with this aspect of the case.

The appellant appeals against the judgment and the grounds of appeal as set out in the notice are : (a) That

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the judgment of the trial Court was wrong and contrary to the evidence adduced ; (b) that the trial Court wrongly believed the evidence of the defendant and wrongly weighed the evidence and the facts ; (c) that the trial Court wrongly disbelieved the evidence of the plaintiff and came to the conclusion that he alone was to blame for the accident ; (d) that the trial Court wrongly failed to take into consideration the special circumstances having regard to the place and the time of the accident and lastly, (e) that the reasoning of the judgment is not based on satisfactory grounds.

Having heard learned counsel for the appellant today we have not been persuaded that there is anything wrong with the trial Court's findings. Such matters are primarily within the province of the trial Court and it has been held time and again that this Court will not interfere with questions of credibility and findings of fact unless satisfied that such findings are unsatisfactory having regard to the evidence. Regarding the instances when this Court may interfere with findings of fact of the trial Court there is a line of authorities ; we might, perhaps, mention the case of *Kyriacou v. Aristotelous* (1970) 1 C.L.R. 172 in which reference is made to a number of other cases on this issue.

In the present case it seems to us that far from the findings of the trial Court being in any way unsatisfactory they were the only reasonable conclusion which the Court could have reached in the light of the evidence before it and no sufficient reason has been shown to warrant interference by this Court with those findings.

In the result this appeal fails and is dismissed with costs.

*Appeal dismissed with costs.*