

1983 May 18

[HADJIANASTASSIOU, STYLIANIDES, PIKIS, JJ.]

GEORGHIOS NEOPHYTOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 4380.*)

Road traffic—Careless driving—Collision between vehicles moving in opposite directions—Fact that point of impact slightly within appellant’s side of the road irrelevant—A factor to be borne in mind in apportioning liability for civil purposes.

The appellant was convicted on a charge of negligent driving which arose out of a road accident, in the course of which a car driven by the appellant collided near the middle of the road with another car, driven in the opposite direction by appellant’s co-accused at the trial. 5

Upon appeal against conviction it was contended: 10

(a) That the Judge omitted to deal with evidence indicating that before the accident the appellant had been overtaken by another car; and, also, omitted to pay notice to the fact that appellant could not make use of the space beyond the tarmac. 15

(b) That the trial Court did not take into consideration that the point of impact was slightly within appellant’s side of the road.

Held, (1) that the fact that the vehicle of the appellant had been overtaken by another car and the fact that it could not make use of the space beyond the tarmac are inconsequential for the deliberations of the trial Court; accordingly contention (a) should fail. 20

(2) That the fact that the point of impact was slightly within appellant's side of the road is a factor to be borne in mind in apportioning liability for civil purposes but otherwise it has no decisive effect upon the conclusions of the trial Court; that the inevitable inference, given the findings of the Court, is that each of the two drivers made use of the road in breach of the duty of care owed to the other, thereby directly contributing to the collision that followed; and that accordingly the appeal must be dismissed.

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*Appeal dismissed.***Appeal against conviction.**

Appeal against conviction by Georghios Neophytou who was convicted on the 25th January, 1983 at the District Court of Paphos (Criminal Case No. 474/81) on one count of the offence of driving without due care and attention contrary to sections 8 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86/72) and was sentenced by *M. Papas, D.J.* to pay £10.- fine.

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L. Parparinos, for the appellant.

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A. M. Angelides, Senior Counsel of the Republic, for the respondents.

HADJIANASTASSIOU J.: We consider it unnecessary to call upon counsel for the Republic in reply. The judgment of the Court will be delivered by Mr. Justice Pikis.

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PIKIS J. : Appellant was convicted on a charge of negligent driving arising from a road accident on the evening of 18/1/81 that occurred at Ayios Pavlos Avenue, Paphos, the road connecting Kato Paphos with Ktima. The accident happened when a vehicle driven by the appellant, HK99 and, another saloon car DL452, driven by a co-accused at the trial, collided near the middle of the road while proceeding in opposite directions. Where the accident occurred, the road was wide enough, 30 ft., to make possible the passage of the two vehicles without hindrance or obstruction. In fact, there was ample room to manoeuvre having regard to the width of the two vehicles, each about 5 ft. wide.

In a fairly detailed judgment, the trial Judge reviewed the oral and real evidence before him and, thereafter concluded both drivers were guilty of careless driving. They were convicted accordingly.

The appeal is mainly directed toward establishing a mis- 5
direction arising from omission on the part of the trial Court
to pay due heed to two important facts. The omission makes
the findings of the Court unsafe to the extent of justifying,
in the submission of counsel, our intervention. The first 10
omission, allegedly significant for the evaluation of the responsi-
bility of appellant, was the Judge's failure to deal with evidence
before him, indicating that before the accident the vehicle
of the appellant had been overtaken by another car. The
importance, if any, of this factor upon the events that followed, 15
has not been explained. Bearing in mind the analysis of the
facts made by the trial Court, we may fairly infer that the Judge
treated this fact as inconsequential to the events that followed.
There is no suggestion that the overtaking caused or forced
the appellant to act in a way precipitating the accident. The 20
other fact pressed before us, is equally inconsequential for
the deliberations of the trial Court. Counsel argued that
the trial Court failed to pay notice to the fact that appellant
could not make use of the space beyond the tarmac, a space
designed for the entrance and exit of vehicles to premises
adjacent to the road. There is no suggestion that appellant 25
could not make use of the tarmac further to his left, as a necessary
precaution for the avoidance of the accident.

The version of the appellant before the trial Court as to
the cause of the accident, was rejected. The trial Court 30
disbelieved his allegation that the oncoming vehicle suddenly
swerved into his side and cut his line of travelling depriving
him of a chance to take avoiding action. The trial Court
concluded that the occurrence of the collision approximately
in the middle of the road, was indicative of the lack of care 35
with which the two drivers drove their respective vehicles,
an inference that cannot be faulted given the findings of the
trial Court.

Counsel for the appellant drew our attention to the fact
that the point of impact was slightly within his side of

road. Dividing the road into two lanes the accident occurred on the lane used by the appellant, about one foot from the middle. This may be a factor to be borne in mind in apportioning liability for civil purposes but otherwise it has no decisive effect upon the conclusions of the trial Court. The inevitable inference given the findings of the Court, is that each of the two drivers made use of the road in breach of the duty of care owed to the other, thereby directly contributing to the collision that followed. We consider it unnecessary to review the caselaw that bears on the subject of liability for negligent driving in a criminal case. Negligence is decided as a question of fact after a proper direction on the duty of care expected of a driver in the circumstances of the particular case. What is expected of a driver, that is his duty of care, is objectively determined by reference to surrounding facts, with reasonableness as the measure of responsibility.

The appeal fails. It is dismissed.

Appeal dismissed.