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

MICHALAKIS KARAYIORGHIS,

Appellant - Plaintiff,

v.

IORDANIS KYRIACOU,

Respondent - Defendant.

(Civil Appeal No. 5175).

1974
Sept. 12

MICHALAKIS KARAYIORGHIS

v.

IORDANIS KYRIACOU

Negligence—Contributory negligence—Findings of trial Court regarding issue of negligence—Approach of Court of Appeal.

Negligence—Parking—Car parked at night on side of main road with rear lights on—Driver colliding with rear of parked car—No negligence established on the part of driver of parked car which was causative of the accident.

While the appellant (plaintiff) was driving his car towards Nicosia from the direction of Limassol he collided with the rear of the car of the respondent (defendant) which was at that moment parked on the left-hand side of the road with its rear lights on, and occupying part of the asphalted surface of the road and about one foot of the berm next to it.

The trial judge dismissed appellant's action, finding that no negligence on the part of the respondent had been established and that the collision was wholly due to appellant's negligence.

Counsel for the appellant contended that the respondent, by parking, as he had done, on a main highway, created a hazard for other drivers—notwithstanding the fact that the rear lights of his car were left on—and that, therefore, he should have been found liable, to, at least, a large extent; and relied, mainly, on the case of *Watson* v. *Heslop* [1971] R.T.R. 308, where the driver of a parked car was found liable to the extent of 70% for a collision with a car which was coming from behind.

Held, Bearing in mind the approach of this Court on appeal to findings of trial Courts regarding the issue of negligence (see, *inter alia, Stavrou* v. *Papadopoulos* (1969) 1 C.L.R. 172 and *Ioannou* v. *Mavridou* (1972) 1 C.L.R. 107 and the reasons given by the trial judge for holding that the appellant was solely to blame (see p. 136 in the judgment post), we have come to the conclusion that it is not warranted, on the basis of its own particular facts, to interfere on appeal with the finding of the Court below that there was not established negligence, on the part of the respondent, which was causative of the accident in question. (*Watson* v. *Heslop* [1971] R.T.R. 308 is distinguishable because of its facts).

Appeal dismissed.

Cases referred to :

Watson v. *Heslop* [1971] R.T.R. 308;

Stavrou v. *Papadopoulos* (1969) 1 C.L.R. 172;

Ioannou v. *Mavridou* (1972) 1 C.L.R. 107.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Demetriades, P.D.C.) dated the 28th February, 1973 (Action No. 726/69) whereby his claim for damages against the defendant, in respect of injuries and damage to property which he suffered in a traffic accident, was dismissed.

A. Markides, for the appellant.

L. Papaphilippou, for the respondent.

The judgment of the Court was delivered by :-

TRIANTAFYLLIDES, P. : This is an appeal against the dismissal of an action in which the appellant was claiming, as the plaintiff, damages against the respondent, as the defendant, in respect of injuries, and damage to property, which he suffered in a traffic accident.

The facts of this case are, briefly, that in the evening of August 29, 1969, while the respondent was driving his car from Limassol to Nicosia, he had to stop due

to a mechanical breakdown; he parked on his left-hand side, with his car occupying part of the asphalted surface of the road and about one foot of the berm next to it. He then stopped another car, which was passing by, in order to seek help; that other car turned around and stopped in front of the car of the respondent, on the same side of the road, and its driver tried to assist the respondent in repairing his car.

As was found by the trial judge, and not disputed on appeal, the car of the respondent was parked with its rear lights on, and the other car was parked with its front lights on, in order to provide lighting for the repair work.

At that moment the car of the appellant, which was coming, also, from the direction of Limassol, collided with the rear of the car of the respondent, which as a result was pushed forward and collided with the other car which was stationary in front of it.

The trial judge dismissed the action, finding that no negligence on the part of the respondent had been established and that the collision was wholly due to the negligence of the appellant.

Counsel for the appellant has contended that the respondent, by parking, as he had done, on a main highway, created a hazard for other drivers—notwithstanding the fact that the rear lights of his car were left on—and that, therefore, he should have been found liable, to, at least, a large extent. He did not dispute that his own client, the appellant, had been, also, negligent and had thus contributed in causing the accident.

Counsel for the appellant relied, mainly, in support of his argument, on *Watson* v. *Heslop* [1971] R.T.R. 308, which is a case where the driver of a parked car was found liable to the extent of 70% for a collision with a car which was coming from behind.

Each case has to be decided on the basis of its own particular circumstances; a basic difference between the present case and the *Watson* case, *supra,* is that, even though the Limassol-Nicosia road is a busy road, the volume of traffic on it, at the particular time, cannot be said to have been so great as was the volume of traffic

on the road in England on which the collision involved in the *Watson* case occurred; the traffic situation as regards the latter road (unlike that on the Limassol-Nicosia road) was such that it was found that there was created a hazard by stopping even momentarily in order to lay a passenger down.

In the present case, bearing in mind the approach of this Court on appeal to findings of trial Courts regarding the issue of negligence, as expounded in, *inter alia*, *Stavrou* v. *Papadopoulos* (1969) 1 C.L.R. 172 and *Ioannou* v. *Mavridou* (1972) 1 C.L.R. 107, we have come to the conclusion that it is not warranted, on the basis of its own particular facts, to interfere on appeal with the finding of the Court below that there was not established negligence, on the part of the respondent, which was causative of the accident in question.

We have borne in mind, in forming this view, the reasons given by the trial judge for holding that the appellant was solely to blame, namely that it clearly emerged from the evidence that the appellant was not keeping a proper lookout, that he was driving, at night-time, with his lights dipped, at a speed of about 40 miles per hour, and, as a result, he was not driving safely within the limits of the visibility available to him; and, furthermore, that, according to his own evidence, just before the collision he had been dazzled by the lights of an oncoming car and that though, as he testified, he needed some time to recover from being dazzled, he did not stop, or slow down, but continued on his way.

Moreover, the car of the respondent was not only clearly visible from some distance away, due to the fact that its rear lights were on, but the place where the collision occurred was illuminated, to a certain extent, by the head lights of the other stationary car.

In view of all the foregoing considerations this appeal is dismissed with costs.

Appeal dismissed with costs.