

1981 October 26

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

CHRISTOS DESPOTIS,

Appellant—Plaintiff.

v.

ANDREAS THERAPI,

Respondent—Defendant.

(Civil Appeal No. 5912).

5 *Negligence—Contributory negligence—Findings of trial Court on liability—Appeal—Principles on which Court of Appeal intervenes—Road accident—Collision of vehicles moving in opposite directions—Duty to take care by drivers of vehicles approaching each other—Appellant driving on the wrong side of the road—Finding of trial Court that he was solely to blame for the accident upheld.*

10 The appellant was adjudged to pay to the respondent the amount of C£455 as special damages in respect of damage caused to the car of the respondent in a collision with the lorry of the appellant whilst the two vehicles were being driven in opposite directions towards each other. The collision took place on the wrong side of the road, in so far as the appellant was concerned. The trial Judge found that the appellant had
15 failed to give any adequate explanation for being on his wrong side of the road at the material time and, furthermore, that the respondent was not, in the circumstances of this case, to blame for not having managed to drive further to the left in an effort to avoid the collision; so, he found that the appellant
20 was solely to blame for such collision and that, consequently, the respondent was not guilty of any contributory negligence.

Upon appeal:

25 *Held, (after dealing with the duty to take care by drivers of vehicles approaching each other) that in the light of the principles on the strength of which this Court interferes on appeal with the finding of a trial Court on liability (see, inter alia, Papadopoulos v. Pericleous (1980) 1 C.L.R. 576 at p. 579) and Patsalides v. Milikouri (1981) 1 C.L.R. 158 at p. 162) there is no*

adequate reason for interfering with the finding of the trial Court as to liability in the present case; accordingly the appeal must fail.

Appeal dismissed.

Cases referred to: 5

Theofanous v. Markides (1975) 1 C.L.R. 199 at p. 206;

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

Papadopoulos v. Pericleous (1980) 1 C.L.R. 576 at p. 579;

Patsalides v. Milikouri (1981) 1 C.L.R. 158 at p. 162.

Appeal. 10

Appeal by plaintiff against the judgment of the District Court of Nicosia (Chr. Ioannides, P.D.C.) dated the 23rd November, 1978 (Action No. 3757/75) whereby plaintiff was ordered to pay to the defendant C£455.-, on his counter-claim, as special damages in respect of damage caused to defendant's car in a collision with plaintiff's lorry. 15

M. Vassiliou, for the appellant.

G. I. Palaghias, for the respondent.

TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellant, who was the plaintiff before the trial Court, appeals against the judgment given on a counter-claim in favour of the defendant in the case, who is now the respondent in this appeal. 20

By means of the said judgment the appellant was ordered to pay to the respondent the amount of C£455 as special damages in respect of damage caused to the car of the respondent in a collision with the lorry of the appellant. At the time the two vehicles were being driven in opposite directions towards each other. 25

The said amount of C£455 was agreed between the parties as damages and what the trial Court had to determine was only the question of liability for the collision. 30

As regards the duty to take care of drivers of vehicles approaching each other reference may be made to *Theofanous v. Markides*, (1975) 1 C.L.R. 199, 206, where it was stated 35

(following *Pourikkos v. Fevzi*, (1963) 2 C.L.R. 24, 31) that it is, of course, always a question of fact whether each party has taken sufficient precautions to avoid the collision. The *Theophanous*, case, *supra*, was followed in *Papadopoulos v. Pericleous*, (1980) 1 C.L.R. 576, 579.

From the evidence of the respondent, which the trial Court accepted as correct in preference to that of the appellant, and which evidence tallies substantially with the real evidence which was placed before the trial Court by the police investigating officer, it is abundantly clear that the collision took place on the wrong side of the road, in so far as the appellant was concerned.

The trial Judge found that the appellant had failed to give any adequate explanation for being on his wrong side of the road at the material time and, furthermore, that the respondent was not, in the circumstances of this case, to blame for not having managed to drive further to the left in an effort to avoid the collision; so, he found that the appellant was solely to blame for such collision and that, consequently, the respondent was not guilty of any contributory negligence.

The principles on the strength of which this Court interferes on appeal with the finding of a trial Court on liability have been referred to in, *inter alia*, the *Papadopoulos*, case, *supra* (at p. 579) and, also, in *Patsalides v. Milikouri*, (1981) 1 C.L.R. 158, 162. In the light of such principles we see no adequate reason for interfering with the finding of the trial Court as to liability in the present case.

In the result this appeal is dismissed with costs.

Appeal dismissed with costs.