

1974
Mar. 29

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

COSTAS SHIAMPETTA, AS NATURAL GUARDIAN
AND FATHER OF HIS MINOR DAUGHTER,
IRINOULLA CONSTANTINOU.

COSTAS
SHIAMPETTA
AS NATURAL
GUARDIAN
AND FATHER
OF HIS MINOR
DAUGHTER
IRINOULLA
CONSTANTINOU

Appellant - Plaintiff,

v.

MICHALAKIS DIACOU AND ANOTHER.

v.
MICHALAKIS
DIACOU
AND ANOTHER

Respondents - Defendants.

(Civil Appeal No. 5122).

*Negligence—Contributory negligence—Road traffic accident—
Girl of 4 knocked down by motor vehicle whilst attempt-
ing to cross the road—Two conflicting versions—Ver-
sion of driver preferred—Finding of trial judge that
the child dashed suddenly to cross to the other side of
the road and that the driver found himself in an emer-
gency a finding of primary fact—Based on his view
of the quality of the evidence and tested with real
evidence—Not a finding with which Court of Appeal
could properly interfere—Appeal dismissed.*

The plaintiff, a child of four years of age, appealed against the dismissal of her claim for damages which she sustained in a road accident.

The trial judge found that the defendant found himself in an emergency created by the sudden dashing of the plaintiff to cross the road and dismissed the action.

Held, The said finding of the trial judge was a finding of primary fact based largely on his view of the quality of the evidence he heard, and rightly tested by him with the real evidence, that is to say, the brake marks of the motor-car. It is not a finding with which this Court could properly interfere, and we affirm the judgment of the trial Court that the defendant was not to blame at all for the accident.

Appeal dismissed.

Cases referred to :

Christou v. Makris and Others (1968) 1 C.L.R. 194;

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

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Stavrinakis, Ag. P.D.C.) dated the 23rd September, 1972, (Action No. 3024/72) whereby plaintiff's claim for special and general damages in respect of injuries she sustained in a road accident was dismissed.

E. Vrahimi, (Mrs.), for the appellant.

D. Liveras, for the respondent.

The judgment of the Court was delivered by :-

HADJIANASTASSIOU, J. : By these proceedings the plaintiff, Irinoulla Constantinou, a child of four years of age, suing through her father as her natural guardian, appeals from the judgment of the President of the District Court of Nicosia, who dismissed her claim for general and special damages. This action was brought in respect of a road accident which occurred on April 28, 1970, at Photi Pitta Street in Engomi, when the defendant's motor car struck her.

The notice of appeal raised originally two points : (1) that the trial Judge was wrong in rejecting the evidence for the plaintiff and in acquitting the defendant of negligence; and (2) that the damages awarded were manifestly low. Before us, however, the latter point was abandoned and the sole ground of appeal now relied upon is that the trial Judge misdirected himself on the factual issue.

The relevant facts can be shortly stated : The plaintiff on the date of the accident was standing on the berm of the road on the left side of Photi Pitta Street, in relation to the defendant's direction, and was struck by a motor car driven by defendant 1. The version of the defendant 1 was that at 3.45 p.m. he was driving at a speed of 20 m.p.h., keeping the left side of the road, and when he approached the house of the plaintiff, he

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noticed that she was standing on the right side of the road near the gate. Suddenly, she started running to go to the other side of the road in a diagonal way. When she was at a distance of about 10 - 12 ft. he immediately applied his brakes and swerved slightly to his left in order to avoid her, and when he came to a standstill, the plaintiff hit the right front fender of his car.

The learned trial Judge, having considered the evidence, and having observed the demeanour of the witnesses, rejected the version of the plaintiff and accepted the evidence of the defendant, and gave these reasons for his conclusions :-

“The version of the defendant is more probable and natural. The sudden application of brakes with brake marks veering to the left are consistent with an emergency created by the sudden dashing of the plaintiff to cross the road from right to left in a diagonal manner.”

Finally, the trial Judge, taking into consideration the whole evidence before him, came to the conclusion that defendant 1 was not to blame at all for the accident and dismissed the action with £30 towards the costs in favour of the defendant.

It is said by counsel on behalf of the plaintiff that the trial Judge misdirected himself in rejecting the evidence of the plaintiff and in giving too much weight in his finding that the only cause of the application of the brakes by the defendant was the crossing of the plaintiff from right to left; although it may have been due to many other causes.

We have considered this contention and we find ourselves unable to agree with counsel. The finding of the trial Judge that the child dashed suddenly to cross to the other side of the road and that the defendant found himself in an emergency, was a finding of primary fact, based largely on his view of the quality of the evidence he heard, and rightly tested it with the real evidence, that is to say, the brake marks of the motor car.

In our judgment, therefore, it is not a finding with

which this Court could properly interfere, and we affirm the judgment of the trial Judge that the defendant was not to blame at all for the accident. (*Christou v. Makris and Others* (1968) 1 C.L.R. 194; and *Kyriacou v. Aristotelous* (1970) 1 C.L.R. 172).

In these circumstances, the appeal is dismissed with costs.

Appeal dismissed with costs.

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