1979 January 25

[A. LOIZOU, DEMETRIADES AND SAVVIDES, JJ.]

CHRISTOS DEMOU,

Appellant-Plaintiff.

v.

POLYKARPOS CONSTANTINOU AND ANOTHER,

Respondents-Defendants.

(Civil Appeal No. 5614).

Findings of trial Court—And credibility of witnesses—Appeal—Road accident—Respondent's version that appellant was driving on the wrong side of the road believed by trial Court—No room to interfere with the findings of fact and the conclusions drawn thereon by the trial Court which had before it the witnesses and so was in a better position than Court of Appeal to decide upon their credibility.

Negligence—Road accident—Collision between vehicles moving in opposite directions—Appellant driving on the wrong side of the road—Rightly held responsible for the accident.

Negligence—Road accident—Speed—High speed is not evidence of negligence unless the particular conditions at the time and place preclude it—Mere presence of military camp does not by itself impose a duty of driving at a lesser speed.

A motor-cycle driven by the appellant-plaintiff collided with a car driven from the opposite direction by respondent-defendant 1. The trial Court believed the version of the respondent as to how the collision occurred and found that the appellant was responsible for the accident because he was driving on the wrong side of the road looking to his side towards a military camp.

In dealing with the question of contributory negligence the trial Court considered whether the speed of the respondent, which was admittedly 45-50 m.p.h., had anything to do with the accident and concluded that "if his speed was say, 15 to

20 m.p.h. he could probably have stopped safely, but we cannot impose such a duty on any driver, unless there is some reasonably foreseeable risk militating against a certain speed. There is nothing in this case which could cast on the defendant such a duty. The accident occurred when the vehicle of the defendant imprinted brake-marks 18 ft. long, which means that the accident would, in any event, have taken place even if the speed of the defendant was as low as to require 18 to 20 feet, plus thinking distance to stop".

Upon appeal by the appellant-plaintiff:

Held, dismissing the appeal, (1) that there is no room for this Court to interfere with the findings of fact and the conclusions drawn thereon by the trial Court which had before it the witnesses and so was in a better position to decide upon their credibility than this Court by going through the transcribed record of the proceedings (p. 24 *post*).

(2) That if one by looking left or right fails to keep a proper look-out and maintain his vehicle on the proper side of the road, it hardly needs saying that such a driver has been negligent in the sense that he failed to do what a reasonable man guided upon the considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do.

(3) That this Court finds no reason to interfere with the findings and inferences of the trial Court that the respondent has not contributed to the accident because of the speed at which he was driving; that there was no speed limit in the area and the mere presence of a military camp at that part of the road did not by itself impose any duty on the respondent to drive at a lesser speed in the circumstances; that high speed alone—if a speed of 45-50 m.p.h. in a non-built up area could be said to be high speed—is not evidence of negligence unless the particular conditions at the time and place preclude it (see *Alexander* v. *Gamble* (1974) 1 C.L.R. 5 at p. 8); and that, accordingly, the appeal will be dismissed.

Appeal dismissed.

Cases referred to:

Alexander v. *Gamble* (1974) 1 C.L.R. 5 at p. 8.

Appeal.

Appeal by plaintiff against the judgment of the District

Court of Nicosia (Stavrinakis, P.D.C. and Orphanides, S.D.J.) dated the 17th July, 1976, (Action No. 7580/73) whereby his claim for damages for personal injuries suffered by him in a road accident was dismissed.

M. Vassiliou with *I. Typographos*, for the appellant.

D. Liveras, for the respondent.

A. Loizou J. gave the following judgment of the Court. This is an appeal from the judgment of the Full District Court of Nicosia by which the appellant's claim for damages for the personal injuries suffered by him in a road accident was dismissed with no order as to costs.

The facts as found by the trial Court are these. On the 24th September, 1973, the appellant was driving his motor-cycle under registration No. FZ644 on the Athalassa road from its junction with the main Limassol–Nicosia road to the direction of Athalassa. At the same time respondent 1 was driving from the opposite direction saloon car under registration No. CF263 belonging to respondent 2. The appellant was proceeding, however, on his wrong side of the road and looking to his side towards a military camp. The respondent 1 faced with this situation, applied brakes and took more to the left but a collision between the two vehicles occurred with the result of the appellant being th own off his motor-cycle and receiving serious injuries.

The trial Court was faced with two versions and after analysing the evidence before it, accepted that of the respondent as the more credible inasmuch as the version of the appellant was not only unsupported by any evidence but was also highly improbable, if not impossible. In view of the fact that the appellant was riding his motor-cycle carelessly on the wrong side of the road, the trial Court found that he was responsible for the accident and proceeded to examine whether the defendant contributed in any way to it. In this respect the important question posed was whether the speed of the respondent, which was admittedly between 45–50 m.p.h., had anything to do with the accident and the trial Court concluded as follows:–

> "Certainly if his speed was, say, 15 to 20 m.p.h., he could probably have stopped safely, but we cannot impose such a duty on any driver, unless there is some reasonably

foreseeable risk militating against a certain speed. There is nothing in this case which could cast on the defendant such a duty. The accident occurred when the vehicle of the defendant imprinted brake-marks 18 ft. long, which means that the accident would, in any event, have taken place even if the speed of the defendant was as low as to require 18 to 20 feet, plus thinking distance to stop. In the light of the above, we cannot attribute any liability to the defendant, even if we entertain certain doubts about his allegation that he sounded his horn."

Having listened to counsel for the appellant carefully and having examined the evidence adduced by both sides, we have come to the conclusion that there is no room for us to interfere with the findings of fact and the conclusions drawn thereon by the trial Court which had before it the witnesses and so was in a better position to decide upon their credibility than we have ourselves in this Court by going through the transcribed record of the proceedings. If one by looking left or right fails to keep a proper look-out and maintain his vehicle on the proper side of the road, it hardly needs saying that such a driver has been negligent in the sense that he failed to do what a reasonable man guided upon the considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do.

Regarding the plea that the respondent contributed to the accident because of the speed at which he was driving, we again find no reason to interfere with the findings and inferences of the trial Court. There was no speed limit in the area and the mere presence of a military camp at that part of the road did not by itself impose any duty on the respondent to drive at a lesser speed in the circumstances. High speed alone–if a speed of 45–50 m.p.h. in a non–built up area could be said to be high speed–is not evidence of negligence unless the particular conditions at the time and place preclude it. The principle that driving at a high speed is not sufficient per se to establish negligence, was stated, *inter alia*, in the case of *Alexander* v. *Gamble* (1974) 1 C.L.R., at p. 8, where it was said that it had further to be shown that such speed was causative of the accident.

In the present case we found no conditions to make the respondent negligent by driving on his side of the road at that

speed, as he was doing at the time. Moreover, the collision occurred so soon after the application of the brakes by the respondent that as rightly found by the trial Court whatever the speed was, it could not have contributed to the accident.

For all the above reasons, the present appeal is dismissed, but we make no order as to costs as they are not insisted upon by counsel for the respondents who also withdrew the cross-appeal against the order of the trial Court as to costs.

Appeal dismissed. No order as to costs.