1979 January 22

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

SOFOCLIS IOANNOU, AS ADMINISTRATOR OF THE ESTATE OF HIS DECEASED SON SAVVAKIS SOFOCLEOUS,

Appellant-Defendant,

v.

KYPROS DEMETRIOU TOKKARIS,

Respondent-Plaintiff,

and

SOTERIS DEMETRIADES AND ANOTHER,

Respondents-Third Parties.

(*Civil Appeal No.* 5604).

Negligence—Road accident—Collision at night time between cars coming from opposite directions—Respondent-third party not keeping his proper side of the road and collision occurring on the wrong side of the road as far as he was concerned—Appellant keeping to the extreme left of the asphalted part of the road but only one small front light of his car on at the material time—Mode of third party's driving the sole cause of the accident irrespective of the condition of the lights of appellant's car.

Negligence—Contributory negligence—Apportionment of liability—Appeal—Principles on which Court of Appeal intervenes.

The appellant-defendant is the administrator of the estate of his late son, Savvakis, ("the deceased") who was killed in an accident to which these proceedings relate.

It was quite dark at the time of the accident and it occurred when a car driven by the deceased collided with a car coming from the opposite direction driven by the first third party ("the third party").

The collision occurred on the wrong side of the road in so far as the third party was concerned, the point of impact being about three and a half feet over the crown of the road in the part of the road which was the proper side of the deceased.

From the real evidence it appeared that the deceased was at the time keeping to the extreme left of the asphalted part of the road; that he applied his brakes as soon as, apparently, he saw the other car coming towards him, and that he had swerved as much as possible, within the space of time available to him, to his left in an effort to avoid the collision. It was, also, established by the real evidence that the third party failed to keep to his proper side of the road.

The deceased was found to be liable to the extent of one third for the occurrence of the accident because at the material time the only front light of his car, which was on, was the right-hand side small light and that due to this factor the third party was placed in a serious predicament and because he failed to slow down in time and veer, as far as he could, to his left-hand side of the road. The third party was found liable to the extent of two thirds because he did not see in time the car driven by the deceased and he failed, on meeting an oncoming car, to keep to his proper side of the road.

Upon appeal by the administrator of the estate of the deceased:

Held, that the fact that only one front small light of the car of the deceased was on at the time of the accident is a quite irrelevant consideration in so far as the issue of liability is concerned; that the only really pertinent factor, in this connection, is that the collision occurred on the wrong side of the road in so far as the third party was concerned; that in the circumstances of this case the deceased could not be found to be liable at all for this accident; that the liability for its causation burdens entirely the third party, who failed to keep to his proper side of the road;and that, therefore, the judgment against the estate of the deceased must be set aside (see, *inter alia*, *Theophanous* v. *Markides and Another* (1975) 1 C.L.R. 199 at p. 206 regarding the principles on which the Court of Appeal intervenes with the apportionment of liability made by a trial Court).

Appeal allowed.

Cases referred to:

Theophanous v. *Markides and Another* (1975) 1 C.L.R. 199 at p. 206;

Sofocleous and Another v. *Georghiou and Another* (1978) 1 C.L.R. 149 at p. 161;

Dieti v. *Loizides* (1978) 1 C.L.R. 233 at p. 242.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Artemides, D.J.) dated the 17th June, 1976 (Action No. 6516/73) whereby he was ordered to pay, in his capacity as administrator of the estate of his deceased son, to the plaintiff the sum of C£175.—as special and general damages in respect of injuries which he suffered as a result of an accident.

D. Liveras, for the appellant.

A. Paikkos, for the respondent-plaintiff.

M. Christophides, for the respondents-third parties.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant, who was the defendant at the trial, is the administrator of the estate of his son, the late Savvakis Sofocleous, who was killed in a traffic accident on December 31, 1972, to which the present proceedings relate; we shall in this judgment refer to Sofocleous as "the deceased".

Judgment was given on June 17, 1976, by the District Court of Nicosia, in civil action No. 6516/73, against the estate of the deceased and in favour of the respondent-plaintiff for agreed special and general damages amounting to C£175 in respect of injuries which he suffered as a result of the accident; at the time he was a passenger in a car, driven by third party Demetriades, which collided with the car driven by the deceased, who lost his life due to the accident. Also, judgment was given in favour of the estate of the deceased to the extent of the two-thirds of the above amount of C£175, namely C£115, against the respondents-third parties, as they were found to be liable to that extent for the collision; the deceased having been found to be liable only to the extent of one third for the occurrence of the accident.

It is admitted that third party Chapelet Ltd. was at the material time the employer of third party Demetriades and it is, also, common ground that at the time of the accident Demetriades was driving in the course of his employment.

The accident took place at about 7 p.m. on the Nicosia-Deftera road, and it was quite dark at the time. The car driven by the deceased, BH248, was proceeding from Deftera to Nicosia, and the car driven by Demetriades, FV628, was coming from the opposite direction.

The trial Judge found that the deceased was liable for the causation of the collision because at the material time the only front light of his car, which was on, was the right-hand side small light and he held that due to this factor Demetriades who was driving from the opposite direction was placed in a serious predicament; he found, further, that the deceased had failed to slow down in time and veer, as far as he could, to his extreme left-hand side of the road. Demetriades was found guilty of negligence because he did not see in time the car driven by the deceased and he failed, on meeting an on coming car, to keep to his proper side of the road.

Having considered carefully the particular facts of this case we have come to the conclusion that the fact that only one front small light of the car of the deceased was on at the time of the accident is a quite irrelevant consideration in so far as the issue of liability in this case is concerned. In our opinion the only really pertinent factor, in this connection, is that the collision occurred on the wrong side of the road in so far as Demetriades was concerned, the point of impact being about three and a half feet over the crown of the road in the part of the road which was the proper side of the deceased; and it appears, also, from the real evidence, that the deceased was at the time keeping to the extreme left of the asphalted part of the road, that he applied his brakes as soon as, apparently, he saw the other car coming towards him, and that he had swerved as much as possible, within the space of time available to him, to his left in an effort to avoid the collision.

In the circumstances of this case we do fail to see how the deceased could be found to be liable at all for this accident; in our view the liability for its causation burdens entirely the driver of the other car, Demetriades. Actually, he insisted, while being cross-examined, that even if the car of the deceased had no lights on at all there would still have occurred the collision because, as he alleged, the cause of the accident was that the deceased had not kept to his proper side of the road and so the collision took place on the wrong side of the road in so far as the car of the deceased was concerned. Once, however, the trial Court did not believe the version of Demetriades as regards the respective positions of the two cars and his allegation about the place of impact, and, on the contrary, it is clearly established, by the real evidence, that Demetriades failed to

keep to his proper side of the road, since the collision occurred on his wrong side of the road, it follows that the mode of his driving, irrespective of the condition of the front lights of the car of the deceased, was the sole cause of the accident.

We have, therefore, to allow the appeal and set aside the judgment given against the estate of the deceased; consequently, we have to rescind, also, the judgment for contribution given, as aforesaid, by the trial Court in favour of the estate of the deceased and against Demetriades and the other third party.

In deciding to intervene with the apportionment of liability made by the trial Court we have borne in mind the principles often expounded, in this connection, in previous case-law of this Court, such as, *inter alia*, *Theophanous* v. *Markides and another*, (1975) 1 C.L.R. 199, 206, *Sofocleous and another* v. *Georghiou the another* (1978) 1 C.L.R. 149, 161, and *Dieti* v. *Loizides*, (1978) 1 C.L.R. 233, 242.

Notwithstanding the fact that we have found that the liability for the collision burdens entirely Demetriades we do not propose to consider whether or not it is open to us, in this case, to make any order against him and the other third party, his employer, in favour of the respondent-plaintiff, as we have not been invited by counsel for the respondent-plaintiff to adopt such a course.

Finally, having taken into account that each counsel appearing in these proceedings has stated that he does not insist on any order for costs in his favour, we decided that the orders for costs made by the trial Court should be set aside and that every party should bear its own costs, both at the trial and on appeal; but let it be clearly understood that the order as to costs which we have just made does not mean that, in the light of the outcome of this appeal, we would have adopted the same course as regards costs, had counsel left the question of costs to be determined by this Court.

Appeal allowed. Order for costs as above.