1977 May 10

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

MAMAS NEOCLEOUS AND ANOTHER,
Appellants-Defendants,

v.

ANDREAS CHRISTODOULOU,
Respondent-Plaintiff.

(*Civil Appeal No.* 5590).

Negligence—Contributory negligence—Meaning—Road accident—Collision at road junction—Main road—Side road—Main road driver's version that side road driver abruptly dashed in front of him believed by trial Court—Side road driver admitting that he did not halt or slow down in entering main road—No question of credibility of witnesses—Trial Court's finding that side road driver solely to blame for the accident upheld.

Court of Appeal—Appeal—Approach of Court of Appeal to findings of fact made by trial Court—Distinction between perception of facts and evaluation of facts—Where there is no question of credibility of witnesses but sole question is the proper inference to be drawn from specific facts (including the real evidence)—Court of Appeal in as good a position to evaluate the evidence as the trial Judge—And should form its own independent opinion though it should give weight to the opinion of the trial Judge.

Damages—General damages—Personal injuries—Appeal against award of general damages—Principles on which Court of Appeal will intervene—Young student and footballer sustaining, inter alia, *extensive transverse lacerated wound on front part of left knee below the patella and a fracture of the lower pole of the patella—In hospital for 29 days—Left with two permanent ugly scars—Would sustain some pain in the future and would be unable to play football in the first division or as a semi-professional or professional player—Award of* £2000, *though it might appear on the high side, sustained.*

Whilst the respondent-plaintiff was riding his motor-cycle

on a main road he collided with a motor-vehicle driven by appellant-defendant 1 ("the appellant") and which was at the material time entering the main road from a side street. The trial Court accepted the version of the respondent to the effect that he was confronted with the motor-vehicle of the appellant which abruptly dashed in front of him and realising that a collision was imminent, in the agony of the moment, he swerved to his right in order to avoid the collision; and after rejecting the version of the appellant by finding that he "was driving without due care and attention, as he admitted in the criminal case" and did not halt or slow down before entering into the main road and by dashing in the main road he endangered all vehicles travelling thereon, it held that the appellant was solely to blame for the accident and awarded to the respondent an amount of £2000 as general damages.

The respondent, who was a student and a footballer sustained, *inter alia*, an extensive transverse lacerated wound on the front part of the left knee below the patella and a fracture of the lower pole of the patella. He remained in hospital and in a private clinic for a total period of 29 days, and had to use crutches for one month after leaving the clinic. He was left with two permanent ugly scars and will sustain in the future some pain owing to the residuals of the injuries. He would be unable to play football in the first division or as a semi-professional or professional football player and lost one year's schooling as he was forced to repeat the sixth grade.

Upon appeal on the issues of liability, contributory negligence and the said award of general damages:

Held, (1) that an Appellate Court should not lightly differ from a finding of trial Judges on a question of fact, but a distinction must be drawn between the perception of facts and the evaluation of facts; that where there is no question of credibility of witnesses, but the sole question is the proper inference to be drawn from specific facts (including the real evidence) an Appellate Court is in as good a position to evaluate the evidence as the trial Judge and should form its own independent opinion though it should give weight to the opinion of the trial Judge; that as the trial Court believed the version of the respondent and because of the admission of the appellant that he was driving in a most negligent manner, this Court finds itself in agreement with

the trial Court that the appellant was driving in a most negligent manner; that in a case like this under appeal where there cannot be any dispute on the relevant facts this Court has reached the conclusion not to interfere with the findings of the trial Court; and that, accordingly, the appeal on the issue of liability must fail.

(2) That a person is guilty of contributory negligence if he ought reasonably to have foreseen that if he did not act as a reasonable prudent man he might be hurt himself (see, also, section 57(1) of the Civil Wrongs Law, Cap. 148); that in this case the accident was caused, as the trial Court found, by the bad driving of the appellant; that the damage was caused again entirely by the bad driving of the appellant and this Court does not think that the respondent must bear any responsibility for the damages; and that, therefore, appellant's contention that the respondent was guilty of contributory negligence must be dismissed once it was the negligence of the appellant only which caused the accident.

(3) (*After stating the principles on which the Court of Appeal will interfere with awards of general damages made by trial Courts* —*vide* pp. 724–5 *post*) that having regard to the facts and circumstances of this case, the medical evidence, the evidence of the football experts, the age of the respondent, and the principles governing intervention of an Appellate Court in appeals against awards of general damages, this Court will not interfere with this award of damages, in spite of the fact that at first sight it might appear that the damages were on the high side; and that, accordingly, the appeal against the award of general damages must, also, fail.

Appeal dismissed.

Cases referred to:

Grant v. *Australian Knitting Mills Ltd.* [1936] A.C. 85 at p. 103 (P.C.);

Heaven v. *Pender* [1883] 11 Q.B.D. 503 at p. 507;

Cunnington v. *Great Northern Rail Co.* [1883] 49 L.T. 392 (C.A.);

Glasgow Corporation v. *Muir* [1943] A.C. 448 at p. 456 (H.L.); [1943] 2 All E.R. 44 at p. 48;

Carmarthenshire Council v. *Lewis* [1955] A.C. 549 (H.L.); 1 All E.R. 565;

Fardon v. *Harcourt-Rivington* [1932] All E.R. Rep. 81 at p. 83 (H.L.);

Blyth v. *Birmingham Waterworks* [1856] 11 Exch. 780 at p. 784;

Asprou and Another v. *Samaras and Another* (1975) 1 C.L.R. 223;

Charalambides v. *Michaelides* (1973) 1 C.L.R. 66;

Benmax v. *Austin Motor Company Ltd.* [1955] 1 All E.R. 326 (H.L.);

Emmanuel and Another v. *Nicolaou* (1977) 1 C.L.R. 15;

Achillides v. *Michaelides* (1977) 1 C.L.R. 172;

Mamas v. *The Firm "Arma" Tyres* (1966) 1 C.L.R. 158;

Watt or Thomas v. *Thomas* [1947] A.C. 484;

Jones v. *Livox Quarries Ltd.* [1952] 2 Q.B. 608;

Swadling v. *Cooper* [1931] A.C. 1;

Davies v. *Swan Motor Co. Ltd.* [1949] 1 All E.R. 620;

Froom and Others v. *Butcher* [1975] 3 All E.R. 520 at pp. 523–524;

Karavallis v. *Economides* (1970) 1 C.L.R. 271;

Taylor v. *O'Connor* [1970] 1 All E.R. 365.

Appeal.

Appeal by defendants against the judgment of the District Court of Limassol (Loris, P.D.C. and Hadjitsangaris, S.D.J.) dated the 19th April, 1976 (Action No. 1133/75) whereby the sum of £2,000.—was awarded to the plaintiff as general damages for injuries suffered by him in a traffic accident.

D.P. Liveras, for the appellants.

J. Agapiou, for the respondent.

HADJIANASTASSIOU J. gave the following judgment of the Court. This is an appeal by the defendants, Mamas Neocleous and Aristotelis Stylianou, against so much of the judgment of the trial Court by which it accepted the evidence of the plaintiff, Andreas Christodoulou, and in particular that part of the damages adjudged to the plaintiff. The defendants sought an order to set aside the judgment for the sum of £2,000 awarded to the plaintiff and to enter judgment in such lesser sum as the Court should deem just and appropriate.

1 *The Facts*

The plaintiff, a student and a footballer, on the evening of the

20th February 1975, was riding his motor cycle under Reg. No. FT 402 along Marathonos Street from east to west keeping the left hand side of the road when he was confronted with the taxi of defendant 1. Defendant 1 was driving the aforesaid taxi along a side street, namely Delphon Street and was at the material time entering Marathonos Street. The plaintiff in the agony of the moment in order to avoid the collision, swerved to his right but in spite of this, a collision occurred.

As his left knee was injured he was taken to the hospital of Limassol. He remained there for a week, and because his leg started smelling badly, he was taken to Dr. Papasavvas' clinic where he received treatment and remained for a period of 22 days. When he left the clinic, he had to use crutches for one month, and because of the long distance from his home to his school, he was forced to absent himself for a period of 3 months.

The police arrived at the scene of the accident at a commendable speed and found the vehicles involved in the collision at the corner of Marathon Street and Delphon and Halkoutsa Quarter of Limassol. In the absence of the drivers, P.C. Anderas Kariolemos investigated the scene. He prepared a rough sketch which he had shown later on to both drivers and they accepted it as being a correct sketch. He also took a statement from different people, including the plaintiff and the defendant.

There is no dispute that Marathon Street is the main road and that from the side of Delphon Street there was no traffic sign at all. In cross-examination, Andreas Kariolemos was asked this: "When you say the defendant told you in his statement that he did not see the plaintiff, did he explain when this was? A. He explained saying 'I looked right and left, I did not see anybody, I proceeded and then I heard a noise, as I was in the middle of the road I alighted and I saw the motor-cycle on the asphalt.' "

The next witness was Eleni Polycarpou who found herself near the scene of the accident. She told the Court that it was dark and the plaintiff was riding his motor-cycle, and when he passed her she was on her way to go to Marathonos Street. The plaintiff greeted her, as he passed very close to her and went straight on. He was not speeding and had his lights on. Because she heard a noise, she stopped where she was. She saw people gathering because the plaintiff was knocked down, but she did not see how the accident had happened.

On the contrary, the defendant Mamas Sofocleous of Pelendri, threw the blame of the collision on the plaintiff and said that he was driving the Mercedes car, the property of his employer, defendant 2, on that date with its lights on. He was on his way out of Delphon Street and getting into Marathonos Street. He was driving at 5 m.p.h. He stopped at the junction, looked right and left, and because there was nobody in the road he entered Marathonos Street. He turned left and a motor-cycle appeared all of a sudden and knocked on the motor-vehicle he was driving. He did not see the motor-cycle not its lights, as it was night time.

2 *Special Damages*

We think it is necessary to state that when the action came on for hearing, counsel agreed that the special damages should be £360, on a full liability basis. The case was contested in Court only on the issues of liability and general damages.

3 *Findings of the trial Court*

The trial Court, having considered the evidence before them, was satisfied on the issue of liability that the version of the plaintiff was a true one. Having observed that the plaintiff reduced his speed when he was about to enter the main road to 5 m.p.h. they said:

> "The version of the plaintiff is as follows:-.....he was proceeding along Marathonos Str. from east to west, at a speed of about 10-15 m.p.h., he was confronted with the taxi of Deft. 1 which abruptly dashed in front of him (shionoto) and realising that a collision was imminent, in the agony of the moment, he swerved to his right in order to avoid collision; despite his efforts a collision occurred and the motorcycle struck in the middle nearside of the taxi driven by defendant 1. As a result, the motor-cycle of the plaintiff fell on the asphalt and the plaintiff was injured".

Speaking also about the version of the defendant, in rejecting it, the Court said:-

> "The Defendant was driving without due care and attention, as he admitted in the criminal case, he did not halt or slow down before entering into the main road, that is, Marathonos Str. from Delphon Street, he did not have a proper

look-out and by so dashing in the main road, he endangered all vehicles travelling along Marathonos Street and in particular, the motorcycle ridden at the material time by the Plaintiff who, acting on the spur of the moment, fairly attempted to avoid the collision by swerving to his right. For this reason we hold the view that Defendant 1 is entirely to blame for this accident."

4 *Grounds of Law*

Counsel for the appellants in support of his grounds of law argued—in his usual careful and fair way—that the trial Court erred in law and in fact (a) in accepting the evidence of the respondent to the effect that the respondent found himself on the point of impact whilst in the process of avoiding the collision in the agony of the moment; and (b) in accepting that prior to the accident in question the respondent-plaintiff was on his correct side of the road because, counsel further argued, that if that was the case the Court erroneously interpreted the respondent's negligence as being that of avoiding action.

5 *The Law*

Time and again we have said that negligence is a specific tort (*Grant* v. *Australian Knitting Mills Ltd.*, [1936] A.C. 85 P.C. at p. 103), and in any given circumstances is the failure to exercise that care which the circumstances demand. (*Heaven* v. *Pender*, [1883] 11 Q.B.D. 503, C.A., at p. 507; *Cunnington* v. *Great Northern Rail. Co.* [1883] 49 L.T. 392, C.A.,; *Glasgow Corpn.* v. *Muir*, [1943] A.C. 448, H.L., at p. 456; [1943] 2 All E.R. 44 at p. 48, per Lord Macmillan; *Carmarthenshire County Council* v. *Lewis*, [1955] A.C. 549 H.L.; [1955] 1 All E.R. 565. What amounts to negligence depends on the facts of each particular case, (see *Fardon* v. *Harcourt-Rivington*, [1932] All E.R. Rep. 81, H.L., at p. 83 per Lord Dunedin) and the categories of negligence are never closed. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. In *Blyth* v. *Birmingham Waterworks*, [1856] 11 Exch. 780 Alderson, B. said at p. 784:-

"Negligence is the omission to do something which a reasonable man guided upon the considerations which ordinarily regulate the conduct of human affairs would do,

or doing something which a prudently reasonable man would not do".

Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen (*Glasgow Corporation* v. *Muir*, [1943] A.C. 448 H.L. at p. 457) to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the accompanying circumstances and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury.

The question is whether the first appellant was acting as a prudent and reasonable man. Having carefully considered the evidence before us, we think that the answer is that the appellant was not behaving on that date as a reasonable and prudent driver, and in his own admission to the police, recorded in the Judgment of the trial Court, he admitted that he did not halt or slow down or exercise a proper lookout in dashing into the main road.

Time and again it is said that an appellate Court, on appeal from cases tried before trial Judges, should not lightly differ from a finding of trial Judges on a question of fact, but a distinction in this respect must be drawn between the perception of facts and the evaluation of facts. Where there is no question of credibility of witnesses, but the sole question is the proper inference to be drawn from specific facts (including the real evidence) an appeal Court is in as good a position to evaluate the evidence as the trial Judge, and should form its own independent opinion, though it should give weight to the opinion of the trial Judge. (*Chrystalla A. Asprou and Another* v. *Pavlos Samaras and Another* (1975) 1 C.L.R., 223; *Charalambides* v. *Michaelides*, (1973) 1 C.L.R. 66, and *Benmax* v. *Austin Motor Company Ltd.*, [1955] 1 All E.R. 326, H.L.).

As we have said earlier, in the present case the trial Court believed the version of the plaintiff, and because of the admission of the first appellant that he was driving in a most negligent manner, we find ourselves in agreement with the trial Court that appellant 1 was driving in a most negligent manner. In a case like this under appeal, where, so far as we can see, there cannot be any dispute on the relevant facts, we have reached the conclu-

sion not to interfere with the finding of the Court. We would, therefore, dismiss the appeal on the factual issues based on the credibility of the witnesses and the admission of the appellant himself. (*Demetrios Emmanuel & Another* v. *Andronikos Nicolaou*, (1977) 1 C.L.R. 15; *Zenon Achillides* v. *Vyron Michaelides*, (1977) 1 C.L.R. 172; *Sofocles Mamas* v. *The Firm "Arma" Tyres*, (1966) 1 C.L.R. 158; *Watt or Thomas* v. *Thomas*, [1947] A.C. 484).

6 *Contributory Negligence*

Counsel for the appellants in support of this ground of law very ably indeed argued that the Court erred in law in failing to find the respondent equally liable in negligence for the accident in question. We have said in a number of cases that negligence depends on a breach of duty, whereas contributory negligence does not. Negligence is a man's carelessness in breach of duty to others. Contributory negligence is a man's carelessness in looking after his own safety. He is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable prudent man, he might be hurt himself. (See *Jones* v. *Livox Quarries Ltd.*, [1952] 2 Q.B. 608). Before 1945 the plaintiff who was guilty of contributory negligence was disentitled from recovering anything if his own negligence was one of the substantial causes of the injury. (See *Swadling* v. *Cooper*, [1931] A.C. 1). Since 1945 he is no longer defeated altogether. He gets reduced damages: (See *Davies* v. *Swan Motor Co. Ltd.* [1949] 1 All E.R. 620). The present law is contained in s. 57(1) of the Civil Wrongs Law, Cap. 148, which says:-

> "57.(1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage."

Subsection (7) says:-

> " 'fault' means negligence, breach of statutory duty, or other act or omission which gives rise to a liability in tort

or would, apart from this Law, give rise to the defence of contributory negligence."

In this case, the accident was caused, as the trial Court found, by the bad driving of the first appellant. The damage is caused again entirely by the bad driving of the appellant and we do not think that the respondent must bear any share in the responsibility for the damages. Looking to the cause of the damage, we would reiterate, we find that the first appellant is entirely to blame. We, therefore, dismiss this contention of counsel, once it was the negligence of the defendant only which caused the accident. It also was the prime cause of the whole of the damage, and we dismiss also this contention of counsel and affirm the judgment of the trial Court. (See *Charalambides* v. *Michaelides*, (1973) 1 C.L.R. 66 at pp. 72-73; see also *Froom and Others* v. *Butcher*, [1975] 3 All E.R. 520 at pp. 523-524).

7 *General Damages*

Once the liability of the driver is admitted, the next question is: what damages are payable? The trial Court, in dealing with this question, dealt with the medical evidence of Dr. Papasavvas and Dr. Tornaritis, and with the evidence of the two football trainers, Andreas Kotsonis and Mavrikios Asprou regarding the ability of the respondent to play football for the team Aris after his accident. As we said earlier, the respondent was taken to the Limassol hospital and was found to have sustained the injuries described in a report prepared by the specialist orthopaedic Surgeon Dr. Michaelides. This report shows that the respondent, as a result of the accident had suffered these injuries:

"(a) An extensive transverse lacerated wound on the front part of the left knee below the patella.

(b) Similar but vertical lacerated wound situated to the side of the patella (both wounds penetrated the joint), and

(c) Fracture of the lower pole of the patella with presence of gas in the joint space."

Turning first to the evidence of the two football coaches, the Court had this to say:-

"These two witnesses made it quite clear to us that the

after-effects of the injuries of the Plaintiff will never give the Plaintiff a chance to continue as a first division player and will prevent him from becoming either a professional or semi-professional footballer in the future."

Regarding the medical evidence, viz. that of Dr. Papasavvas and Dr. Tornaritis, the Court observed that substantially the evidence of one is not contradicting seriously the evidence of the other. Then the Court said:-

" The fact remains that the Plaintiff as a result of the present accident, sustained pain and suffering in the past as described by the doctors, he was left with two permanent ugly scars, described before us and seen by ourselves, that he will sustain in the future some pain owing to the residuals of the injuries; further, the Plaintiff will be unable to play football in the first division or as a semi-professional or professional football player. It is a fact that he lost one year's schooling and he was forced to repeat the sixth grade which he is still attending.

Having in mind the above, the principles under which general damages are being assessed, having seen and heard the Plaintiff and having in mind the awards cited by both sides, we do hereby assess general damages at £2,000."

Finally, counsel for the appellants contended that the Court erred in law in awarding the sum of £2,000 for general damages because such an amount is manifestly excessive having regard to the nature of the injuries and their effect.

We have anxiously considered this submission of counsel but finally, we have reached the conclusion not to interfere with this award of damages, in spite of the fact that at first sight it might appear that the damages were on the high side. The principles governing the approach of the Court of Appeal to awards of damages made by the trial Courts have been expounded in many judgments delivered by our Supreme Court in past and recent years. (See *Charalambides* v. *Michaelides* (*supra*) at pp. 74, 75, 76, 77 and *Elpidoros Karavallis* v. *Andreas N. Economides*, (1970) 1 C.L.R. 271).

In *Taylor* v. *O' Connor*, [1970] 1 All E.R. 365, Viscount

Dilhorne, delivering a separate speech in the House of Lords, had this to say at p. 373:-

> " The principles to be applied in relation to such an appeal were stated by Lord Wright in *Davies v. Powell Duffryn Associated Collieries, Ltd.*[1] as follows:
>
> '.....an appellate Court is always reluctant to interfere with a finding of the trial Judge on any question of fact, but it is particularly reluctant to interfere with a finding on damages (which) differs from an ordinary finding of fact in that it is generally much more a matter of speculation and estimate..... In effect, the Court, before it interferes with an award of damages, should be satisfied that the Judge has acted upon a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellante Court is to interfere, whether on the ground of excess or insufficiency'."

With these principles in mind, and particularly having regard to the young age of the respondent, we adopt and follow the principles expounded in these cases with regard to the approach of a Court of Appeal in the award of damages.

For the reasons we have given at length, and having regard to the facts and circumstances of this case, the medical evidence, the evidence of the two football experts, as well as the age of the respondent, we have decided to dismiss this contention of counsel also, and we affirm the judgment of the trial Court regarding the amount of general damages.

Appeal dismissed. Costs in favour of the respondent.

Appeal dismissed with costs.

1. [1942] 1 All E.R. 657 at 664, 665.