

1982 November 8

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

ANDREAS ADAMIS AND ANOTHER,  
*Appellants-Defendants,*

v.

NATASA ERACLEOUS,  
*Respondent-Plaintiff.*

(Civil Appeal No. 6252).

*Evidence—Real evidence—Negligent driving cases—Significance of real evidence.*

*Negligence—Road accident—Duty of a driver not to emerge on a road unless it is safe so to do is not subject to the limitation that he can act on the assumption that other users of the road will keep to their lane—Whether it is safe to emerge on the road or not is dependent on the state of traffic on the road and foreknowledge that a driver ought to have had of it—Collision at road junction formed by side road and main road—Main road driver driving on his wrong side of the road—Whether side road driver liable in negligence.* 5 10

These proceedings arose out of a road accident in which a car driven by a certain Xenophontos along St. Antonios Str. Paphos (“the main road”) collided with a car driven by appellant 1 at the junction formed by the above road with the driveway to Paphos Beach hotel (“the side road”). The issues that arose for consideration in the appeal were: 15

- (1) Whether the findings of the trial Court as to how the accident happened were correct; and
- (2) Whether emerging from the side road and then moving on to the main road constituted negligence on the part of appellant 1 given that Xenophontos was driving on the wrong side of the road: 20

*Held,* that real evidence is of especial significance to the

5 reconstruction of the circumstances preceding and surrounding a collision and helps to test both the reliability and accuracy of the evidence of eye-witnesses of the accident; that the inference of the trial Court regarding the position on the road of the car of Xenophontos prior to the accident, which was drawn from the real evidence - the marks of friction of the tyres on the road and the damage sustained by the two vehicles - was an inference they were perfectly entitled to draw and therefore the findings of the trial Court as to how the accident happened must be upheld.

10 (2) That the duty of a driver not to emerge on a road unless it is safe so to do is not subject to a limitation that he can act on the assumption that other users of the road will keep to their lane; that whether on a particular occasion it is reasonably safe to emerge on a road, is a question of fact to be resolved in  
15 the light of the circumstances of a case; that the answer depends on the state of traffic on the road and the foreknowledge that a driver ought to have had of it; that if the state of traffic is such as to make it unsafe to enter a driver must refrain from entering until safety so permits; that in this case it was dangerous to  
20 enter the road because of the proximity of the car of Xenophontos to the junction, a danger against which appellant had ample opportunity to guard against, given his visibility in the direction wherefrom the aforesaid car was coming, but failed to do so; that to proceed to Ayios Antonios Street, as appellant  
25 I did, was tantamount to introducing a foreseeable risk thereon, for which appellant I was rightly held liable in negligence; accordingly the appeal must fail.

*Appeal dismissed.*

Cases referred to:

- 30 *Meshiou v. Eleftheriou* (1982) 1 C.L.R. 486;  
*Alexandrou v. Gamble* (1974) 1 C.L.R. 5;  
*Karaolis and Another v. Charalambous* (1976) 1 C.L.R. 310;  
*Antonioni v. Iordanous and Another* (1976) 1 C.L.R. 341;  
*Panayiotou and Another v. Xenophontos* (1980) 1 C.L.R. 345;  
35 *Varnakides v. Papamichael and Another* (1970) 1 C.L.R. 367;  
*Panayiotou v. Mavrou* (1970) 1 C.L.R. 215;  
*Karikatou v. Soteriou, Soteriou v. Apseros* (1979) 1 C.L.R. 150.

**Appeal.**

Appeal by defendants 3 and 4 against the judgment of the District Court of Paphos (Hadjitsangaris, P.D.C. and Papas, Ag. D.J.) dated the 26th March, 1981, (Action No. 982/78) whereby they were adjudged to pay to the plaintiff the sum of £2,000.- as special and general damages for injuries sustained by her as a result of a traffic accident. 5

*P. Sivitanides*, for the appellants.

*Ant. Lemis*, for the respondent.

L. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Pikis. 10

PIKIS J.: Natasa Eracleous, the respondent, was a passenger in car under Reg. No. GL727, driven by Andreas Xenophontos, when it collided on 21st April, 1978, with a taxi driven by appellant 1 for whose acts appellant 2 held himself vicariously liable. As a result, she suffered damages, arising from injuries sustained in the accident, that she sought to recover in proceedings instituted before the District Court of Paphos, against both drivers, on the ground that they were jointly and severally liable for the tortuous act producing her injuries. 15 20

The trial Court found both drivers liable in negligence to the plaintiff, each contributing to its occurrence. Liability was equally apportioned between them. The appellants took an appeal against the finding of the Court holding them liable in negligence for, as Mr. Sivitanides explained, the financial position of Andreas Xenophontos is such as to make it unrealistic to expect contribution from him. 25

The accident occurred late at night, along St. Antonios Street, a wide road close to the Paphos beach, 10 ft. from the junction of the road with the driveway to Paphos Beach Hotel. It occurred under the following circumstances, as the Court found:- 30

Andreas Xenophontos was driving his car on the wrong side of the road, about 10 ft. from the edge of the tarmac on his off side. The car of the appellants emerged on the road from the driveway, without stopping at the junction, at a time when it was dangerous so to do having regard to the proximity to the junction of the car driven by Xenophontos. In failing to stop, 35

appellant 1 was found to have acted negligently. In drawing its conclusions, the Court relied, *inter alia*, on marks of real evidence found at the scene by the investigating officer, mainly consisting of black marks on the road caused by the car of Xenophontos after the accident, as a result of friction of the tyres, with the asphalt. This fact, judged in combination with the point of impact, and the damage on the vehicles, led the Court to draw an inference as to the direction of the car of Xenophontos and its position on the road shortly before the accident.

Mr. Sivitanides made a two-pronged attack on the findings of the trial Court. Firstly, he questioned the rejection of the evidence of appellant 1 by the trial Court and, secondly, he invited us to dismiss, as erroneous and unrealistic, the inferences drawn from the real evidence.

With regard to the first complaint, we may appropriately shorten this judgment by observing there was ample room before the trial Court to arrive at its findings as respects the credibility of appellant 1.

Coming to the real evidence, its evaluation and the inferences that one may draw therefrom, is invariably a matter of logic and common sense. Real evidence is of especial significance to the reconstruction of the circumstances preceding and surrounding a collision, and helps to test both the reliability and accuracy of the evidence of eye-witnesses of the accident. The speed with which events develop, if nothing else, may cause witnesses, particularly those directly involved in the accident, to form mistaken impressions not least about the position of the vehicles on the road. (See, *inter alia*, *Meshiou v. Eleftheriou* (1982) 1 C.L.R. 486). The trial Court concluded, upon a juxtaposition of marks of friction of the tyres on the road and the damage sustained by the two vehicles, that prior to the accident, the car of Xenophontos occupied a position on the road close to the right, bearing in mind his direction, approximately 10 ft. from its edge as at the time of the collision. It was an inference they were perfectly entitled to draw, and nothing that was said justifies us drawing any other inference from the facts. Certainly, real evidence was in sharp conflict with the evidence of appellant 1 to the effect that the car of Xenophontos was first driven on the left and then found itself

to the scene of the accident as a result of a sharp turn to the right before the accident. Had that been the case, the damage on the two vehicles would be elsewhere than it was, and the direction of the car of Xenophontos different than the one it was evidenced by real evidence to have followed thereafter. 5

We uphold the findings of the trial Court as to how the accident happened. There remains to consider the submission of Mr. Sivitanides that the findings of the trial Court, be they non vulnerable to interference, as held, do not reveal any negligence on the part of appellant 1. 10

For the appellant it was submitted that, emerging from the driveway of Paphos Beach Hotel, described as a side road by the trial Court, and then moving on to the main road, did not fix appellant 1 with negligence inasmuch as he was not expected to guard against the possibility of Xenophontos driving on the wrong side of the road. In support of his argument, he relied on four decisions of the Supreme Court allegedly bearing out his submission, the cases of *Marios Chr. Alexandrou v. Geoffrey Charles Gamble* (1974) 1 C.L.R. 5; *Nicos Karaolis and Another v. Ioannis Charalambous* (1976) 1 C.L.R. 310; *Kyriacos Antoniou v. Iordanis Iordanous and Another* (1976) 1 C.L.R. 341; *Panayiotou and Another v. Xenophontos* (1980) 1 C.L.R. 345. The principles arising from the above cases may be summarised as follows - 15 20

- (a) A user of the road is expected to guard against foreseeable risks, and that in so guarding, he can act on the assumption, in the absence of concrete indications to the contrary, that other users of the road will make reasonable use of it and, generally, heed the rules regulating the use of the road by motorists. (The same principle was heeded in the cases, inter alia, of *Varnavas G. Varnakides v. Christos Papamichael and Another* (1970) 1 C.L.R. 367; *Elpiniki Panayiotou v. Georghios Kyr. Mavrou* (1970) 1 C.L.R. 215, and *Karikatou v. Soteriou, Soteriou v. Apseros* (1979) 1 C.L.R. 150). 25 30 35

And

- (b) The actions of a motorist confronted with a dilemma on the road will be judged subject to the agonising

5 situation into which he finds himself and the fact that a driver under such pressure may choose a course that is not the most expedient in the circumstances. He does not have the coolness or the breathing space necessary to ponder on rival courses.

10 The principles involved in the above cases are, with respect, inapplicable in the present case because the appellant committed an act of negligence when under no pressure. What is in issue here, is, whether the duty of a driver not to enter a road unless  
15 it is safe so to do, is subject to a limitation that he can act on the assumption that other users of the road will keep to their lane. The duty not to emerge on a road unless it is safe so to do, is not conditioned by any such limitation. Whether it is safe to emerge on a road or not, is dependent on the state of traffic on  
20 the road in question at the time of the emergence; and if it is such as to make it unsafe to enter, a driver must refrain from entering until safety so permits. Whether on a particular occasion it is reasonably safe to emerge on a road, is a question of fact to be resolved in the light of the circumstances of a case. Consequently, the ultimate question of negligence to be decided  
25 in each case, is reduced to a question of fact. Was it then safe for appellant 1 to enter Ayios Antonios Street from the driveway of the hotel when he actually did so? The answer depends on the state of traffic on the road and the foreknowledge that appellant 1 ought to have had of it. The answer is, it was dangerous to enter the road because of the proximity of the car of Xenophontos to the junction, a danger against which plaintiff had ample opportunity to guard against, given his visibility in  
30 the direction wherefrom the aforesaid car was coming, but failed to do so. To proceed to Ayios Antonios Street, as appellant 1 did, was tantamount to introducing a foreseeable risk thereon, for which appellant 1 was rightly held liable in negligence.

35 As Mr. Justice Loizou observed at the conclusion of the address of Mr. Sivitanides, intimating our inclination to dismiss the case, this appeal might fair better if it was directed against the apportionment of liability. We need not, however, debate that aspect of the case as it is not raised before us.

40 The appeal fails. In the result, the appeal is dismissed with costs.

*Appeal dismissed with costs.*