1981 April 16

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

VASSILIS PATSALIDES,

Appellant-Plaintiff,

v.

STELIOS MILIKOURI,

Respondent-Defendant.

(*Civil Appeal No.* 5958).

Negligence—Contributory negligence—Apportionment of liability—Road accident—Running down case—Pedestrian knocked down by motor vehicle whilst crossing avenue, after he had covered a distance of almost 30 *ft. and when at a distance of* 2 1/2 *ft. from edge of the asphalted part of the road—Crossing started when vehicle at a distance of about* 360 *ft. away—Road clear at the time and line of vision of driver long—Brake marks of* 40 *ft.—Thinking distance—Trial Court finding that driver must have first noticed presence of pedestrian when latter was already in the process of crossing—Had driver kept a proper look out accident would have been avoided—Driver solely to blame for the accident—Trial Court's apportionment of liability, pedestrian two thirds and driver one third, set aside.*

On January 20, 1977, at about 5.15 p.m. and whilst there was still day-light, the appellant started crossing Larnaca avenue, in Aglandjia village, Nicosia, after having seen that the only vehicle using same was a car at a distance of about 360 ft. away to his left coming towards him from the direction of Nicosia. He proceeded diagonally from right to left in relation to the direction of the car and after he had covered a distance of almost 30 ft. and when he was only 2 1/2 from the left edge of the asphalted part of the road, he was hit and injured by that car, which was driven by the respondent, after the said car left 40 ft. of brakemarks, the appellant having stopped momentarily on being alarmed by the sound of the brakes. The trial Court found that the respondent must have first noticed the presence of the appellant "when the latter was already in

the process of crossing"; and that the appellant "by starting to cross the road at such a hazardous point of time planted himself in the difficult position which caused the accident and in this respect he was negligent". On these findings the trial Court apportioned the liability of the appellant at two thirds and of the respondent at one third. Hence this appeal.

Held, (1) that the application of the brakes naturally presupposes the existence of a thinking distance caused by the vehicle before the brakes lock; that it was, therefore, reasonable to infer that the appellant was seen the latest from a distance more than the length of the brakemarks left on the road; that it was, also, reasonable to infer that the appellant started crossing the road long before the respondent saw him at such a position in the road as to feel compelled to apply brakes in order not to hit him; that, therefore, on these established realities the finding of the trial Court that the appellant "by starting to cross the road at such a hazardous point of time planted himself in the difficult position which caused the accident and in this respect he was negligent" was not warranted by the evidence.

(2) That the road was clear at the time, the line of vision of the respondent was unquestionably long and had he kept a proper look-out he would and ought to have seen the appellant much earlier than he did and the accident would have been avoided; that in view of the finding of the trial Court that the respondent must have noticed the presence of the appellant "when the latter was in the process of crossing", coupled with the real evidence and the uncontradicted facts of the case, the appellant when crossing the road took such a care for himself as a reasonable man would have taken for his own safety and that his conduct at the time was not a contributory cause of the accident; accordingly the appeal must be allowed and the apportionment made by the trial Court must be set aside.

Appeal allowed.

Cases referred to:

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

Papadopoullos v. *Pericleous* (1980) 1 C.L.R. 576 at pp. 579–580.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C. and Orphanides, S.D.J.)

dated the 30th April, 1979 (Action No. 2152/77) whereby the apportionment of liability in respect of a traffic accident, in which he was found guilty of contributory negligence, was fixed to be 2/3 on his part and 1/3 on the part of the defendant.

G. Pelaghias, for the appellant.

D. Liveras, for the respondent.

A. Loizou J. gave the following judgment of the Court. This is an appeal by the plaintiff (hereinafter to be referred to as the appellant) against the apportionment of liability made by the Full District Court of Nicosia in respect of a traffic accident in which, being himself a pedestrian at the time, was hit by motor-car under Registration No. AX.344 driven by the respondent on Larnaca Avenue in Aglandjia village, Nicosia. The said apportionment of liability was at 2/3 on the part of the appellant and 1/3 on the part of the respondent.

The amount of special and general damages had been agreed at the trial at C£5,250.- and what was in issue was only the question of liability.

The facts of the case are as follows:

On the 20th January, 1977, at about 5.15 p.m., and whilst there was still day-light, the appellant started crossing the Larnaca Avenue after having seen that the only vehicle using same was a car at a distance of about 360 ft. away to his left coming towards him from the direction of Nicosia. He did so from the right-hand corner of the 'T' junction formed by Andreas Panayides Street with the said Avenue. He proceeded diagonally from right to left in relation to the direction of the car and after he covered a distance of almost 30 ft. and when he was only 2 1/2 ft. from the left edge of the asphalted part of the road, he was hit and injured by that car driven by the respondent after the said car left 40 ft. of brake-marks, the appellant having stopped momentarily on being alarmed by the sound of the brakes. On this latter point the trial Court rejected the explanation of the appellant that he stopped because of the muddy condition of the berm. Learned counsel for the respondent invited this Court to find that what caused the accident was this stopping of the appellant. He urged that had he proceeded to cross over, he would not have been hit and the accident would have been avoided. The finding

of the Court, however, constitutes a complete answer to this argument because when a person is put in a dilemma his reactions, because of the agony of the moment, cannot be held against him even if they are not the most appropriate that should have been taken.

In examining the issue of the liability there are certain fundamental factors that have to be taken into consideration. The application of the brakes naturally presupposes the existence of a thinking distance covered by the vehicle before the brakes lock. It was only, therefore, reasonable to infer that the appellant was seen the latest from a distance more than the length of the brake marks left on the road. It was also reasonable to infer that the appellant started crossing the road long before the respondent driver saw him at such a position in the road as to feel compelled to apply brakes in order not to hit him. On these established realities, therefore, the trial Court was, in our view, wrong to find that the appellant "by starting to cross the road at such a hazardous point of time planted himself in the difficult position which caused the accident and in this respect he was negligent". This is a finding not warranted by the evidence. The road was clear at the time, the line of vision of the respondent was unquestionably long and had he kept a proper look-out he would and ought to have seen the appellant much earlier than when he was actually seen. He should have noticed the presence of the appellant when he latter was in the process of crossing soon after he stepped on the road and proceeded diagonally in it and during the time he was so crossing.

We do not intend to embark into a mathematical calculation and ascertain the position of the car by examining its speed in relation to the time that it takes a pedestrian to cover a distance of 20 to 25 ft. at a walking pace and at that an old man as the appellant is. Suffice it to say that had the respondent had a proper look-out, he would have seen the appellant much earlier than he did and the accident would have been avoided, either by slowing his speed further down and giving way to the pedestrian to complete his crossing or by moving to the right.

In fact, in dealing with the liability of the respondent the trial Court by its finding supports this approach by saying:

"The defendant, on the other hand, is not free from blame

because he too could have noticed the plaintiff's presence on the road and his intention to cross it. In fact, we find judging from the whole evidence before us that he must have first noticed the presence of the plaintiff when the latter was already in the process of crossing".

In view of these findings and inferences of the trial Court, we cannot see how the appellant was found by it to have started crossing the road at a hazardous point of time in relation to the car as to have contributed to the accident.

The aforesaid findings and inferences of the trial Court, therefore, coupled with the real evidence and the uncontradicted facts of the case could only lead us to the inference that the pedestrian when crossing the road took such a care for himself as a reasonable man would have taken for his own safety and that his conduct at the time was not a contributory cause of the accident in question in a way.

We have, therefore, come to the conclusion that we should intervene with the apportionment of liability made by the trial Court, bearing in mind the principles often expounded in this connection in previous case law of this Court, such as, *inter alia*, the case of *Dieti* v. *Loizides* (1978) 1 C.L.R., p. 233, at p. 242; and *Papadopoulos* v. *Pericleous* (1980) 1 C.L.R., p. 576, at pp. 579–580, and the authorities mentioned therein.

For all the above reasons and having found that the respondent was solely to blame, we allow the appeal and set aside the apportionment made by the trial Court as being contrary to the evidence. Judgment, therefore, should be entered for the appellant for the agreed amount of C£5,250.– as special and general damages, with costs here and in the Court below.

Appeal allowed with costs.