

1980 October 31

[TRIANTAFYLIDIS, P., L. LOIZOU, DEMETRIADES, JJ.]

CHARALAMBOS PAPADOPOULLOS,

Appellant-Defendant,

v.

PANAYIOTIS PERICLEOUS,

Respondent-Plaintiff.

(Civil Appeal No. 5841).

*Negligence—Contributory negligence—Apportionment of liability—
Appeal—Principles on which Court of Appeal intervenes—Duty
of care of drivers approaching each other—Blameworthiness—
Causation—Road accident—Vehicles moving in opposite directions
—Appellant, when at a distance of about 150 meters from respondent, 5
driving across the street and parking his car at the other side
of the street facing in the direction opposite to that in which he had
been driving—Respondent not managing to control sufficiently
his car and knocking violently on a wall—Though appellant not
entirely free from blame because he drove right across the street 10
when another car was approaching his degree of liability
erroneously assessed at 30%—Reduced to 15%.*

Whilst the respondent-plaintiff was driving his car along
 Gregoris Afxentiou avenue towards the centre of Nicosia town
 at the same time the appellant-defendant was also driving his 15
 car along the same avenue but in the opposite direction. When
 the appellant was about one hundred and fifty metres from the
 respondent he turned his car to the right, drove across the avenue
 and parked his car at the side of the street, on the berm, facing
 in the direction opposite to that in which he had been driving. 20
 The respondent on seeing the appellant drive across the street
 applied his brakes and turned to his right, but as he did not
 manage to control sufficiently his car he knocked violently
 on a wall which collapsed; as a result the respondent's car
 suffered extensive damage and he was, also, injured. 25

In an action for damages by the respondent the trial Court,
 having held that the main cause of the accident was the excessive

speed of the respondent, apportioned liability at 70% against the respondent and 30% against the appellant.

5 Upon appeal by the defendant on the ground that he ought not to have been found at all guilty of negligence inasmuch as he drove across the street at such long distance away from the car of the respondent that it was only the respondent, because of the way in which he was driving, that was to blame for the accident:

10 *Held, (after stating the principles governing the duty to take care of drivers approaching each other and the principles on which the Court of Appeal interferes with the apportionment of liability made by a trial Court—vide pp. 579–80 post) that having paid due regard to both the factors of blameworthiness and causation, which are relevant to the matter of contributory negligence, 15 this Court is of the opinion that though the appellant cannot be held to be entirely free from blame because he drove right across the street when another car was approaching, he did so at such a long distance from the other car that his degree of liability was erroneously assessed at thirty per cent and that 20 it cannot be held to amount to anything more than fifteen per cent; that, therefore, the appeal must be allowed and the amount of damages which the appellant has to pay to the respondent has to be reduced by half.*

Appeal allowed.

25 Cases referred to:

Theofanous v. Markides (1975) 1 C.L.R. 199 at pp. 205–206;

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

Ioannou v. Tokkaris (1979) 1 C.L.R. 509 at p. 513;

Kika v. Lazarou (1979) 1 C.L.R. 670 at p. 677.

30 **Appeal.**

Appeal by defendant against the judgment of the District Court of Nicosia (Stylianides, P.D.C. and Laoutas, D.J.) dated the 26th April, 1978 (Action No. 1860/76) whereby he was found liable for negligence to the extent of thirty per cent for a traffic accident.

N. Pelides, for the appellant.

Z. Katsouris, for the respondent.

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment of the Court. The appellant, who was the defendant at the trial, has appealed against the decision of the District Court of Nicosia by means of which he was found liable for negligence to the extent of thirty per cent for a traffic accident which occurred in Nicosia on September 27, 1975. 5

According to the findings of fact made by the trial Court, the respondent, who was the plaintiff at the trial, was on the aforesaid date driving his car along Gregoris Afxentiou avenue towards the centre of Nicosia town and at the same time the appellant was also driving his car along the same avenue but in the opposite direction. 10

When the appellant was about one hundred and fifty metres from the respondent he turned his car to the right, drove across the avenue and parked his car at the side of the street, on the berm, facing in the direction opposite to that in which he had been driving. 15

The respondent on seeing the appellant drive across the street applied his brakes and turned to his right, but as he did not manage to control sufficiently his car he knocked violently on a wall which collapsed; as a result the respondent's car suffered extensive damage and he was, also, injured. 20

The trial Court in apportioning liability between the two drivers concerned stated the following:

"The plaintiff is a grown up person and a mechanic by occupation. He could foresee that in the way he was driving he could hurt himself and cause damage to other road users. The speed he was driving, having regard to the fact that Gregoris Afxentiou is an inhabited and frequented and speed limited road, was very excessive. We are of the view and so hold, that the main cause of the accident was the excessive speed of the plaintiff and his failure to keep a proper lookout under the particular circumstances of this case. 25 30

The defendant is an experienced police sergeant. He has been in the Accident Investigation branch of the Police for 11 years. He has investigated a considerable number of accidents. He admitted having seen the plaintiff from a distance of 150 meters. He ought to have estimated 35

his speed. At least he should have been in a position to realise whether he was driving faster than it was usually expected from a driver on that road. There was nothing to obstruct his visibility. Despite that he decided to turn
5 to his right. We find that the defendant was guilty of negligence.

In apportioning the degree of liability we take into consideration the factors of blameworthiness and causation. We apportion liability at 70% against the plaintiff and 30%
10 against the defendant.”

It has been strenuously argued before us on behalf of the appellant that he ought not to have been found at all guilty of negligence inasmuch as he drove across the street at such long distance away from the car of the respondent that it was
15 only the respondent, because of the way in which he was driving, that was to blame for the accident.,

As regards the duty to take care of drivers of vehicles approaching each other the following have been stated by this Court in *Theophanous v. Markides*, (1975) 1 C.L.R. 199 (at pp. 205–
20 206):

“It is a well-founded principle that when two vehicles are so moving in relation to each other as to be involved in a risk of collision, each one of them owes to the other a duty to proceed with due care (see *Nance v. British Columbia Electric Railway Co., Ltd.* [1951] 2 All E.R. 448). This principle has been applied by our Supreme Court on many occasions (see, *inter alia*, *Pourikkos v. Fevzi* (1963) 2 C.L.R. 24); it is, of course, always a question of fact whether each party has taken sufficient precautions
25 to avoid the collision (see the judgment of Wilson P. in the *Pourikkos* case, *supra*, at p. 31)”.
30

In relation to the right of this Court to interfere with the apportionment of the liability made by a trial Court the following have been stated in *Dieti v. Loizides*, (1978) 1 C.L.R. 233 (at
35 p. 242):

“We are well aware that the apportionment of liability in a case such as the present one is primarily the task of a trial Court, and this Court should not interfere except in an exceptional case when there exists an error in principle
40 or the apportionment is clearly erroneous (see, for example,

Stavrou v. Papadopoulos, (1969) 1 C.L.R. 172, 179, *Constantinou v. Salachouris*, (1969) 1 C.L.R. 416, 421 and *Emmanuel and Another v. Nicolaou*, (1977) 1 J.S.C.9*”.

In this respect the *Dieti* case, *supra*, was referred to with approval in *Ioannou v. Tokkaris*, (1979) 1 C.L.R. 509, 513, 5 and in *Kika v. Lazarou*, (1979) 1 C.L.R. 670, where (at p. 677) it was stated that:

“.....an appellate Court should be slow to interfere with the finding of a trial Court regarding the existence or not of contributory negligence, and with the apportionment of liability in case contributory negligence has been found to exist by a trial Court.....”.

With the foregoing principles in mind we have approached the question of the issue of the liability of the appellant for the accident in question and, having paid due regard to both the factors of blameworthiness and causation, which are relevant to the matter of contributory negligence, we are of the opinion that, though the appellant cannot be held to be entirely free from blame because he drove right across the street when another car was approaching, he did so at such a long distance from the other car that his degree of liability was erroneously assessed at thirty per cent and that it cannot be held to amount to anything more than fifteen per cent. 15 20

In reaching the above conclusion we have duly borne in mind that the trial Court accepted as true the version of the appellant as regards what happened and that it rejected that of the respondent; and it was testified by the appellant that, at the time when he drove across the street, the respondent was so far away and moving at such a speed that he thought that it was really safe, in his opinion, to act as he has done. 25 30

In the result, this appeal is allowed. The amount of damages which the appellant has to pay to the respondent has to be reduced by half, that is to C£291.500 mils, and the costs awarded by the trial Court against the appellant have to be reassessed on the scale appropriate for the above amount. 35

The appellant is entitled to receive from the respondent half the costs of this appeal.

Appeal allowed. Order for costs as above.

* (1977) 1 C.L.R. 15.