1984 September 7

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

EVANGELOS GEORGHIADES,

Appellant-Defendant,

v.

1. ANDREAS HADJISAVVA,
2. ATLAS ASSURANCE CO. LTD. NOW GUARDIAN ROYAL EXCHANGE ASSURANCE CO. LTD.,

Respondents-Plaintiffs.

(*Civil Appeal No.* 5823).

Negligence—Road accident—Collision between vehicles moving in opposite directions and whilst one of them (appellant's car) was intending to turn right into a side road—Trial Court's findings that appellant's car started taking a turn and blocked way of respondent's car—And that even if appellant's car was stationary at the time of the impact this was not of great importance because path of respondent had already been blocked, fully warranted by the evidence before it—Respondent taking avoiding action by applying brakes—Trial Court made no error in principle in deciding that respondent was not to blame for the accident—Avoiding action—Issue whether the taking of further or different avoiding action with probably better results not to be examined strictly and mathematically in the cool atmosphere of the Court room where the elements of panic and agony of the situation are absent—What has to be examined is whether at that particular moment respondent failed, as a reasonable average man, to take any action to avoid the accident in complete disregard of his own safety or the safety of others.

These proceedings arose out of a collision between a car driven by respondent 1, along the main Nicosia–Limassol road in the direction of Nicosia, and a car driven by the appellant from the opposite direction with the intention of turning right and proceed to Alambra. The trial Court accepted the version of respondent 1 that the appellant started taking a turn to his right and thus blocked his way having rejected the allegations

of the latter that at the time of the collision his car was stationary keeping the centre of the road; and proceeded to find that respondent No. 1 was faced with an emergency before his car started imprinting brakemarks on the road and perhaps at a time when the appellant's car was still in motion; that even if the appellant's car was stationary at the actual moment of impact, this was of no great importance because the path of respondent's No. 1 car had already been blocked; that the offside of the appellant's car was at a distance of not more than four feet from the edge of the esphalted part of the road to his right and that respondent No. 1 did in actual fact take evasive action by applying brakes, on being confronted with the emergency created by the appellant's negligence; that the application of brakes was what respondent 1 thought at the time the best way of avoiding the accident; that if he could move more further to the left, in order to avoid the accident, he would have done so; and that the taking of further or different avoiding action with probably better results should not be examined and considered strictly and mathematically in the cool atmosphere of the Court room, where the elements of panic and agony of the situation are absent but what must be examined is whether respondent at that particular moment and on seeing appellant's car gradually blocking his way, failed, as a reasonable average man to take any action to avoid the accident in complete disregard of his own safety.

Upon appeal against the judgment of the Court below whereby it was found that respondent 1 was not at all to blame for the accident:

Held, that considering the circumstances of the case and the evidence adduced before the trial Court there is no reason for this Court to interfere with the findings of the trial Court as, in reaching its decision, the trial Court made no error in principle; that in fact, this Court is in agreement with all findings of the trial Court as such findings were fully warranted by the evidence which was before it; and that, accordingly, the appeal must fail.

Appeal dismissed.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C. and Orphanides, S.D.J.)

dated the 28th February, 1978, (Action No. 4838/73) where he was adjudged to pay to plaintiffs the sum of £2,988.— damages for injuries received by them as a result of a traf accident.

L. Papaphilippou, for the appellant.

N. Pelides with *P. Sarris*, for the respondents.

Cur. adv. vi

HADJIANASTASSIOU J.: The President of the Court, M Justice Loizou, is indisposed in hospital and for this reason is unable to sit today in Court. He has, however, informed that he agrees with the judgment which will be delivered Mr. Justice Demetriades.

DEMETRIADES J.: This is an appeal by the defendant Action No. 4838/73 against the judgment of the District Co of Nicosia by which it was found that respondent No. 1 v not at all to blame for the accident.

At the hearing of the action before the trial Court the amo of damages to which the plaintiffs-respondents would h been entitled on a full liability basis were agreed as follo

Plaintiff-respondent No. 1 - £1,922.-

Plaintiff-respondent No. 2 - £1,068.-

The action arose as a result of an accident that took place the 3rd July, 1973, along the Nicosia-Limassol main road at junction of the main road with two side roads leading the o to Alambra village and the other to Lymbia village. At material time respondent No. 1 was driving motor car un Registration No. GJ 993 towards Nicosia. The defenda appellant was driving motor car under Registration No. 846 from the opposite direction and his intention was to t right and proceed to Alambra. According to the eviden the two vehicles collided on the left side of the road in relat to the direction which respondent No. 1 was following.

The circumstances under which the collision occurred a the explanations given by the parties during the hearing bef the trial Court were at variance. In short, respondent 1 1 alleged that the appellant started taking a turn to his ri and thus blocked his way. On the other hand, the appell

alleged that at the time of the collision his car was stationary keeping the centre of the road and that though there was sufficient room for respondent No. 1 to pass, the latter suddenly turned towards him at the last moment and as a result a violent collision followed.

The trial Court accepted the evidence of respondent No. 1 and rejected the allegations of the appellant, having found that respondent No. 1 was faced with an emergency before his car started imprinting brakemarks on the road and perhaps at a time when the appellant's car was still in motion; that even if the appellant's car was stationary at the actual moment of impact, this was of no great importance because the path of respondent's No. 1 car had already been blocked; that the offside of the appellant's car was at a distance of not more than four feet from the edge of the asphalted part of the road to his right and that respondent No. 1 did in actual fact take evasive action on being confronted with the emergency created by the appellant's negligence.

The trial Court further found that the position of a parapet, for which there was some argument whether it existed at the material time, was not of such a great importance and considered it a waste of time to make specific findings on this issue.

The appellant complains that the trial Court was wrong in its judgment for the following grounds, namely that the trial Court:

(1) failed to make a finding as to whether the appellant's car was actually moving when respondent No. 1 realised the danger and applied the brakes;

(2) was wrong in concluding that the offside of the appellant's car was at a distance of not more than four feet from the edge of the asphalted part of the road;

(3) failed to make a finding as to the correct position of the parapet in relation to the asphalted part of the road; and

(4) was wrong in concluding that respondent No. 1 took proper or adequate avoiding action, in that such finding is against the evidence adduced.

The following reasons were given by the trial Court for its finding against which the appellant complains.

Ground No. 1

"Obviously, the plaintiff was faced with an emergency before his car started imprinting brakemarks on the road and perhaps at a time when the defendant's car was still moving. It may be that at the actual moment of impact the defendant's car was stationary but this is of no great consequence because the path of the plaintiff had already been blocked, the offside of the defendant's car being at a distance of not more than 4 feet from the edge of the asphalted part of the road (on the wrong side)".

Ground No. 2

"Having considered the totality of the evidence, we find that the explanation given by the Investigating Officer is quite rational and further supported by the almost undisputed position of the brakemarks. We, therefore, find that the point of impact lies within the brake-lines and is 4 feet from the left edge of the asphalted part of the road in relation to the plaintiff's direction. The left line of brakemarks is only 2 feet from the edge of the asphalt and continues with an unchanged direction upto the point of impact. If the suggestion of the defendant is worthy of any consideration, we must accept that the plaintiff's car on reaching the end of its travel with the brakes on, jumped abruptly to its right reaching thus and colliding with the defendant's car. Something to that effect was, of course, alleged by the defendant and his passenger-plaintiff in Action No. 599/74—but in our view this is a highly improbable and unnatural allegation and cannot possibly stand to reason.

To our mind it is inconceivable how and why a car which proceeds in a straight course with the brakes on, obviously because of some danger lying ahead, at the last moment and near the point of danger which the driver tried to avoid by applying his brakes, would turn suddenly towards the said point and cause thereby, a very violent collision".

Ground No. 3

"Finally, it may be that at the time of the application of his brakes the defendant's car was still moving, blocking gradually more and more the plaintiff's path as the two vehicles were approaching and this is a probability very much in sight having regard to the evidence as a whole and in trying to visualise the parties' reaction at the crucial moment. In this respect, we may say that the position of the parapet is, in view of our findings, of not such a great importance, if at all and, therefore, we consider it a waste of time to make specific findings. We may say, however, that the evidence before us was on this not completely incompatible with the various versions. The Officer may have found the parapet where it was marked on the sketch and later the witnesses of the defendant to have found it elsewhere by reason of the widening of the road and other road marks that have been carried out since the accident".

Ground No. 4

"The further movement of the plaintiff to his left, as suggested by the defendant, would have been, in our opinion, an evasive action, good in theory only, but hard to imagine how it could effectively be put into operation. The plaintiff did in actual fact take evasive action on being confronted with the emergency created by the defendant's negligence. In our opinion, the taking of further or different avoiding action with probably better results should not be examined and considered strictly and mathematically in the cool atmosphere of the Court Room where the elements of panic and agony of the situation are absent. We must, therefore, try to see whether the plaintiff, at that particular moment and on seeing the defendant's car gradually blocking his way, failed, as a reasonable average man, to take any action to avoid the accident in complete disregard of his own safety and the safety of others. The application of brakes was what the plaintiff thought at the time the best way of avoiding the accident and we have no doubt that if he could move further to the left in order to avoid the accident, he would have done so".

Having considered the circumstances of the case and the evidence adduced before the trial Court we find that there is no reason for us to interfere with the findings of the trial Court as, in reaching its decision, the trial Court made no error in principle. In fact, we are in agreement with all findings of the trial Court as such findings were fully warranted by the evidence which was before it.

In the result, the appeal is dismissed with costs.

Appeal dismissed with costs.