1980 June 4

[L. LOIZOU, HADJIANASTASSIOU AND SAVVIDES, JJ.]

ANDREAS SIAKOS,

Appellant–Defendant,

v.

ANDREAS NICOLAOU,

Respondent–Plaintiff.

(*Civil Appeal No.* 5819).

Negligence—Road accident—Collision at cross-roads—Main road—Side road—Halt sign and stop signal on side road—Side road driver crossing the road at a high speed without stopping at halt sign—Main road driver could expect traffic coming out from side road to conform with requirements of halt sign and give way to traffic on main road—Finding of trial Judge that he was, also, to blame for the accident erroneous.

Practice—Evidence—Real evidence—Road accident—Brake-marks—Trial Judges should not turn themselves as experts on the result of their own comparison without hearing expert evidence.

A car driven by respondent–plaintiff collided at night-time, near a cross–road, with a car driven by the appellant–defendant. Appellant's car was driven along the main road and respondent's car along the side road which had a "halt" sign and a "stop signal". The trial Judge found that the side road–driver (the respondent) did not stop at the halt sign and attempted to cross at a high speed; and that he was the person whose negligence was mainly the cause of the accident. Regarding the main road driver (the appellant) the trial Judge found that by using his brakes he must have seen the other driver entering the main road; that a "prudent driver should always foresee the negligence of another driver and he must take all the necessary measures in order to avoid it"; and that though in this case he could not do much taking into account the brake–marks of his car "it is obvious that he was going at a high speed irrespective of the fact that he alleges that he was driving at 30 m.p.h.". Finally

the trial Judge concluded that the side road driver was 85% to blame for the accident and the main road driver 15%.

Upon appeal by the main road driver (the defendant):

Held, that the finding of the trial Judge that the appellant was to be blamed also for the accident is erroneous in law and in the light of the evidence which he accepted viz. that the appellant could not do very much to avoid the accident; that the respondent had no right to enter the main road unless he was satisfied that it was safe for him to do so, and once he had entered, he had no right to proceed without exercising the utmost care to see whether it was safe for him to proceed; that this Court having reached the conclusion that the appellant faced with an emergency tried his best and acted as a good driver to avoid the accident, it is unable to agree with the learned Judge that in those circumstances the appellant was to be blamed for the accident; that the appellant driver was using the main road and like any other driver expected traffic coming out from the side road to conform with the requirements of the "halt" sign and to give way to traffic on the main road; and that, accordingly, the appeal must be allowed.

Appeal allowed.

Per curiam:

Before concluding our judgment we think it is necessary to point out that trial Judges when dealing with the real evidence and particularly with a sketch should bear in mind not to turn themselves into experts merely on the result of their comparisons, without hearing evidence coming from an expert. This is what has happened in this case when the trial Judge turned himself into an expert in trying to explain how the accident occurred and whether it was due to speeding on the part of the appellant by looking to the brake marks left by the car of the appellant, without first hearing expert evidence.

Cases referred to:

Davies v. *Swan Motor Co. (Swansea) Ltd.* [1949] 1 All E.R. 620 at p. 632;

Charalambides v. *Michaelides* (1973) 1 C.L.R. 66 at p. 73;

Humphrey v. *Leigh, Bingham's Motor Claims Cases* 7th ed. p. 121;

Watson v. *Everall and Tebbett, Bingham's Motor Claims* Cases, 7th ed. p. 122;

Brooks v. *Graham, Bingham's Motor Claims Cases*, 7th ed. p. 122;

Pourikkos v. *Fevzi* (1963) 2 C.L.R. 24 at p. 31;

Charalambous v. *Pillakouris* (1976) 1 C.L.R. 198 at p. 214;

Salih and Another v. *Sofocleous and Others* (1979) 1 C.L.R. 248 p. 253.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Ioannides, P.D.C.) dated the 2nd February, 1978, (Action No. 1285/77) whereby he was found guilty of negligence and he was ordered to pay to plaintiff an amount of damages for injuries suffered by him in an accident.

A. Pandelides, for the appellant.

Chr. Kitromilides, for the respondent.

L. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU J.: This is an appeal by the defendant, Andreas Siakos, from the judgment of a Single Judge of the District Court of Nicosia dated 2nd February, 1978, whereby the Court having found that he was to be blamed to the extent of 15% for the accident awarded to the plaintiff, Andreas Nicolaou, an amount of damages for injuries suffered by him in that accident. The defendant now challenges the finding of the trial Court that he had contributed to the accident.

1. *THE FACTS*

The plaintiff on 8th January, 1976, at night time he was driving his motor car under Registration No. EV815 in Delphon Street towards Metochiou Street. Because he has driven on a number of occasions in that area he was aware that there was a halt sign and a stop signal before one could cross in order to enter Metochiou Street and Archbishop Makarios III Avenue. When he finished his work at 6.30 p.m. on his way home he stopped in order to give a message to the wife of a friend. Having done so he drove away and when he approached the halt line, he applied his brakes but he went a bit further in order to see whether there was any traffic on the main road. He saw no traffic but when he

entered the main road, he saw a light on his right-hand side at a distance of about two donums. He proceeded and as he passed the centre of the road was hit by the defendant's car. His speed was about 20-25 m.p.h. before he applied his brakes. He reduced his speed to 5-6 m.p.h. at the halt line but because he saw no-one he did not stop in spite of the fact that the visibility was not so good. He proceeded a little further on and when he saw an approaching car coming from his right-hand side, instead of stopping he drove on because he thought that he could avoid the accident. He turned slightly to his left but because that car coming from Archbishop Makarios III Avenue was being driven fast, the accident occurred. He could not estimate the speed of the other car but he heard the noise of brakes of that car and then the collision took place.

Cross-examined by defence counsel, he said that he reduced his speed at the halt sign. Pressed further by defence counsel that he had crossed both half lines speeding, and that that was the reason why his car left brake-marks on the road and the reason why the accident occurred, his reply was that he was not speeding on that night.

On the other hand, the defendant Siakos told the Court that on the same date he was driving the car of his mother under Registration No. FE101 along Archbishop Makarios III Avenue from Engomi towards Nicosia. When he approached the cross-roads he was driving at 30 m.p.h. One driving along Archbishop Makarios III Avenue cannot see into Delphon Street because there is a house and trees. One can see along Delphon Street when he is 4-5 metres from the cross-road because the trees are standing very close to each other making a fence. When he reached 3-4 metres from the cross-road, the plaintiff entered into the cross-road driving from Delphon Street without stopping at the halt line. He tried to avoid him and he swerved to the right thinking that he would stop but as he could not avoid him the front part of his car came into contact with the right side of the other car. Although he applied brakes when he saw the plaintiff entering into the cross-road, he could not avoid the accident. He stayed at the scene until the arrival of the Police who took various measurements in his presence. Cross-examined by counsel for the plaintiff, he repeated that he was driving at 30 m.p.h. when he entered into Archbishop Makarios III Avenue from a side road which was 20-30 metres

from the cross-road. He repeated that he saw the car of the plaintiff for the first time when he was 4-5 metres away from it and he swerved a little to the right and applied his brakes. He further said that the collision was a violent one because the driver of the other car did not stop before entering into the cross-road. He further added that he did not notice if the plaintiff made any effort to avoid the collision and that he himself was keeping to the left side of the road before the collision.

There is no doubt that the arrival of the Police at the scene was made at a commendable speed, and according to P.C. Andreas Charalambous who arrived at the scene at 7.00 p.m. of that night he found the two cars and also the defendant there. The plaintiff having been injured was taken to the hospital. According to this witness he prepared a sketch and in giving evidence he said that the distance from the halt sign in Delphon Street to the point of impact was 17 ft; and from the point of impact to the end of Metochiou Street the distance was 12 ft. He also added that the distance between the point of impact and the final position of the plaintiff's car was 44 ft; and that the brake-marks of the plaintiff's car were 37 ft and those of the defendant's were 30 ft. Dealing also with the question as to whether the collision was a violent one, he said that it was indeed a very violent collision and that is why the plaintiff's car went into the field. He further told the Court that the visibility was not very good because of the fence and trees, and added that that was why the driver had to stop at the halt line and then proceed very slowly in order to be able to see whether any other car was coming from his right side before proceeding into Metochiou Street. A driver coming from Archbishop Makarios III Avenue into Metochiou Street, the witness added, has no visibility as regards Delphon Street but he has a good visibility towards the other part of Metochiou Street on his right-hand side. Cross-examined by counsel for the defence he admitted that as one comes from Delphon Street there is a traffic signal marked "C" on which there is written the word "Halt", and that the same thing is painted on the roads.

2. *FINDINGS OF THE TRIAL COURT*

The learned trial Judge having dealt first with the evidence of the plaintiff Andreas Nicolaou, said:

"Taking everything into account, it is obvious that the

plaintiff is not telling the truth as to what happened, especially as regards the speed of his car. This is obvious from the brake-marks shown on *exhibit* No. 1. I take it that even before entering the main road, his speed was high, he saw the lights of the car coming from his right and he applied his brakes long before he approached the halt line. Only this shows that his attempt was to go ahead without halting, at a high speed.

This accident occurred late at night during winter. There were not many cars on the road at that time and that is probably one of the reasons why the plaintiff went ahead, as I explained earlier."

Then the learned Judge dealing with the evidence of the defendant had this to say:

"He was driving on the main road and it is obvious that by using his brakes he must have seen the plaintiff entering the main road. However, the question is: Did he drive in a proper way, in other words, didn't he have in mind that an accident may occur because and as a result of the negligence of the plaintiff? In my opinion, the answer is yes. A prudent driver should always foresee the negligence of another driver and he must take all the necessary measures in order to avoid it.

In the present case he could not do very much but again taking into account the brake-marks of the defendant's car, it is obvious that he was going at a high speed irrespective of the fact that he alleges that he was driving at 30 m.p.h. This is obvious from the brakemarks and the violent collision.

Taking everything into account I find that the plaintiff is the person whose negligence was mainly the cause of the accident but I cannot exonerate the defendant completely. For this reason I arrived at the conclusion that the plaintiff is to be blamed 85% and the defendant 15%".

3. *GROUNDS OF APPEAL*

Counsel in support of his ground of law very ably indeed argued that the Court erred in law in finding that the appellant contributed in the accident by 15%, and that his finding as to

negligence is unreasonable and arbitrary. On the contrary, counsel for the respondent argued that in the particular circumstances of this case, the finding of the Court that the appellant contributed to the accident by 15% should stand. As we have said earlier, the trial Court had disbelieved the evidence of the plaintiff and having gone into the whole of the evidence, we think we should not interfere with the finding of the trial Judge regarding the credibility of that witness. We would, therefore, affirm the judgment, viz., that the plaintiff was guilty of negligence.

Having considered very carefully the arguments of both counsel, the question is whether the appellant was also to be blamed 15% for the accident in question.

4. *CASE LAW*

Time and again we have said that an appellate Court, on appeal from cases tried before trial Judges should not lightly differ from their finding 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 a witness, as in the present case, 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.

In a number of cases it was said that while causation is the decisive factor in determining whether there should be a reduced amount payable to the plaintiff, nevertheless, the amount of the reduction does not depend solely on the degree of causation. The amount of the reduction is such an amount as may be found by the Court to be "just and equitable", having regard to the claimant's "share in the responsibility" for the damage. This involves a consideration, not only of the causative potency of a particular factor, but also of its blame-worthiness. See *Davies* v. *Swan Motor Co. (Swansea) Ltd.* [1949] 1 All E.R. 620 at p. 632.

In *Christos Charalambides* v. *Polyvios Michaelides*, (1973) 1 C.L.R. 66, in delivering the judgment of the Court, I said at p. 73:

"Respectfully adopting this test, it seems clear to us that

the appellant had no right to enter the main road at all, unless he was satisfied that it was safe for him to do so, and once he had entered it, he had no right to proceed further across the cross-roads without taking the utmost care to make sure that no-one was on the road. There is no doubt that the act of driving into the main road without any warning at all was an act in a high degree potently causative of the collision and of the injuries suffered by the respondent.

The trial Court found that the appellant-defendant was at fault and was wholly to blame for the accident, and we are not prepared to say otherwise; because in our view the respondent in the light of the evidence, could not have contributed to this accident."

Counsel relied and quoted before the trial Court and in this Court a number of cases and we think out of respect we shall be dealing with some of these cases. In *Humphrey* v. *Leigh*, reported in Bingham's Motor Claims Cases 7th edition 121, in the hours of darkness a motor coach and a van collided at a cross-roads where a main road was crossed by a subsidiary road. The van was being driven along the main road and the coach along the subsidiary road, which had a "Halt" sign and stop line at the point where the coach emerged on to the main road. Due to his injuries the driver did not remember the actual collision but he remembered turning on his headlights as he left the lights of a town some distance from the crossroads: they would have been visible to the coach driver for at least 70 yards before the crossing. The Court found that the coach driver did not halt at the main road but was crossing it at some speed, and without looking out for other traffic, when the van struck the coach on its offside in front of the rear wheel. There was no evidence as to what the van was doing before the impact either as to speed or position on the road, nor did it leave any brake marks on the road. The Judge of Assize held the drivers equally to blame. On appeal, allowing the van driver's appeal, and in finding that the coach driver was wholly to blame Sellers L.J. said:

"It depicts the typical case of a vehicle coming out from the side road directly in front of the van which had the right to use that main road expecting that traffic coming out from the side road on the left would conform with the requirements of the law that it should halt and the further

requirement that being a side road it should give way to traffic passing on the main road."

In *Watson* v. *Everall and Tebbett* reported in Bingham's Motor Claims Cases, 7th Edition at p. 122, at a cross-roads in a built-up area a van was travelling north and a car was travelling west. There was a "Halt" sign in the van-driver's road, but he did not stop. He drove straight out on to the cross-roads at about 20 m.p.h., colliding with the nearside of the car which was travelling at about 15 m.p.h. Neither party saw the other before the collision. The car driver said he looked into the turning on his left as he approached but saw no vehicle at the halt line and carried on. The Judge found the car driver 25 per cent to blame for driving at an excessive speed and not keeping a proper look-out. On appeal it was held: The driver of the car was not to blame at all. It was impossible to support the Judge's conclusion without taking a wholly unrealistic view of traffic conditions as they are. The relative speeds of the vehicles showed that at the moment the car reached the actual cross-road the van could not have reached the halt line. If the car driver had seen it coming towards the crossing he might justifiably have assumed that it would have when it reached the halt line. The Judge had treated the case as though it were one of a collision at an uncontrolled cross-road or a cross-road subject only to a "Slow" sign. Where there is a "Halt" sign wholly different considerations apply. If a vehicle on a major road is to approach such a cross-road in such a way that it can stop dead if a vehicle on a minor road fails to observe the "Halt" sign, it would mean that it would have to slow down to little more than a walking pace and all practical purposes bring traffic on the major road to a standstill.

In *Brooks* v. *Graham* reported in Bingham's Motor Claims Cases, 7th Edition at p. 122 approaching a cross-road in a rural area in daylight the second defendant was driving his car along the main road at 25-30 m.p.h. He knew the minor road on his left had a "Halt" sign at its mouth. From a point about 35 yards from the junction there was a view through an open fence along the minor road for a similar distance from the junction. The first defendant approaching the cross-roads along the minor road at about 50 m.p.h. ignored the "Halt" sign and drove straight on to the junction striking the second defendant's car and killing a passenger. The second defendant, who was

paying attention to some horses approaching from the far side of the junction, said he had only a fleeting glimpse of the other car before the collision. It was held: The second defendant was not at all to blame. He was driving quietly and sensibly on a main road with knowledge of the "Halt" sign in the minor road. He was faced with the presence of the horses. His obligation was to behave reasonably. It was doubtful whether he would have seen anything in the minor road but he had every reason to believe a car in the minor road would stop. The sole responsibility for the accident lay on the first defendant.

In *Yiannakis Kyriakou Pourikkos* v. *Mehmet Fevzi* (1963) 2 C.L.R. 24, Wilson P. delivering the first judgment of the Court said at p. 31:

> "The difficulty here is not whether the defendant took any precautions to avoid the collision but whether he took sufficient precautions. This is a question of fact, upon which the trial Court has made a finding and it is not to be reversed when as here, there is evidence to support it. For these reasons the appeal must be dismissed with costs, and the cross-appeal must also be dismissed with costs."

Having reviewed the authorities already quoted, and fully aware of the principles which govern the exercise of our powers to interfere with the decisions of trial Courts, we have reached the conclusion that the finding of the trial Judge that the appellant was to be blamed also for the accident is erroneous in law and in the light of the evidence which he accepted, viz., that the appellant could not do very much to avoid the accident. Indeed the respondent had no right to enter the main road unless he was satisfied that it was safe for him to do so, and once he had entered, he had no right to proceed without exercising the utmost care to see whether it was safe for him to proceed. Having reached the conclusion that the appellant faced with an emergency tried his best and acted as a good driver to avoid the accident, we find ourselves unable to agree with the learned Judge that in those circumstances the driver was to be blamed for the accident. We think we should reiterate the appellant driver was using the main road and like any other driver expected traffic coming out from the side road to conform with the requirements of the "Halt" sign and to give way to traffic on the main road.

Before concluding our judgment, we think it is necessary

to point out in the present case, that trial Judges when dealing with the real evidence and particularly with a sketch should bear in mind not to turn themselves into experts merely on the result of their comparisons, without hearing evidence coming from an expert. This is what has happened in this case when the learned trial Judge turned himself into an expert in trying to explain how the accident occurred and whether it was due to speeding on the part of the appellant by looking to the brake marks left by the car of the appellant, without first hearing expert evidence. If authority is needed, the case of *Demos Charalambous* v. *Costakis Pillakouris*, (1976) 1 C.L.R. 198 provides the answer. In that case delivering a dissenting judgment, I had this to say at p. 214.

> "With this in mind, I would go further and state that the appellant has failed to show that the Judge had failed to use or has palpably misused his advantage of seeing the witnesses, and the Court of Appeal ought not to have taken the responsibility of reversing the conclusions arrived at merely on the result of their own comparisons and criticism of the witnesses—the nature of the damage being unexplained—and of their own view of the probabilities of the case without expert evidence.
>
> Applying the principles to which I have referred earlier in this judgment, and in the absence, I repeat, of any expert evidence explaining from the precise nature of the damage how the accident occurred, and because the defendant by moving his car deprived the Court from knowing what was its resultant position, I have reached the conclusion that the damage cannot be considered as being a determined and undisputable fact which constitutes positive evidence refuting the oral evidence of the witnesses. I would, therefore, find myself unable to accept as sufficient the reasoning which had led my two brothers to reverse the decision of the trial Judge, and for the reasons I have given I would affirm the judgment that the defendant was wholly to blame for the accident and dismiss the appeal with costs."

That minority judgment was confirmed in the case of *Salih and Another* v. *Sofocleous and Others*, (1979) 1 C.L.R. 248 at p. 253, where Mr. Justice L. Loizou had this to say at p. 253:-

> "In the present case we do not feel that we could from the

mere fact that there was only one line of brake marks and in the absence of any evidence, act as experts and come to any conclusion as to the state of the taxi's brakes. Nor would we be prepared to say that even assuming that the brakes of the taxi were not in perfect order the taxi driver could, having regard to the facts and circumstances of this case, be burdened with any degree of negligence."

For the reasons we have given at length, we allow the appeal, but as counsel for the appellant has not claimed the costs, we make no order as to costs.

Appeal allowed. No order as to costs.