1984 March 22

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

PETROS IOAKIM,

Appellant-Plaintiff,

v.

MINAS SOTERIADES,

Respondent-Defendant.

(Civil Appeal No. 6569)

Negligence—Contributory negligence—High speed and speed in excess of the speed limit—Not in themselves negligence—Length of brake-marks—Cannot be inferred by Judge from his own knowledge or from relevant tables of which he cannot take judicial notice—This is a matter to be resolved by an expert witness—In the absence of evidence before him trial Judge could not conclude that appellant would have stopped at less than 52 feet had his speed been less than 30 m.p.h.

These proceedings arose out of a collision at a "T" junction formed by a major road and a side road. The appellant was driving his car on the major road and the respondent on the side road; and the latter entered the major road without making certain that it was safe for him to do so. There was a 30 m.p.h. speed limit in the area; and the trial Judge after finding that the speed of the appellant was 40 m.p.h. held that had he been driving at 30 m.p.h. it would have been possible to stop his car at a distance less than 52 feet, that is the distance between the commencement of the brake-marks and the point of impact, and the impact would be avoided. Liability was then apportioned as being 80% on the respondent and 20% contributory negligence on the appellant.

Upon appeal by the major road driver it was contended that the trial Judge erred in finding him liable in contributory negligence merely on the evidence of a possible marginal excess in the speed limit whilst there was no evidence whatsoever that any such excess contributed to in any way and/or was or could

have been the cause to whatever extent of the accident in question. On the contrary, it was argued, the learned trial Judge was wrong in relying only presumably on his own assessment and personal knowledge.

Held, that high speed alone and speed in excess of the speed limit though an offence are not in themselves negligence imposing civil liability or at that rendering a person guilty of contributory negligence; that these have to be inferred from the circumstances of the case and on the basis of the evidence adduced; that in this case the trial Judge had no evidence before him from which to conclude that the vehicle of the appellant would have stopped at less than 52 feet, had his speed been less than 30 m.p.h.; that this was a matter inferred by him, apparently from his own knowledge or from relevant tables of which a Judge cannot take judicial notice and which in any event are not conclusive unless the actual circumstances including the condition of the vehicle as well as the quality and condition of the road and its surface in particular have been examined at the time as material factors by an expert witness; that, therefore, the inference of the trial Judge that the appellant contributed to the accident by appreciating *himself* the length of the brake-marks and deducting therefrom that there was a likelihood of the appellant having contributed to the accident, was not based on the correct test; accordingly the appeal must be allowed.

Appeal allowed.

Cases referred to:

Xenophontos and Another v. *Anastassiou* (1981) 1 C.L.R. 521;

Alexandrou v. *Gamble* (1974) 1 C.L.R. 5 at pp. 7–8;

Shakolas v. *Agathangelou and Another* (1938) 1 C.L.R. 1007.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Ioannides, D.J.) dated the 9th April, 1983 (Action No. 3201/78) whereby he was found liable to contributory negligence to the extent of 20% in a traffic accident.

D. Leveras with *P. Liveras*, for the appellant.

J. Mavronicolas, for the respondent.

Cur. adv. vult.

A. LOIZOU J. gave the following judgment of the Court. This appeal in essence is directed against the apportionment of liability between the parties in a traffic accident. The only complaint of the appellant is that the trial Judge erred in finding him liable in contributory negligence merely on the evidence of a possible marginal excess in the speed limit whilst there was no evidence whatsoever that any such excess contributed to in any way and/or was or could have been the cause to whatever extent of the accident in question. On the contrary, it was argued, the learned trial Judge was wrong in relying only presumably on his own assessment and personal knowledge.

The facts of the case are not in dispute. On the 28th July, 1978, and at about 10 p.m. the appellant, a taxi driver, by profession, was driving his taxi under Registration No. TJS. 323 along Grivas Dighenis Avenue to the direction of the Nicosia Airport, whilst the respondent was driving his motor car under Registration No. JN 815 in Stassinou Street towards the Avenue. a side road with which it formed a 'T' junction on the left side, as the appellant was proceeding and entered into the Avenue suddenly without making certain that it was safe for him to do so and whilst the car of the respondent was very close to him. The negligence of the respondent was not disputed at the trial, what his counsel urged was that the appellant was also guilty of contributory negligence in view of the excessive, in the circumstances, speed at which he was driving his car, having himself admitted in evidence that his speed at the time of the accident was between 30 and 35 m.p.h., possibly, as he said in cross-examination, 40 m.p.h., because of his erroneous belief that the speed limit at that part of the Avenue was 40 m.p.h. as it is in other parts of it.

The learned trial Judge concluded that the speed of the appellant was 40 m.p.h. in view of his admission that it could possibly be that much and the fact that it had left 68 ft. of brake-marks and that after the impact the car of the respondent moved to a distance of 65 ft. from the point of impact and also because of the serious damage suffered by both vehicles.

The learned trial Judge then went on the drew the following conclusions:-

"I am of the opinion that the speed of 40 m.p.h. at the time of the accident contributed to the accident on account that the plaintiff did not manage to stop the car at a lesser distance without colliding with the car of the defendant. If the plaintiff drove at a speed up to 30 m.p.h. in that area, which is an area with a controlled speed limit of 30 m.p.h., it would be possible to stop his car at a distance less than 52 ft., that is, the distance between the commencement of the brake-marks and the point of impact and the impact would be avoided".

He went on to conclude that on account of that speed, excessive in the circumstances, he contributed to the accident as he did not permit the appellant to stop at a lesser distance after he saw the other car and applied his brakes. He apportioned the liability between them as being 80% on the respondent and 20% contributory negligence on the appellant.

The learned trial Judge directed correctly himself of the law and in that respect he referred, among other cases, to that of *Vicos Xenophontos & Another* v. *George Anastassiou* (1981) 1 C.L.R., p. 521, where Hadjianastassiou, J., in delivering the judgment of the Court and by reference to the case of *Jones* v. *Livox Quarries Ltd.* [1952] 2 Q.B. 608, had this to say at pages 527-528:

". . . The existence of contributory negligence does not depend on any duty owed by the injured party to the parties sued, and all that is necessary to establish a plea of contributory negligence is to prove that that injured party did not in his own interest take reasonable care of himself and contributed by his want of care to his own injury.

Principle involved is that, where a man is part author of his own wrong, he cannot call on the other party to compensate him in full. The standard of care depends upon foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably

to have foreseen that if he did not act as a reasonably prudent man he might hurt himself. The plaintiff is not usually bound to foresee that another person may be negligent, unless experience shows a particular form of negligence to be common in the circumstances".

He also referred to the case of *Marios Alexandrou* v. *Geoffrey Charles Gamble* (1974) 1 C.L.R. 5, where Triantafyllides, P., in delivering the judgment of the Court summed up the position as regards excessive speed or speed in excess of the prescribed limit as follows (pages 7–8):

"Even if we were to proceed on the basis of the assumption that the respondent was, just before the collision driving at a high speed, or exceeding the prescribed speed-limit in a built-up area, we cannot, in any case, accept the proposition, put forward by counsel for the appellant, that doing so was, inevitably, sufficient per se, and irrespective of the circumstances of the present case, to establish negligence. That such a proposition is not correct is to be derived from, inter alia, *Quinn* v. *Scott* [1965] 1 W.L.R. 1004, and *Barna* v. *Hudes Merchandising Corporation* (the full report of which is not available, but which is sufficiently reported in Bingham's Motor Claims Cases, 7th ed., p. 104).

In relation to the above matter we have been referred, by counsel for the appellant, to *Radif* v. *Paphitis*, 1964 C.L.R. 392, and reliance was placed on passages in the judgment therein as establishing that excessive speed was per se sufficient to establish negligence, or at least contributory negligence, in the case of a traffic collision. We have perused the full record of the *Radif* case and we have no difficulty in saying that such case was decided in the light of its own special circumstances, all of which are not set out in the judgment on appeal; one of them was that the driver who was found to be negligent, because of driving at an excessive speed, had been travelling at such a high speed that, as a result, he was not able to pull up in time or to bring his car under control and he went over to the

wrong side of the road and then into an adjoining field where he struck the other party to those proceedings. It is, thus, clear that the *Radif* case is distinguishable from the present case.

That speed, in itself, is not sufficient to support a finding of negligence, or of contributory negligence, is to be derived, too, from *Ioannou* v. *Michaelides* (1966) 1 C.L.R. 235, which was decided by the Supreme Court subsequently to the *Radif* case and, actually, by the same bench which decided that case (see, in particular, the judgment of Josephides, J. in the *Ioannou* case)".

There is no doubt that high speed alone and speed in excess of the speed limit though an offence are not in themselves negligence imposing civil liability or at that rendering a person guilty of contributory negligence. These have to be inferred from the circumstances of the case and on the basis of the evidence adduced. In the case under appeal the learned trial Judge had no evidence before him from which to conclude that the vehicle of the appellant would have stopped at less than 52 feet, had his speed been less than 30 m.p.h. This was a matter inferred by him, apparently from his own knowledge or from relevant Tables of which a Judge cannot take judicial notice and which in any event are not conclusive unless the actual circumstances including the condition of the vehicle as well as the quality and condition of the road and its surface in particular have been examined at the time as material factors by an expert witness. (See *Shakolas* v. *Agathangelou and another* (1983) 1 C.L.R. p. 1007 and the authorities therein reviewed.

Having considered the facts and circumstances of this appeal in the light of the well settled principles of law to which reference has been made, we have come to the conclusion that the inference of the learned trial Judge that the appellant contributed to the accident by appreciating himself the length of the brake-marks and deducting therefrom that there was a likelihood of the appellant having contributed to the accident, was not based on the correct test. In the circumstances, the appeal is allowed. The apportionment is varied so that the respondent is found 100%

liable for the accident and judgment is entered against him for the full amount of £400, agreed damages with legal interest. There will be, however, no order as to costs as none have been claimed.

Appeal allowed with no order as to costs.