1982 October 11

[L. LOIZOU, DEMETRIADES, PIKIS, JJ.]

IOANNIS VAKANAS,

Appellant-Plaintiff,

v.

MICHAEL THOMAS AND ANOTHER,

Respondents-Defendants.

(*Civil Appeal No.* 6229).

Negligence—Road accident—Main road—Side road—"Halt sign" —Motorist travelling along the main road need not anticipate, unless he has some forewarning of such an eventuality that another user of the road will emerge on a main road from a side road without first stopping and making certain that it is safe so to do—Side road driver held wholly to blame for the accident because he failed to stop at the halt sign.

Negligence—Users of the road—Duty to take due care for observance of rights of other users of the road—Whether such duty discharged a question of fact—The duty is to avoid exposing other users of the road to reasonably foreseeable dangers—What is a foreseeable danger—In determining risks which are reasonably likely to arise one is guided by reason and the experience of mankind —Courts should be guided by standards of common sense.

These proceedings arose out of a traffic accident, at Dem. Severis Avenue, Nicosia, close to the junction with Ayii Omoloyitae Avenue, involving the appellant, a pedal cyclist, and respondent 1, a motor car driver. The trial Court found the cyclist solely to blame for the accident after finding that he emerged on Dem. Severis Avenue without first halting, as required by a halt sign at the junction of the two avenues, and proceeded to cross diagonally Severis Avenue at a time when it was highly dangerous so to do, in view of the presence of the motorcar of the respondent on the road, and its direction, leaving little margin of manoeuvre to the motorist to avoid the accident.

Upon appeal by the cyclist:

Held, that a motorist travelling along the main road need

not anticipate, unless he has some forewarning, of such an eventuality, that another user of the road will emerge on a main road from a side road without first stopping and making certain that it is safe so to do (see, inter alia, *Varnakkides* v. *PapaMichael and Another* (1970) 1 C.L.R. 367); that the tort of negligence is intended to maintain reasonable standards of behaviour among neighbours; that this duty takes the form of exhibition, in the case of users of the road, of due care for the observance of the rights of other users of the road; that the precise duty in given circumstances depends on the facts of the case; that whether this duty has been discharged, or whether there is a breach of it, is decided as a question of fact; that the standard to be observed is fixed impersonally and universally in relation to the safety of other users of the road; that its discharge varies with the facts of each case; that the duty is to avoid exposing other users of the road to reasonably foreseeable dangers; that foreseeable danger is one that reason and common sense suggest it is reasonably likely to materialise, as opposed to a risk, the occurrence of which is a mere possibility; that if motorists and users of the road were to act on the assumption that other users of the road were inevitably bound to be negligent, we would be imposing an impossible burden on users of the road, far beyond what reason and experience justify; that in determining the risks which are reasonably likely to arise, one is guided by reason and the experience of mankind; that the robust standards of common sense should guide the Court in its appreciation of a given situation; that it is unprofitable to be perplexed by niceties, such as the precise point from which the parties were in sight of one another, that tends to give the impression that we are concerned with a mathematical exercise; that applying these principles to the facts of the case, the one factor to be singled-out in the conduct of the parties, is the rushness with which the cyclist emerged on the road, reducing, in the circumstances, to the minimum the ability of the motorist to avoid the collision; that no blame should be attached to the motorist for the accident; accordingly the appeal should fail.

Appeal dismissed.

Cases referred to:

Varnakkides v. *Papamichael and Another* (1970) 1 C.L.R. 367;

Elpiniki Panayiotou v. *Georghios Kyriacou Mavros* (1970) 1 C.L.R. 215;

Karikatou v. *Soteriou, Soteriou* v. *Apseros* (1979) 1 C.L.R. 150.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Stylianides, P.D.C. and Fr. Nicolaides, D.J.) dated the 31st January, 1981, (Action No. 2481/79) whereby his claim for damages for personal injuries sustained by him in a traffic accident was dismissed.

E. Vrachimi (*Mrs.*), for the appellant.

S. Erotocritou (*Mrs.*), for the respondents.

L. LOIZOU J.: We consider it unnecessary to hear the respondents in reply. The appeal fails. Mr. Justice Pikis will give our reasons for dismissing the appeal.

PIKIS J.: This appeal is directed against the findings and conclusions of the District Court of Nicosia in relation to an accident that occurred on 10th April, 1975, at Dem. Severis Avenue, close to the junction with Ayii Omoloyitae Avenue, involving the appellant, a pedal cyclist, and respondent 1, who was in charge of motorcar under Reg. No. DB336. The circumstances preceding and attending the collision, were the subject of careful and detailed analysis by the trial Court. They found the cyclist solely to blame for the accident, absolving the motorist of any liability for its occurrence.

Briefly, the trial Court found that the cyclist emerged on Dem. Severis Avenue without first halting, as required by a halt sign at the junction of the two avenues, and proceeded to cross diagonally Severis Avenue at a time when it was highly dangerous so to do, in view of the presence of the motorcar of the respondent on the road, and its direction, leaving little margin of manoeuvre to the motorist to avoid the accident. Further, the trial Court held that the reaction of the motorist to the dangerous situation, created on the road by the pedal cyclist, was blameless, in that he could not reasonably anticipate that the cyclist would enter the main road without first halting, in view of the slow pace at which he was seen approaching the junction. He first sensed danger when the cyclist, in gross disregard to his safety and that of other users of the road, emerged on Severis Avenue, speeding up in an effort to cross to the opposite side. Faced with this dilemma, the motorist applied brakes taking further to the left, hoping, thereby, to avert a collision. The cyclist emerged on to Severis Avenue from his right. He was nearly

successful in avoiding a collision for, he had just managed to bring his car to a standstill before the cyclist collided with the front right bumper of the car, sustaining serious injuries, as the trial Court found, that would have entitled him to a substantive award of damages had the motorist been held liable in negligence.

Mrs. Vrahimi strenuously argued that the evidence before the trial Court warranted a finding that the motorist ought to have sensed the possibility of danger emerging earlier than he did, and that, in consequence, the precautions taken by the motorist to avoid the accident, were inadequate; therefore, he should be held responsible in part, for the injuries suffered by the appellant. She submitted it is unreasonable to presume, having regard to the distance that the cyclist covered on the main road up to the point of impact in juxtaposition to the distance covered by the motorist up to the same point, that the cyclist was travelling as fast, or faster than the motorist. She made this submission notwithstanding the finding of the trial Court that the cyclist accelerated his speed in order to cross the road while the motorist was breaking down his speed in an effort to bring his car to a stop. Eventually, she submitted that the motorist ought to have taken steps to prevent the collision before the cyclist emerged on the main road, inasmuch as the eventuality of the cyclist failing to stop, was one that ought reasonably to be anticipated. As the trial Court observed, relying on authority, the duty of a reasonable motorist, and for that matter of any user of the road, does not extend beyond taking precautions against a reasonably foreseeable danger.

The cases of *Varnakkides v. Papamichael and Another* (1970) 1 C.L.R. 367, *Elpiniki Panayiotou v. Georghios Kyriacou Mavros* (1970) 1 C.L.R. 215, and *Karikatou v. Soteriou, Soteriou v. Apseros* (1979) 1 C.L.R. 150, establish that a motorist travelling along the main road need not anticipate, unless he has some forewarning, of such an eventuality, that another user of the road will emerge on a main road from a side road without first stopping and making certain that it is safe so to do.

The tort of negligence is intended to maintain reasonable standards of behaviour among neighbours. This duty takes the form of exhibition, in the case of users of the road, of due care

for the observance of the rights of other users of the road. The precise duty in given circumstances depends on the facts of the case. Whether this duty has been discharged, or whether there is a breach of it, is decided as a question of fact. The standard to be observed is fixed impersonally and universally in relation to the safety of other users of the road. Its discharge varies with the facts of each case. The duty is to avoid exposing other users of the road to reasonably foreseeable dangers. A foreseeable danger is one that reason and common sense suggest it is reasonably likely to materialise, as opposed to a risk, the occurrence of which is a mere possibility. If motorists and users of the road were to act on the assumption that other users of the road were inevitably bound to be negligent, we would be imposing an impossible burden on users of the road, far beyond what reason and experience justify. In determining the risks which are reasonably likely to arise, one is guided by reason and the experience of mankind. The robust standards of common sense should guide the Court in its appreciation of a given situation. It is unprofitable to be perplexed by niceties, such as the precise point from which the parties were in sight of one another, that tends to give the impression that we are concerned with a mathematical exercise. Applying these principles to the facts of the case, the one factor to be singled-out in the conduct of the parties, is the rushness with which the cyclist emerged on the road, reducing, in the circumstances, to the minimum the ability of the motorist to avoid the collision. No blame should be attached to the motorist for the accident.

For the reasons above given, we judged it unnecessary to call upon the respondents to reply to the arguments raised in support of the appeal, taking the view that the appeal is bound to fail.

The appeal is dismissed. As there is no claim for costs, there would be no order as to costs.

Appeal dismissed. No order as to costs.