

1982 July 6

[HADJIANASTASSIOU, LORIS AND PIKIS, JJ.]

PARASKEVI MESHIOU,

*Appellant-Plaintiff,*

v.

LEFCOS ELEFThERIOU,

*Respondent-Defendant.*

(Civil Appeal No. 6194).

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*Civil Procedure—Trial of civil cases—Road accident case—Failure of trial Judge to make the necessary overall assessment of the evidence and especially to evaluate the real evidence—His findings cannot be safely relied upon—Disinclination of Court of Appeal to interfere with findings of trial Court recedes in view of a real likelihood that such findings may have been arrived at, either in disregard to or without a proper evaluation of the evidence—* 5  
*—And that as findings of the trial Court do not vest on inferences from primary facts, but on a combination of primary facts, involving, inter alia, the credibility of witnesses and inferences drawn therefrom, only alternative is to order a retrial before another Judge.* 10

*Evidence—Real evidence—Is a great assistance in road accident collisions.*

These proceedings arose out of a road accident involving a saloon car driven by the appellant-plaintiff and a lorry driven by the respondent-defendant. The trial Court, faced with two conflicting versions about the circumstances that led to the accident, found for the respondent having accepted in effect that the accident occurred as a result of the act of the appellant to drive forward, when it was manifestly dangerous so to do. 15 20

The appellant challenged the findings of the trial Court on account of alleged failure to evaluate the evidence before it and appraise it in the context of the totality of the evidence.

*Held*, that the trial Court failed to heed in its judgment 25

important aspects of the evidence and reflect on their bearing on the outcome of the case; that, also, there was failure to advert to certain contradictions in the account of the respondent of the accident and failure to make reference to the point of impact; that, moreover, the failure of the trial Judge to make the necessary overall assessment of the evidence, especially his omission to evaluate in the proper perspective the real evidence, renders his findings vulnerable to the extent that it would be unsafe to rely upon them as proven facts; that in the face of this reality, the disinclination of the Court of Appeal to interfere with the findings of the trial Court recedes in view of a real likelihood that such findings may have been arrived at, either in disregard to or without a proper evaluation of the evidence; that as the findings of the trial Court do not vest on inferences from primary facts, but on a combination of primary facts, involving, inter alia, the credibility of witnesses and inferences drawn therefrom, the only alternative is to order a retrial before another Judge.

*Appeal allowed.*

*Retrial ordered.*

*Observations with regard to the great assistance of real evidence in road accident collisions.*

#### Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Papadopoulos, P.D.C.) dated the 24th October, 1980, (Action No. 3386/78) whereby her action for damages for personal injuries which she suffered as a result of a road accident was dismissed.

*C. Gavrielides*, for the appellant.

*G. Pelagias*, for the respondent.

HADJIANASTASSIOU J.: Having deliberated on the outcome of the appeal during a break, we are ready to deliver our judgment. Pikis, J., will deliver the judgment of the Court.

PIKIS J.: The trial Court was concerned to adjudicate on the liability of the parties, respecting a road accident that occurred on 1st March, 1978, on a side-road leading to the main Lakatamia—Dheftera road, involving a saloon car, under the control of the appellant, plaintiff before the trial Court, and

a lorry driven by the respondent, defendant before the trial Court.

The parties advanced before the trial Court conflicting versions about the circumstances leading to and attending the occurrence of the accident. The appellant maintained that the accident occurred when her car was stationary next to the pavement, while the respondent was in the process of overtaking her vehicle. She refuted the suggestion of the respondent that the collision occurred in circumstances leaving a large share of the responsibility for the accident on her. In particular, she denied that the accident happened as a result of her setting her stationary car in motion and moving forward at a time when the lorry was engaged in the process of overtaking her car. As a matter of fact, her contention was that she kept a look on traffic coming from the rear, noticed the lorry coming up from behind, and kept waiting for the passage to clear before moving on. The respondent, on the other hand, contended that the two cars collided when he had virtually driven past the saloon car as a result of the action of the appellant who, suddenly and unexpectedly, and without any prior warning, set her car to go forward. On any view of the evidence, an inescapable inference is that the respondent overtook the car of the appellant from a distance that was unreasonably close. His lack of care in this regard becomes greater on reflection considering that the road was 30 ft. wide and the two vehicles occupied less than 13 ft. of the road. No suggestion was made that any obstacle prevented him from overtaking the car of the appellant from a wider angle.

The scene of the accident was surveyed by a police constable who assumed the investigation of the accident and prepared a plan of the scene, noting thereon such pieces of real evidence as he could trace.

Papadopoulos, P.D.C., found for the defendant, accepting in effect that the accident occurred as a result of the act of the plaintiff to drive forward, when it was manifestly dangerous so to do, precipitating the accident that followed.

The appellant challenged the findings of the trial Court, on account of alleged failure to evaluate the evidence before it and appraise it in the context of the totality of the evidence before

the Court. The failure led, in the submission of learned counsel, the Court to ignore significant pieces of evidence, especially the evidence of the investigating officer as to the point of impact, and an omission to appraise the implications and impact of contradictions in the version of the respondent. And he went on to submit that the evidence, properly evaluated, should result in the action of the appellant being sustained. Consequently, he invited us to allow the appeal and give judgment for the appellant for the sum of £900.- the agreed damages.

Learned counsel for the respondent invited us to dismiss the appeal, arguing that the findings of the trial Court rest on the credibility of the witnesses, an area that should be kept free of interference by the Court of Appeal, except in the most clear and compelling circumstances. We may note that the element of discretion that vests in the trial Court, to evaluate the evidence, was recently emphasized by this Court in its judgment in Civil Appeal No.6138, delivered on 1/6/82\*.

There is substance in the criticism that the trial Court failed to heed in its judgment important aspects of the evidence and reflect on their bearing on the outcome of the case. Also, there was failure to advert to certain contradictions in the account of the respondent, of the accident. The trial Judge totally omitted, in his judgment, to make reference to the point of impact, as ascertained by the investigating officer on the indications of the respondent, about 5.5' ft. from the edge of the road, adjacent to which there was parked the car of the appellant. Had this piece of evidence been properly weighed, it might lead the Court to different conclusions from those arrived at as to the circumstances of the accident; for, if the point of impact was correctly identified by the investigating officer, a very probable inference would be, bearing in mind the width of the saloon car, 5.4' ft., that the accident happened while the car of the appellant was stationary, a finding that would strongly corroborate her account of the accident. Moreover, the trial Judge failed to go into the apparent contradiction between the testimony of the respondent at the trial as to the distance that separated his lorry from the saloon car while overtaking it, one or two feet, and his aforementioned indication of the point of impact to the police constable, that virtually tallies with the width of the saloon car. There was, also, another apparent

\* See (1982) 1 C.L.R. 321.

contradiction in the version of the respondent, as related in his statement to the police, and the version put forward in Court as to his intended destination, to the police constable. In his statement to the police, he maintained that it was within his contemplation to turn to the left when reaching the main road. In court, he was vague on the subject, but, finally, stated that he intended to turn in the opposite direction.

The failure of the trial Judge to make the necessary overall assessment of the evidence, especially his omission to evaluate in the proper perspective the real evidence, renders his findings vulnerable to the extent that it would be unsafe to rely upon them as proven facts. Of especial significance is his failure to direct his attention to the real evidence. It has been said time and again that in road accident collisions, real evidence is of great assistance, as more often than not it offers an insight into what happened. Common experience tells us that in road accident collisions, the parties immediately involved thereto are apt to form a mistaken impression about a variety of facts, including their position on the road, not least because of the great speed with which events develop. Real evidence, on the other hand, is not dependent on the impressions of the parties, and in appropriate circumstances, it may offer reliable evidence as to what happened. After all, we are dwelling on the theme of negligence where a momentary inattention or distraction may be the agent of the collision. Real evidence may guide us to the ascertainment of the true facts surrounding a collision.

The judgment of the trial Court is vulnerable on another score, as well. The trial Judge failed to appreciate or evaluate the implications arising from the fact that the respondent did, on any view of the evidence, overtake the saloon car from a distance that was too close, increasing thereby the likelihood of danger to other users of the road. This is a consequential consideration, more so in view of the absence of any obstacle or hindrance to the use of the remaining patch of the road.

In the light of the above, we are of the view that the findings of the trial Court cannot be safely relied upon. In the face of this reality, the disinclination of the Court of Appeal to interfere with the findings of the trial Court, recedes in view of a real likelihood that such findings may have been arrived at,

either in disregard to or without a proper evaluation of the evidence.

What should be done in the circumstances:

5 We cannot sustain the submission of learned counsel for the appellant and find for his client. For, the findings of the Court do not rest on inferences from primary facts, but on a combination of primary facts, involving, inter alia, the credibility of witnesses and inferences drawn therefrom. In our judgment, the only alternative is to order a retrial before another  
10 Judge, and we so order.

The costs before the trial Court will be costs in the cause.

The costs of the appeal will be borne by the respondent.

*Appeal allowed.*

*Retrial ordered.*

*Order for costs as above.*

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