1984 March 7

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

ANDREAS TRANTA,

Appellant-Defendant.

v.

MICHAEL EVANGELOU BOYADJI, INFANT, THROUGH HIS FATHER AND NATURAL GUARDIAN EVANGELOS BOYADJIS, AS NEAREST FRIEND AND RELATIVE,

Respondent-Plaintiff.

(Civil Appeal No. 6504).

Negligence—Road accident—Apportionment of liability—Collision at road junction—Side road—Major road—Side road driver moving slowly into the major road—Major road driver was overtaking on the second lane cars that were stopping, in relation to the side road driver, and collision ensued—Apportionment of liability equally on each driver sustained—Even if side road driver was inching out from the side road that would not automatically exonerate him from liability making the Court of Appeal interfere with same.

Damages—General damages—Personal injuries—Displaced fractures of left tibia and fibula—In hospital for a month—Physiotherapy for two months and on crutches for six months—Difficulty in dancing, walking on uneven ground or ascending stairs and in running—Left with a permanent ugly scar—Award of £4,000.- *sustained.*

These proceedings arose out of a road accident which occurred at the junction of a major road with a side road. The appellant was driving his car on the side road and the respondent was proceeding with his motor-cycle at a speed of 20-25 m.p.h. on the major road. The trial Court found that the respondent overtook in the second lane the cars that were stopping actually at that time in relation to the car of the appellant, when same was moving slowly into the junction; and held that the parties were equally to blame for the accident. The respondent who

was 17 years of age at the time of the accident sustained displaced fractures with overriding of the fragments at the junction of the middle and lower thirds of the left tibia and fibula. He stayed in hospital for a month underwent physiotherapy for two months and was on crutches for six months. He was left with permanent incapacity affecting his left foot as a result of which he would have difficulty in walking on uneven ground or ascending stairs; and dancing which he used to enjoy would also be difficult, and painful. His ability to squat was, also, affected and was left with a permanent ugly scar. He was awarded C£4,000 general damages.

Upon appeal by the side road driver his counsel questioned the findings of fact made by the trial Court, as well as the conclusions drawn by it and in particular that the appellant emerged into the main road and forced the approaching traffic to stop and argued that her client was under no liability at all as he owed no duty of care to a driver who was queue jamping.

He, also, contended that the damages were excessive and not warranted by the evidence.

Held, (1) that there are no reasons for this Court on appeal to interfere with the findings of fact made by the trial Court based on the credibility of witnesses as accepted by it and the conclusions drawn thereon, as well as the apportionment of liability which in the circumstances was the appropriate one.

Held, further, that even if it were to be accepted that the appellant was inching out slowly from the side-road, that would not automatically exonerate him of liability in the circumstances of this case making this Court interfere with the apportionment of same.

(2) That bearing in mind that this Court is examining the position on appeal it finds that no reasons exist justifying any interference on its part with the assessment of general damages which are, in the first place, the functions of a trial Court; accordingly the appeal must fail.

Appeal dismissed.

Cases referred to:

Worsfold v. *Howe* [1980] 1 All E.R. 1025.

Appeal.

Appeal by defendant against the judgment of the Distr Court of Nicosia (Nikitas, P.D.C. and N. Nicolaou, Ag.D. dated the 8th November, 1982 (Action No. 1745/79) where he was adjudged to pay to the plaintiff the sum of £2.272.5 mils being the one half of the general and special damages f personal injuries suffered by the plaintiff in a traffic accide which was caused by defendant's negligent driving and for whi he was found to have contributed by 50%.

St. Erotocritou (*Mrs.*), for the appellant.

M. Iacovou with *I. Stavrou* (*Miss*), for the respondent.

A. Loizou J. gave the following judgment of the Cou This is an appeal from the judgment of the Full District Co of Nicosia, by which the appellant-defendant was adjudg to pay the amount of C£2.272.500 mils being the one half the total of the general and special damages for the perso injuries which the respondent-plaintiff suffered in a trat accident that was caused by the negligent driving of the app lant, to which he was found to have contributed by 50%.

This traffic accident took place at the junction of Dighe Akritas Avenue and Androkles Street. The first is a ma road, 48 ft. wide, made up of four lanes, separated by a tra island 6 ft. wide painted on the surface of the tarmac. T latter is a side road 20 ft. wide and is controlled by a halt si

The respondent was motorcycling at a speed of between 2 25 m.p.h., along the second lane of Dighenis Akritas Ave in the direction of Pallouriotissa. He was at the time 17 ye of age and had no driving licence. The appellant was driv his motorcar along Androkles Street and as the trial Co concluded, there was no clear evidence besides that of him on whether he had entered the main road without stoppi But that it held, was immaterial as the important thing w that the defendant emerged into the main road and created dangerous situation as the cars travelling on Dighenis Akri Avenue were forced to stop, rejecting the allegations of t appellant concerning the circumstances under which he e into the road to the effect that he did so extremely slowly a that the on-coming cars were 100 meters away when he ente

and which though proceeding at low speed, slowed up further to give him priority.

The trial Court relying on the evidence of a disinterested and independent witness found that the respondent overtook on the second lane the cars that were stopping actually at that time, in relation to the car of the appellant, when same was moving slowly into the junction.

Its conclusions were the following:

> "In our view there is in the present situation ample evidence of negligence by both drivers. The defendant came out into the main road when it was dangerous or unsafe to do so and he either failed to keep a proper look out or was indifferent of the consequences of his action. His faulty driving was on the evidence a contributory cause of the accident. As for the plaintiff he was overtaking close to the junction without exercising that high degree of care which his dangerous manoeuvre involved. We accept that he was going at 20-25 m.p.h. but such a speed did not allow him to deal with an emergency. We hold the parties equally to blame for this accident".

Counsel for the appellant has questioned the findings of fact made by the trial Court, as well as the conclusions drawn by it and in particular that the appellant emerged into the main road and forced the approaching traffic to stop and argued that her client was under no liability at all as he owed no duty of care to a driver who was queue jumping.

Having given due regard to her arguments and having examined them in the context of the whole of the evidence, we have come to the conclusion that there are no reasons for this Court on appeal to interfere with the findings of fact made by the trial Court based on the credibility of witnesses as accepted by it and the conclusions drawn thereon, as well as the apportionment of liability which we find that in the circumstances was the appropriate one. Even if we were to accept that the appellant was inching out slowly from the sideroad, that would not automatically exonerate him of liability in the circumstances of this case making us interfere with the apportionment of same.

Useful reference in that respect may be made to the case of *Worsfold* v. *Howe* [1980] 1 All E.R. p. 1025, where it was held that:

> "There was no principle of law that a driver was entitled to emerge blind from a minor road onto a major road by inching forward beyond his line of vision and that if he did so very slowly he was under no liability to other traffic on the main road. Since the judge would have held the parties equally to blame but for the fact that he felt bound by precedent to hold that the defendant was under no liability, the appeal would be allowed and judgment entered for the plaintiff for half the agreed damages."

So, even where the driver was inching into the main road from a side road he was found in the circumstances to have been 50% liable.

The second ground on which this appeal has been argued, is that the amount of general damages is excessive and not warranted by the evidence. The evidence relevant to this issue was summed up by the trial Court as follows:-

> "After the accident the plaintiff was taken to Nicosia Hospital where he was examined and treated by Dr. Panayiotides, an orthopaedic surgeon.
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> On examination it was found that the plaintiff suffered displaced fractures with overriding of the fragments at the junction of the middle and lower thirds of the left tibia and fibula. This was treated by closed reduction. After immobilisation in plaster the fracture united satisfactorily but the injury left a permanent nasty looking scar 13 cm. x 4 cm. which we had occasion to see for ourselves. The plaintiff had stayed in hospital for a month and after his discharge he received treatment as an out-patient. He underwent physiotherapy for two months. It is to be noted that he was on crutches for six months after removal of the plaster.
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> In the opinion of Dr. Panayiotides the plaintiff is left with permanent disability affecting his left foot. The disability is that the plaintiff cannot extend his foot upwards In medical jargon this movement is called dorsiflection and

if we understood the medical evidence correctly the full range of the movement is 35o and it has been lost completely though the opposite movement, plantarflexion, was not affected at all. Dr. Pelides who gave evidence for the defendant held the same view.

As a result of his incapacity the plaintiff will have difficulty in walking on uneven ground or ascending stairs or if he does a lot of walking and he will experience pain and discomfort. Dancing which he used to enjoy will also be difficult and painful. He will be able to drive a car or ride a motorcycle but again with some difficulty. His ability to squat is also affected by the injury. According to Dr. Panayiotides he cannot squat at all. Dr. Pelides thought that he can, but must use other movements. At any rate he conceded that the plaintiff's ability to squat is impaired".

In support of this ground counsel for the appellant has referred us to a passage in the judgment where the trial Court said that "Dr. Panayiotides was of the opinion that the permanent injury sustained by the plaintiff prevents him from working as an electrician", an opinion which does not appear from the record to have been directly expressed by this doctor and consequently in view of this misdirection the amount of general damages should be reduced.

The trial Court, however, went on and added the following:

"....But Dr. Pelides held a contrary view. Having considered the evidence we incline to accept the evidence of Dr. Panayiotides. We find that the permanent injury of the plaintiff will prevent him from engaging in his chosen occupation which implies prolonged standing, going up stairs, squatting and similar strenuous activities. Evidence coming from the plaintiff to the effect that he tried to work as an electrician but gave it up because of the injury reinforces our finding. No evidence was given to show what the plaintiff might earn as an electrician or in any other job such as a job of a clerical nature: none at all. However, we believe that some consideration must be given to this aspect of the case when assessing damages".

It is clear, however, from the tenor of the evidence of Dr. Panayiotides, his findings, his expert opinion and his conclusions, that there was a good number of movements which because of the injuries suffered by and the resulting permanent incapacity of the respondent, considered in the context of the necessary movements that an electrician has to go through in order to carry out his work, that the respondent would not have been able to work as such as he would have been had he not suffered the said permanent incapacity. There exists, therefore, no misdirection whatsoever as regards this conclusion reached. In fact, Dr. Pelides was cross-examined on this point and he gave the necessary answers and the respondent himself clearly testified that he tried to work as an electrician but he gave it up because of the handicap in his movements.

Indeed in considering the reasonableness of the amount of C£4,000.- general damages the trial Court arrived at this figure after taking into consideration that the respondent suffered a good deal of pain over a period of about six months after the accident, that his ankle was still aching after strenuous physical activity, that he had limitations of movement of his left foot with the consequences that have already been enumerated and a permanent ugly scar, and of course, the loss of amenities, including the difficulty in dancing and running that the respondent would have to go through life.

In view of all this and bearing in mind that we are examining the position on appeal, we find that no reasons exist justifying any interference on our part with the aforesaid assessment of general damages which are, in the first place, the functions of a trial Court as we have not been prepared to interfere also with the apportionment of liability.

For all the above reasons the appeal is dismissed with costs.

Appeal dismissed with costs.