

1981 November 30

[LORIS, STYLIANIDES, PIKIS, JJ.]

NICOLAS KYRIACOU,

Appellant-Defendant,

v.

A. KORTAS & SONS LTD.,

Respondents-Plaintiffs.

(Civil Appeal No. 6065).

*Findings of fact—Credibility of witnesses—Appeal turning thereon—
Principles applicable—Collision at cross-roads controlled by
traffic lights—Trial Court finding appellant solely to blame for
the accident in that he proceeded across the cross-roads while
the traffic lights were against him—Court of appeal not satisfied
that finding was not warranted or that the trial Court erred in
accepting as true evidence which has led it to the said finding.*

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These proceedings arose out of a collision of two motor cars at a cross-road controlled by traffic-lights. The main issue before the trial Court was that of liability for the collision; and by the judgment under appeal such issue was determined against the appellant who was held solely to blame for the accident, in that he proceeded across the cross-road at a time when the traffic-lights were against him and in favour of the respondent.

Upon appeal by the defendant solely on the ground that the finding of the trial Court that he was solely to blame for the accident was contrary to the evidence and unwarranted:

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Held, that in appeals directed against the credibility of witnesses it must be shown that the trial Judge was wrong in evaluating the evidence and the onus is on the appellant to persuade the Court of Appeal that that is so; that matters relating to credibility of witnesses fall within the province of the trial Judge who has the opportunity to see and hear the witnesses; that if on the evidence before him it was reasonably open to him to make the findings to which he arrived at, then this Court will not interfere unless the inferences drawn therefrom are

not warranted by the findings whereupon this Court can draw its own conclusions; that having considered the submission made, in the light of the judgment of the trial Court and the record, this Court is not satisfied that the finding of the Court below, to the effect that the appellant was negligent, in that he proceeded across the cross-roads while the traffic-lights were against him, was not warranted or that such Court erred in accepting as true evidence which has led it to the said finding. 5

Held, further, that on the material before this Court the appellant has failed to discharge the burden of establishing that the trial Court ought to have found the driver, employee of the respondent company, guilty of contributory negligence. 10

Appeal dismissed.

Appeal.

Appeal by defendant 1 against the judgment of the District Court of Nicosia (Laoutas, D.J.) dated the 14th January, 1980, (Action No. 3254/77) whereby he was adjudged to pay to plaintiffs the sum of £415.380 mils by way of damages in a traffic collision. 15

M. Christodoulou, for the appellant. 20

St. Erotokritou (Mrs.), for the respondents.

LORIS J. gave the following judgment of the Court. We consider it unnecessary to hear the respondent in view of the failure of the appellant to persuade us that the judgment appealed from is in any way wrong. We shall proceed now to deliver our judgment. 25

This is an appeal of defendant 1 against the judgment of the District Court of Nicosia (Laoutas, D.J., as he then was) given on the 14th January, 1980, by virtue of which the aforesaid defendant—appellant in the present appeal—was adjudged to pay to the plaintiff company—the respondents of the present appeal—the sum of £415.380 mils by way of damages in relation to a traffic collision which occurred on the 22nd July, 1976, through the sole negligence of the appellant as found by the trial Court. 30 35

It is common ground that at about 6.00 a.m. on the 22nd July, 1976, the appellant was driving motor-car under Reg.

No. C.T. 976 along Grivas Dighenis Avenue in Nicosia with a direction towards Engomi; at the same time the employee of the respondent company was driving company's motor-car under Reg. No. D.G. 215 along Demosthenis Severis Avenue
5 heading towards Γ.Σ.Π.

At the crossroad of Demosthenis Severis Avenue with Grivas Dighenis Avenue, controlled by traffic-lights, the cars driven by the appellant and the employee of the respondent company collided; as a result a passenger in appellant's car was injured
10 and the two vehicles were extensively damaged; in fact the respondent company—plaintiffs in the said action—aver in their statement of claim that the motor-car under Reg. No. D.G. 215 became a total loss as a result of the accident; further the respondents claimed damages in respect of the dairy products
15 then in transportation in their said car.

The main issue before the trial Court was that of liability for the collision; and by the judgment under appeal such issue was determined against the appellant who was held solely to blame for the accident, in that he proceeded across the crossroad
20 at a time when the traffic-lights were against him and in favour of the car of the respondent company.

The main contention of counsel for the appellant in this appeal was to the effect that the finding of the trial Court that the defendant was solely to blame for the accident was contrary
25 to the evidence and unwarranted.

The principles upon which this Court decides appeals directed against the credibility of witnesses are well settled and we need not enter into them in detail: It must be shown that the trial Judge was wrong in evaluating the evidence and the onus is
30 on the appellant to persuade the Court that that is so. Matters relating to credibility of witnesses fall within the province of the trial Judge who has the opportunity to see and hear the witnesses. If on the evidence before him it was reasonably open to him to make the findings to which he arrived at, then
35 this Court will not interfere unless the inferences drawn therefrom are not warranted by the findings whereupon this Court can draw its own conclusions.

Having considered the submission made in the light of the judgment of the trial Court and the record, we are not satisfied

that the finding of the Court below, to the effect that the appellant was negligent, in that he proceeded across the crossroads while the traffic-lights were against him, was not warranted or that such Court erred in accepting as true evidence which has led it to the said finding.

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Counsel for appellant submitted further that even if the appellant was jumping the traffic-lights, nevertheless the driver of the respondent company ought to be found contributory to the accident. On the material before us we hold the view that the appellant has failed to discharge the burden of establishing that the trial Court ought to have found the driver, employee of the respondent company, guilty of contributory negligence.

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The remaining issue in this appeal is that of damages. Here again we have not been persuaded that the assessment made by the trial Court was unwarranted by the evidence, although we might have—had the matter been open to us—made a different assessment, possibly raising the amount awarded in favour of the plaintiff concerning the value of the car. The issue does not arise at all before us in the absence of a cross-appeal.

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In the result the appeal is dismissed with costs for the respondents.

Appeal dismissed with costs.