1985 September 3

[A. LOIZOU, DEMETRIADES, LORIS, JJ.]

MICHALIS K. PAPATAS,

Appellant-Plaintiff,

v.

ANASTASSIS SOLOMOU,

Respondent-Defendant.

(Civil Appeal No. 6750).

Collision between vehicles moving in opposite directions—Findings of fact and conclusions drawn therefrom by trial Court—Onus on the appellant to satisfy the Court that this is a proper case for interference with such findings and conclusions.

The appellant-plaintiff was driving at the material time his motor car towards Pareklishia village and the respondent-defendant his motor lorry from the opposite direction. The width of appellant's car was 5 feet and the width of respondent's lorry 8 feet.

The asphalted portion of the road at the scene of the accident is 11 feet wide with berms on either side; the berm to the left hand side of the road towards the direction the respondent was proceeding was 4 feet by the small bridge, but gradually it narrows down to 2 feet; to the side of this berm there is a deep precipice. On the opposite side there is an open space which starts from 3 feet, goes up to 16 feet, and gradually narrows down to 3 feet again; part of this open space is usable as delineated on the sketch which was produced at the trial as exhibit 2.

The trial Court accepted the version given by the respondent who stated that he saw the oncoming car of the appellant from a distance, whilst his lorry was proceeding downhill keeping his left hand side of the road at a speed of 4-5 m.p.h.; he then reduced his speed more

and drove his lorry slowly on the berm to his left thus occupying 1 foot of the berm; he continued so proceedings whilst the appellant's car approached the opening and was in the process of by-passing his lorry; then the respondent maintained that all of a sudden he realized that whilst so proceeding something, which in fact proved to be the car of the appellant, hit the rear right wheel of his lorry.

The main contention of the appellant was that the finding of the trial Court that he was solely to blame was unwarranted by the evidence adduced.

Held, dismissing the appeal: The appellant failed to discharge the onus cast upon him to persuade this Court to interfere with the findings of fact and the conclusions drawn therefrom by the trial Court.

Appeal dismissed.

Cases referred to:

Haloumias v. *The Police* (1970) 2 C.L.R. 154 at p. 158.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Chrysostomis, P.D.C.) dated the 31st March, 1984 (Action No. 4368/81) whereby plaintiff's claim for damages arising out of a traffic accident was dismissed.

B. Vassiliades, for the appellant.

N. Zomenis, for the respondent.

Cur. adv. vult.

A. Loizou J.: The judgment of the Court will be delivered by Mr. Justice Loris.

Loris J.: The present appeal is directed against the judgment in Limassol Action No. 4368/81 (Y. Chrysostomis P.D.C.), whereby the plaintiff's claim for damages arising out of a traffic accident was dismissed with costs and judgment was entered in favour of the defendant on the counterclaim for damages arising out of the same incident.

Prior to the hearing of the aforesaid action in the Court below, damages on the claim and counterclaim were agreed and the case was contested only on the issue of liability.

The accident in question occurred on the 30th June, 1981 at about 2.30 p.m. along Limassol-Pareklisia main road by the junction towards Pyrgos village, near a small bridge.

The appellant-plaintiff, a professional taxi driver, was driving at the material time his "Taunus" motor-car under Reg. No. CS 477 towards Pareklisia village and the respondent-defendant was driving his motor-lorry under Reg. No. FQ 52 from the opposite direction. The width of appellant's car was 5 feet and the width of respondent's lorry 8 feet.

The asphalted portion of the road at the scene of the accident is 11 feet wide with berms on either side; the berm to the left hand side of the road towards the direction the respondent was proceeding was 4 feet by the small bridge, but gradually it narrows down to 2 feet; to the side of this berm there is a deep precipice. On the opposite side there is an open space which starts from 3 feet, goes up to 16 feet, and gradually narrows down to 3 feet again; part of this open space is usable as delineated on the sketch which was produced at the trial as exhibit 2.

It was the version of appellant at the trial that at the material time he was driving uphill towards Pareklisia village keeping his proper side of the road and on approaching the small bridge he formed the impression that he could freely by-pass the oncoming lorry of the respondent. However, he maintained that on entering the bridge the respondent all of a sudden swerved to his right thus blocking the appellant's way and the front right part of the motor-lorry collided with the front of his car; as a result of the collision the appellant's car was pushed towards the ohto.

The respondent gave a different version:

He stated that he saw the oncoming car of the appellant from a distance, whilst his lorry was proceeding downhill keeping his left hand side of the road at a speed of 4-5 m.p.h.; he then reduced his speed more and drove his lorry which was loaded with shingles, slowly on the berm to his left thus occupying 1 foot of the berm; he continued

so proceeding whilst the appellant's car approached the opening and was in the process of by-passing his lorry; then the respondent maintained that all of a sudden he realized that whilst so proceeding something, which in fact proved to be the car of the appellant, hit the rear right wheel of his lorry.

The appellant gave evidence himself and called no other witnesses; the respondent gave evidence himself and called another witness namely Philippos Kariolemos P. C. 660, the police constable who was summoned to the scene of the accident shortly after its occurrence, took measurements and prepared a sketch which was produced at the trial as exhibit 2.

The learned President, who tried the present case in the first instance, after hearing the evidence adduced by both sides, tested, as he stated, the highly conflicting versions on the real evidence "which is the most reliable source for the truth" (per Vassiliades P. in *Halloumias* v. *The Police* (1970) 2 C.L.R. 154 at p. 158), and after being satisfied, inter alia, that

(a) the point of impact was the one indicated by the respondent to the police constable which is marked X on exh. 2, where the constable himself who was summoned to the scene of the accident shortly after its occurrence, saw mud and broken pieces of glass;

(b) the motor-lorry of the respondent had no damage whatever on the front part of it or on its front bumper or along its right side (damage which should have been expected on those parts of the lorry if the version of the appellant to the effect that the front part of the motor lorry collided with the front part of his car, was correct);

(c) the only damage on the motor lorry was on the right rear mudguard which was dented inwards and a blackening on the rear right tyre, damage consistent with the version of the respondent,

accepted the evidence of the respondent and dismissing the claim of the appellant gave judgment in favour of the respondent on the counterclaim.

Learned counsel for the appellant forcefully attacked the findings of the trial Court and went as far as submitting that the respondent has removed the mud and broken glasses from point X1, which according to appellant's version was the point of impact, to point X, during the time that elapsed between the removal of the appellant to the hospital and the arrival of the police constable. This point was raised at the trial and it was dismissed by the learned President for the reasons stated in his judgment. We have gone carefully through the record and we have also considered the reasons given by the trial Court and we are satisfied that this specific point raised by the appellant is unwarranted by the evidence adduced and was rightly dismissed by the trial Court.

The main contention of the appellant was to the effect that the finding of the trial Court that the appellant was solely to blame for the accident was unwarranted by the evidence adduced.

Having considered the submission of learned counsel for appellant in the light of the judgment of the trial Court and the record, we are not satisfied that the appellant has discharged the onus cast upon him to persuade this Court this is a proper case for us to interfere with the findings of fact and the conclusions drawn therefrom by the trial Court.

On the contrary, we hold the view that it was reasonably open to the trial Court to make the findings he arrived at and draw therefrom the inferences he drew.

In the result, the present appeal fails and it is accordingly dismissed with costs.

Appeal dismissed. with costs.