1977 December 15

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

VASILIOS A. HJI GEORGHIOU AND ANOTHER,

Appellants-Plaintiffs,

v.

ANTHOS RODINIS,

Respondent-Defendant.

(*Civil Appeal No.* 5574).

Negligence—Contributory negligence—Road accident—Collision at road junction—Major and minor road—Driver on minor road not stopping at halt sign—No time for driver on major road, in the agony of the moment, to do anything more than what he did or to do anything earlier than when he has done it—Rightly held not to have contributed to the accident.

Whilst appellant 1 was driving his car along Stassinos street, a minor road, towards its junction with Kyklopos street, a major road, he collided with a car driven by respondent along Kyklopos street and towards the said junction. It was common ground that the appellant did not stop at the halt sign.

The appellant's version was that he saw the respondent's car when it was actually colliding with his but before that he had heard the noise of the sudden application of brakes. On the other hand, respondent's version was that he first saw the appellant's car when it was very near the while halt line and it did give him the impression that it was not going to stop at the halt line. His immediate reaction was to apply brakes.

The trial Judge* after stating that he was not satisfied that the respondent had the time required to do anything more than what he has actually done or to do anything earlier than when he has actually done it, came to the conclusion that appellant 1 was solely to blame for the collision.

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* See the relevant passage of his judgment at p. 178 *post.*

Upon appeal counsel for the appellant contended that the respondent was to a certain degree also to blame because even though he was travelling on the major road he was under a duty to guard against the negligence of the appellant who was travelling on the minor road.

Held, (1) the principle that a driver travelling on the major road is under a duty to guard against the negligence of a car travelling on the minor road is correct but has to be applied in the light of the particular facts and circumstances of each case. It is well settled that if the possibility of danger emerging is reasonably apparent then to take no precautions is negligence. But if the possibility of danger emerging is only a mere possibility, which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extraordinary precautions. (See, *inter alia*, *Antoniou* v. *Iordanous and Another* (1976) 10 J.S.C. p. 1509 and the cases referred to therein).

(2) Bearing in mind the sudden emergency with which the respondent was confronted as a result of the bad driving of the appellant he had not the time, in the agony of the moment, to do anything more than what he did or to do anything earlier than when he has actually done it; and that he could not rightly be held to have contributed to the accident to any degree.

Appeal dismissed with costs.

Cases referred to:

Antoniou v. *Iordanous & Another* (1976) 10 J.S.C. 1509 (to be reported in (1976) 1 C.L.R.).

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Nicosia (Boyadjis, S.D.J.) (Consolidated Actions Nos. 1604/73 and 1605/73) dismissing their claims for damages as a result of a road traffic accident and awarding to the defendant the sum of £315.– on his counterclaim.

G. Mitsides, for the appellants.

D. Liveras, for the respondent.

The judgment of the Court was delivered by:

L. Loizou J.: The appellants were plaintiffs in consolidated actions 1604/73 and 1605/73 respectively of the District Court of Nicosia by virtue of which they claimed damages against

the defendant–respondent for negligence as a result of a road traffic accident. The first appellant's claim was for the damage caused to his car whereas that of the second appellant was for personal injuries.

The accident in question occurred on the 1st February, 1973, between 6.00 and 6.30 p.m. at the cross–roads formed by Kyklopos street and Stassinos street in Nicosia.

The only issue before the trial Court was that of liability the parties having agreed, in the course of the hearing, as to the quantum of damages on a full liability basis.

The brief facts of the case are as follows: The first appellant was, at the material time, driving his car under registration No. GE 96 with the second appellant as a passenger along Stassinos street towards the junction and the respondent was driving his car under registration No. AW 805 along Kyklopos street again towards the junction. Kyklopos street is the major road and in fact on both sides of Stassinos street at the entrance to the junction there was a white halt line which although slightly faded was clearly visible. It is common ground that appellant 1 did not stop at the halt sign. He said in evidence that he saw the respondent's car when it was actually colliding with his but before that he had heard the noise of the sudden application of brakes. The brake marks as well as the resultant position of the two vehicles, the point of impact and all other relevant points at the scene appear on the plan *exhibit* 2 produced at the trial. It is apparent from this plan that the respondent's car left 23 1/2 feet. brake marks, 15 feet of which were in Kyklopos street and 8 feet within the junction.

The version of the respondent was that on approaching the cross–roads he understood from the light falling over the street that a vehicle was approaching the cross–roads from the direction of Stassinos street on his right. He first saw the first appellant's car when it was very near the white halt line and it then did give him the impression that the driver was not going to stop at the halt line. His immediate reaction was to apply his brakes as he did but inspite of this the collision could not be avoided.

The learned trial Judge in a careful judgment and after analysing the facts had this to say on the issue of negligence:

"If the defendant failed to heed the presence of the

plaintiff's car early enough to be able to reflect properly the danger emanating therefrom and if it is shown that he could have seen that car early enough to take more effective avoiding action, then the defendant, despite his priority, would have been negligent. Having regard to the extent of the visibility and the fact that it was night time and also having regard to the period of time that the average man needs to appreciate properly the probable dangers from somebody else's act and take decisions as to the best way of avoiding them, I am not satisfied that in this case the defendant had the time required to do anything more than what he has actually done or to do anything earlier than when he has actually done it."

And came to the conclusion that the appellant 1 was solely to blame for the collision.

The sole ground of appeal argued before us was that the trial Court erred in finding the first appellant solely to blame and in not finding that the respondent was guilty of contributory negligence.

Learned counsel for the appellant conceded, very fairly, that there was no question about the negligence of the appellant but submitted that the respondent was to a certain degree also to blame because even though he was travelling on the major road he was under a duty to guard against the negligence of the appellant who was travelling on the minor road.

This principle is, no doubt, correct, but it has to be applied in the light of the particular facts and circumstances of each case. It is well settled that if the possibility of danger emerging is reasonably apparent then to take no precautions is negligence. But if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extra-ordinary precautions. (See, *inter alia*, *Antoniou* v. *Iordanous and Another* (1976) 10 J.S.C. p. 1509* and the cases referred to therein).

Considering all the circumstances of this case in the light of the facts as correctly found by the learned trial Judge which

* To be reported in (1976) 1 C.L.R.

are really undisputed, we find no reason to interfere with his conclusion. We agree that bearing in mind the sudden emergency with which the respondent was confronted as a result of the bad driving of the appellant he had not the time, in the agony of the moment, to do anything more than what he did or to do anything earlier than when he has actually done it; and that he could not rightly be held to have contributed to the accident to any degree.

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

Appeal dismissed with costs.