

1983 February 22

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

MOUZAFER MOUHAREM AND ANOTHER

*Appellants.*

v.

GEORGHIOS TH. PAVLIDES,

*Respondent.*

(Civil Appeal No. 5145).

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*Civil Wrongs—Joint tortfeasors—Judgment against two defendants in an action for damages sustained in a road accident—Apportionment of blame equally as between defendants and not as between the plaintiff and defendants because the latter were joint tortfeasors—Judgment for plaintiff against the defendants jointly and severally properly given in view of the wording of the first paragraph of section 11 of the Civil Wrongs Law, Cap. 148—Whether it would have made any real difference if the two defendants were to be found severally liable.* 5

The respondent-plaintiff, who was injured in a traffic accident when the motor-cycle on which he was a pillion rider and was driven by defendant 1 collided with a bus, driven by defendant 3 and belonging to defendant 2, sued all defendants for damages. The trial Court apportioned the blame between defendant 1 and defendant 3 at 50% against each one of them and made such apportionment as "between defendant 1 and defendants 2 and 3 and not vis-a-vis the plaintiff as in the present case the defendants are clearly joint tortfeasors" and as joint tortfeasors they were jointly liable to the plaintiff for any amount of compensation that the Court would award. This apportionment was made because an application was filed by defendants 2 and 3 under Order 10, rule 12(1) of the Civil Procedure Rules. 10 15 20

Upon appeal by defendants 2 and 3 it was contended that the trial Court erred in finding defendant 1 and defendant 3 to be joint tortfeasors and in, consequently, giving judgment for the plaintiff and against both such defendants jointly and severally. 25

The relevant legislative provision is section 11 of the Civil Wrongs Law, Cap. 148 which is quoted at pp. 528–529 post.

5 *Held*, that by the use in the first paragraph of section 11 of Cap. 148 of the word “respectively” the ambit of such provision appears to have been rendered so wide as to encompass both joint tortfeasors and several tortfeasors causing the same damage; that, thus, in effect, for the purposes of section 11 the distinction between joint tortfeasors and several tortfeasors causing the same damage seems to have been abolished; that in view, therefore, of the wording of the first paragraph of section 10 11 the trial Court could have held that defendants 1 and 3—and consequently defendant 2 as well—were jointly and severally liable to pay the compensation awarded to the plaintiff.

15 *Held*, further, it would have made no real difference even if the two drivers were to be found severally liable, since each one of them had to be found liable to compensate the plaintiff for the whole of the damage suffered by him, which was indivisible, as it was caused by the injuries suffered by him in the traffic collision in question.

20 *Appeal dismissed.*

Cases referred to:

*Dingle v. Associated Newspapers Ltd. and Others* [1961] 1 All E.R. 897 at p. 916.

### Appeal.

25 Appeal by defendants 2 and 3 against the judgment of the District Court of Limassol (Stylianides, P.D.C. and Hadjitsan-garis, D.J.) dated the 11th December, 1972 (Action No. 255/70) whereby they were held to be jointly and severally liable with defendant 1 and were ordered to pay to the plaintiff the sum of 30 C£4,290.850 mils as compensation for the injuries he suffered in a traffic accident.

*M. A. Hakki*, for the appellants.

*P. Schizas* with *L. Tsikkinis*, for the respondent.

*Cur. adv. vult.*

35 TRIANTAFYLIDIS P. read the following judgment of the Court. This is an appeal against that part of the judgment of the Di-

strict Court of Limassol by means of which the appellants, who were defendants 2 and 3 in the action before the trial Court, were held to be jointly and severally liable with defendant 1 - who has not filed an appeal - to pay to the respondent, as plaintiff, the sum of C£4,290.850 mils, as compensation for injuries he has suffered in a traffic accident. 5

At the material time the respondent was a pillion rider on a motor cycle which was being ridden by defendant 1 along Gladstone street in Limassol and which came into collision with a bus which was being driven by defendant 3 and belonged to defendant 2. 10

The relevant part of the judgment of the trial Court reads as follows:

“In the present case, and using such common sense approach, we apportion the blame between Defendant 1 and Defendant 3 at 50% against Defendant 1 and 50% against Defendant 3. This apportionment is made as between Defendant 1 and Defendants 2 and 3 and not vis a vis the Plaintiff as in the present case the Defendants are clearly joint tortfeasors. As joint tortfeasors they are jointly and severally liable to the plaintiff for any amount of compensation that we should award. The aforesaid apportionment is made as an application was made by Defendants 2 and 3 under Order 10, Rule 12(1) of the Civil Procedure Rules.” 15 20 25

The present appeal has been limited by counsel for the appellants to only one of the grounds of appeal, namely that the trial Court erred in finding defendant 1 and defendant 3 to be joint tortfeasors and in, consequently, giving judgment for the plaintiff and against both such defendants jointly and severally. Defendant 2 was held to be, also, jointly and severally liable with defendant 1 by way of vicarious liability for the negligence of defendant 3. 30

The relevant legislative provision in the Civil Wrongs Law, Cap. 148, is section 11, which reads as follows: 35

“11. When two or more persons are respectively liable under the provisions of this Law for any act and such act constitutes a civil wrong such persons shall be jointly liable

as civil wrong does for such act and may be sued therefor jointly or severally:

Provided that -

(a) if a judgment is obtained against, or

5 (b) if a release is given to,

one or more of such persons in respect of such civil wrong no action shall lie against the other person or persons in respect thereof:

10 Provided that where damage is suffered by any person as a result of a civil wrong (whether a crime or not) -

(a) judgment recovered against any civil wrong doer liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint civil wrong doer in respect of the same damage;

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(b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the wife, husband, parent or child, of that person, against civil wrong doers liable in respect of the damage (whether as joint civil wrong doers or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the Court is of opinion that there was reasonable ground for bringing the action."

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30 A similar relevant enactment in England is section 6 in the Law Reform (Married Women and Tortfeasors) Act, 1935, in which provisions such as those set out in section 11, above, as well as in section 64 of Cap. 148, are to be found, except that the first paragraph of section 11 is missing from the aforesaid section 6 in England.

35 By the use in the first paragraph of section 11 of Cap. 148 of the word "respectively" the ambit of such provision appears to have been rendered so wide as to encompass both joint tort-

feasors and several tortfeasors causing the same damage; thus, in effect, for the purposes of section 11 the distinction between joint tortfeasors and several tortfeasors causing the same damage seems to have been abolished.

In view, therefore, of the wording of the first paragraph of section 11, above, we are clearly of the opinion that the trial Court could have held that defendants 1 and 3 - and consequently defendant 2 as well - were jointly and severally liable to pay the compensation awarded to the plaintiff.

In any event, even if we were to accept the submission of counsel for the appellants that the two drivers concerned ought to have been found only severally liable, we are of the opinion that, as in the present case the damage caused is indivisible, judgment could be given against each one of them for the whole amount of the compensation payable to the plaintiff.

Reference may be made, in this respect, to Halsbury's Laws of England, 3rd ed., vol. 37, p. 136, para. 245, where there are stated the following:

*"Concurrent and consecutive tortfeasors.* If each of several persons, not acting in concert, commits a tort against another person substantially contemporaneously and causing the same or indivisible damage, each tortfeasor is liable for the whole damage. If each of several persons commits an independent tort consecutively against the same person, each is liable for the damage caused by his tortious act, assuming the damage proximately caused by each tort to be distinct. Thus, if the second tortfeasor's act caused no further damage or merely duplicated damage caused by the first tort, the second tortfeasor will not be liable; but, if his act aggravated merely the damage caused by the first tort, each tortfeasor will be liable only in respect of that part of the damage which his tort caused, assuming that it is possible to separate and quantify the aggravation of damage."

Also, in *Dingle v. Associated Newspapers, Ltd. and others*, [1961] 1 All E.R. 897, Devlin L.J. said (at p. 916):

"Where injury has been done to the plaintiff and the injury is indivisible, any tortfeasor whose act has been a proximate

cause of the injury must compensate for the whole of it. As between the plaintiff and the defendant it is immaterial that there are others whose acts also have been a cause of the injury and it does not matter whether those others have or have not a good defence. These factors would be relevant in a claim between tortfeasors for contribution but the plaintiff is not concerned with that; he can obtain judgment for total compensation from anyone whose act has been a cause of his injury. If there are more than one of such persons, it is immaterial to the plaintiff whether they are joint tortfeasors or not. If four men, acting severally and not in concert, strike the plaintiff one after another and as a result of his injuries he suffers shock and is detained in hospital and loses a month's wages, each wrongdoer is liable to compensate for the whole loss of earnings. If there were four distinct physical injuries, each man would be liable only for the consequences peculiar to the injury he inflicted, but in the example I have given the loss of earnings is one injury caused in part by all four defendants. It is essential for this purpose that the loss should be one and indivisible; whether it is so or not is a matter of fact and not a matter of law. If, for example, a ship is damaged in two separate collisions by two wrongdoers and consequently is in dry dock for a month for repairs and claims for loss of earnings, it is usually possible to say how many days' detention is attributable to the damage done by each collision and divide the loss of earnings accordingly."

Thus, in the present instance, it would have made no real difference even if the two drivers were to be found severally liable, since each one of them had to be found liable to compensate the plaintiff for the whole of the damage suffered by him, which was indivisible, as it was caused by the injuries suffered by him in the traffic collision in question.

In the light, therefore, of all the foregoing the present appeal fails and has to be dismissed with costs.

*Appeal dismissed with costs.*