1982 October 14

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

VASSOS EVAGOROU AND 2 OTHERS,
Appellants-Defendants,

v.

NICOS KEFALAS AND OTHERS,
Respondents-Plaintiffs.

(*Civil Appeal No.* 6304).

Negligence—Road accident—Collision on a curve between cars driven from opposite directions—Point of impact about the centre—Apportionment of liability equally between the two drivers—Sustained—Howard *v.* Bemrose [1973] *R.T.R.* 32 *at p.* 35 *adopted.*

These proceedings arose out of a collision, on a curve between two cars driven from opposite directions. The trial Court after analysing the evidence came to the conclusion that the collision was a head-on collision approximately in the middle of the asphalted part of the road and apportioned liability equally between the two drivers.

Upon appeal against the apportionment of liability:

Held, that on the basis of the findings of the trial Court which were duly warranted by the evidence, its apportionment of liability was the correct one; that there was nothing in the evidence to indicate that the accident occurred on the side of the road which belonged to the one or the other party; that, in fact, they were obviously both to blame inasmuch as in approaching and negotiating a curve none of them took the precaution of taking to the extreme left and also they both failed to keep a proper look-out in time in order to avoid the collision; that the principles of law set out in *Howard* v. *Bemrose* [1973] R.T.R. 32 at p. 35 with which this Court agrees cover also a fortiori the present case as in addition there is clear and

undisputed evidence that the point of impact was about the centre of the road; that, therefore, the appeal must be dismissed.

Appeal dismissed.

Cases referred to:

Baker v. *Market Harborough Co-Operative Society* [1953] 1 W.L.R. 1472;

Howard v. *Bemrose* [1973] R.T.R. 32 at p. 35.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (HjiConstantinou, S.D.J. and Nikitas, D.J.) dated the 9th July, 1981 (Consolidated Actions Nos. 3060/77, 3367/77, 2658/78 and 2659/78) whereby they were adjudged to pay to all the plaintiffs the sum of £7,400.- as damages for personal injuries received as a result of a traffic accident.

A. Dikigoropoulos, for the appellants.

I. Avraamides, for the respondents.

A. Loizou J. gave the following judgment of the Court. This appeal which has been taken in these four consolidated actions, has been argued only in so far as the issue of liability is concerned as a discrepancy that appeared in the judgment of the Court with regard to the amounts adjudged to be paid to the plaintiffs has been corrected by statement of counsel made at the outset of the case. The statement is as follows and speaks for itself:

"*Dikigoropoullos:* On the facts as they appear in the record of the proceedings, and assuming the apportionment of liability is correct, then the correct judgment would have been in Actions Nos. 3367/77, 2658/78 and 2659/78, the amounts agreed without any reduction because these people were passengers as follows:

In Action No. 3367/77, £1,500.-

In Action No. 2658/77, £1,400.-

In Action No. 2659/78, £600.-.

In Action 3060/77, the judgment would have been £1,950.-, that is half of the quantum agreed and there would be judgment against the plaintiff in favour of the

defendants for £120 agreed special damages and £1,750 as indemnity and/or contribution of the amounts paid or payable by defendants to the plaintiffs in the other three actions and the net result would have been that the plaintiffs in the three actions would get £3,500 but the plaintiff in Action No. 3060/77 would only get £80.

In fact, this is ground 4 of my appeal which is accepted by my learned friend on the other side, and the main issue is the liability.

Avraamides: I agree."

The facts of the case as accepted by the trial Court and as they are born out from the evidence and the plans and photographs produced which present the real evidence in the case, in addition to the oral testimony of the experts that prepared them, are as follows:

On the 2nd January, 1977, on the Kalo Chorio - Pharmacas road, the two vehicles, a mini car under registration No. FT.774 owned and driven towards Pharmacas village by the husband and having as passengers his wife and his two daughters, and motor lorry under registration No. HH. 482 driven from the opposite direction by the first defendant, now appellant 1, and owned by defendants 2 and 3 in all actions, now appellants 2 and 3 collided on a left curve of the road having regard to the direction towards Pharmacas. The trial Court after analyzing the evidence came to the following conclusions:-

"The rear right part of the lorry, in view of the leftward inclination of those marks, should be placed even nearer to the right edge of the asphalt having regard to the direction of the motor lorry. Thus, the above real evidence proves that at the time of the collission or at least at the time when those marks were caused the motor lorry was occupying almost the middle of the asphalted part of the road, whereas prior to the causing of those marks the motor lorry must have been occupying a position even closer to the right edge of the asphalt than to the left edge of the asphalt having regard to its direction.

The marks caused by the Mini car are of not much help due to the fact that they were caused after the collision and

in the course of that Mini car being pushed backwards until it reached its resultant position; but having regard to the fact that the part of the Mini car which must have forcibly collided on to the motor lorry is approximately the middle front part, it shows that at the time of the collision this Mini car was not keeping very close to the left edge of the asphalt having regard to its direction. In other words, it was a head-on collision approximately in the middle of the asphalted part of the road; we do not overlook the fact that the motor lorry was proceeding uphill and the Mini car downhill. The fact that after the collision and the probable application of the brakes by the driver of the motor lorry this motor lorry proceeded and fell into the ditch whereas the Mini car pushed uphill for quite a distance, shows that the speed of the motor lorry must have been higher than that of the Mini car".

Learned counsel for the appellants has argued that certain of these findings of fact and certain of the conclusions drawn therefrom were not warranted by the evidence and in particular by the real evidence. He further pointed out that the correct approach in Law should have been the one enunciated in the case of *Baker* v. *Market Harborough Cooperative Society* [1953] 1 W.L.R. 1472, as explained and understood in the judgment of Stevenson L.J. to which Davies L.J. agreed in the case of *Howard* v. *Bemrose* [1973] R.T.R. 32, at p. 35 which reads as follows:-

"The principle enunciated in *Baker* v. *Market Harbourough Industrial Cooperative Society Ltd* [1953] 1 W.L.R. 1472, is, as I think, correctly set out in the headnote of the report:

'Where the evidence established that a collision between two motor vehicles proceeding in opposite directions occurred in the centre of a straight road during the hours of darkness, when both drivers were killed, the inference, in the absence of any other evidence enabling the court to draw a distinction between them, was that each driver was committing almost the same acts of negligence–failing to keep a proper look-out and to drive his vehicle on the correct side of the road–and accordingly both were equally to blame'.

I read that case as deciding no more and no less than that, and I do not find any extension of that decision in *Davidson* v. *Leggett*, decided in 1969 and rather briefly reported in (1969) 113 S.J. 409 and also in (1969) 133 T.P. 552.

There can, of course, be no difference between a case in which both drivers are dead and one in which one is dead and the other was so injured that he cannot give any account or explanation of the accident. There may be, I think that there is, a difference between a case in which a collision is proved to have occurred on one side of the road and a case like *Baker's* case [1953] 1 W.L.R. 1472, in which the collision was proved to have taken place in the middle of the road. It seems to me that the real point in this case is whether the collision between this motor-cycle and this motor car did, on a balance of probabilities, take place on the car driver's wrong side of the road or whether it took place in the centre, or approximately the centre, of the road. If, on a balance of probabilities, it took place in the centre of the road, it seems to me that the principle enunciated in Baker's case applies and the judge's judgment cannot possibly be impugned. If, on the other hand, Mr. Wild is right and the evidence not merely entitled but compelled the judge to draw the inference that the probable point of impact where the collision took place was substantially-not just, but substantially-on the car driver's wrong side, then as it seems to me Baker's case has no application and this appeal ought to succeed."

We have considered the position and on the basis of the findings of the trial Court which were duly warranted by the evidence, we have come to the conclusion that its apportionment of liability was the correct one. There was nothing in the evidence to indicate that the accident occurred on the side of the road which belonged to the one or the other party. In fact, they were obviously both to blame inasmuch as in approaching and negotiating a curve none of them took the precaution of taking to the extreme left and also they both failed to keep a proper look-out in time in order to avoid the collision.

The principles of Law hereinabove set out and with which we

agree, cover also a fortiori the present case as in addition there is clear and undisputed evidence that the point of impact was about the centre of the road.

For all the above reasons the appeal is dismissed as regards the question of the apportionment of liability but the judgments entered in the respective cases should be rectified in accordance with the statement made by counsel of both sides and earlier set out in this judgment. The appeal, therefore, is allowed to that extent.

In the circumstances the appellants to pay half the costs of this appeal.

Appeal partly allowed.