

1988 March 29

(A LOIZOY, SAWIDES, KOURRIS JJ)

CHRISTOS NICOLAIDES,

Appellant - Defendant,

v

DEMETRIOS ZACHARIADES,

Respondent - Plaintiff

(Civil Appeal No 7074)

Negligence — Road traffic collision — Overtaking at a considerable speed a stationary queue of cars from the left hand side, using the berm and colliding with a car, crossing the road in front of the queue in order to enter a side street — In the circumstances, driver of latter car could not reasonably anticipate such an action by driver of first car — Driver of first car solely to blame 5

Evidence — Findings of fact — Road traffic collision — Speed — Force of collision and length of brakemarks — Inference that appellant was not driving at a low speed as alleged

Respondent was driving his car along Athalassa Avenue towards Strovolos, intending to turn to the right, in order to enter a side road. There was a queue of cars coming from the opposite direction headed by a tanker 10

The respondent stopped his car, indicating his aforesaid intention. The driver of the tanker stopped to allow the respondent to pass. The other cars in the queue stopped behind the tanker. The respondent proceeded to enter the aforesaid side road. However, at that time, appellant was overtaking the queue headed by the tanker from its left, using the berm of the road. There followed the collision of the two cars 15 20

It must be noted that at that point of Athalassa avenue there is a white line leaving a space of only 10 feet and 6" for use by those coming from the direction of the queue

The trial Court found that appellant was fully to blame for the collision. Hence this appeal 25

Held, *dismissing the appeal* (1) Though one cannot reach a conclusion as to what was the speed of the appellant, in the absence

5 of any expert evidence in the case, the fact that the collision was a violent one and the length of the brake - marks which were left by the car of the appellant, lead to the inference that the speed of the car of the appellant was not low as alleged by him but it must have been considerable.

10 (2) The space of ten and a half feet left did not allow room for cars travelling from Strovolos to Nicosia to overtake at that particular point and in any event according to the rule of the road when a car overtakes another it has to overtake from the right side of on coming car.

(3) The respondent could not reasonably foresee that a car would suddenly emerge from the side of the other cars in the way that the car of the appellant suddenly emerged.

Appeal dismissed with costs.

15 Appeal.

20 Appeal by defendant against the judgment of the District Court of Nicosia (Hji Constantinou, S. D. J.) dated the 16th October, 1985 (Action No. 3698/84) whereby he was adjudged to pay to the plaintiff the sum of £1,350 damages as a result of a traffic accident.

A. Drakos, for the appellant.

A. Dikigoropoulos, for the respondent.

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Savvides:

25 SAVVIDES J.: This is an appeal from the District Court of Nicosia in civil action No.3698/84 for damages arising as a result of a road traffic accident.

30 The accident which gave cause to the above action occurred in Athalassa Avenue, Nicosia, as a result of the collision of motor - vehicle LG240 driven by the appellant and motor - vehicle LR467 driven by the respondent. It was the allegation of the appellant that the accident was the result of the negligence of the respondent whereas the respondent alleged that the accident was the result of the negligence and/or contributory negligence of the appellant.

35 The quantum of damages both in respect of the claim and the counter - claim had been agreed and the only issue which had to be determined by the trial Judge was the question of liability. On the evidence before him the learned trial Judge came to the

conclusion that the appellant was solely to blame for the accident and gave judgment accordingly. Hence the present appeal.

The facts of the case are briefly as follows:

The accident occurred at the junction of Athalassa Avenue with Dassoupolis street and at a point of about 150 feet from the traffic lights of the main Nicosia/Limassol road. The width of Athalassa Avenue at the point of the accident is 30 feet and that of Dassoupolis street 22 feet. Before the junction of Athalassa Avenue and Dassoupolis street there is a berm four feet wide on the left - hand side towards the main Nicosia/Limassol road and as the junction is only at a short distance from the traffic lights there is on the left - hand side a continuous white line at a point of 10 feet 6 inches from the left - hand side of the road whereas the right - hand side of the road is left free for traffic coming from the opposite direction. A short distance from the junction of the two roads the white continuous line breaks into two dotted lines forming two lanes, the left - hand side one to be used by vehicles proceeding towards the traffic lights and intending to turn towards Nicosia and the right - hand side one for use by vehicles intending to turn to the right in the direction of Limassol. Such white line is an indication that cars coming from the direction of Strovolos could at that point travel only on the space of 10 feet, 6 inches of the asphalted road which is marked with a continuous white line and leave 19 feet, 6 inches for use by the cars coming from the opposite direction.

Respondent was driving his car along Athalassa Avenue following the direction from Limassol/Nicosia road towards Strovolos intending to turn to his right into Dassoupolis Street which is a side road. At the material time there was a long queue of cars coming from the opposite direction in front of which there was a tanker. The respondent indicated with his trafficator that he intended to turn to the right. The tanker which was coming from the opposite direction followed by the other cars stopped to give way to the respondent to turn to the right. At the same time all cars which were following stopped behind the tanker. Whilst the respondent was proceeding to enter into Dassoupolis Street his car collided with appellant's car which instead of stopping behind the row of cars was driven on the berm of the road on the left - hand side of the cars and proceeded straight ahead to overtake improperly all cars ahead of him. The collision was a violent one and this is manifested by the extensive damages caused to both vehicles.

It was the allegation of the appellant that the respondent wrongly tried to turn to his right without making sure whether any car was coming from the opposite direction and in anyway the speed of his car was excessive.

5 The learned trial Judge accepted the evidence of the respondent and came to the conclusion that the appellant was solely to blame as he was overtaking the long queue of the cars which were in front of him from the left and in so doing he was driving all along his car on the berm. He also found that the
10 appellant was driving his car at a great speed.

The learned trial Judge drew his inference that the speed was excessive bearing in mind the brake - marks left by the car of the appellant and also the force of the collision. Though one cannot reach a conclusion as to what was the speed of the appellant, in the
15 absence of any expert evidence in the case, the fact that the collision was a violent one and the length of the brake - marks which were left by the car of the appellant, lead to the inference that the speed of the car of the appellant was not low as alleged by him but it must have been considerable.

20 Though Athalassa Avenue at that point is 30 feet wide the space which was available on the left - hand side for use by cars proceeding from the direction of Strovolos towards Nicosia was only ten feet six inches wide as explained above. The space of ten and a half feet left did not allow room for cars travelling from
25 Strovolos to Nicosia to overtake at that particular point and in any event according to the rule of the road when a car overtakes another it has to overtake from the right side of the oncoming car. In the present case the appellant being in a hurry thought fit to overtake a long queue of cars by driving his car on the berm at
30 considerable speed and proceeding on the left - hand side of such cars which was in any event wrong.

The learned trial Judge found that if the intention of the appellant was to turn to the left it could have been thought probable that he might have a right to overtake the other cars on
35 the left for the purpose of entering into the side road. This finding of the learned trial Judge is based on a hypothetical situation and not on the facts of the present case where the actual intention of the appellant was not to turn to the left but to overtake the other cars and take heed of them. We find it unnecessary to deal with
40 such hypothetical finding of the trial Judge. We consider it

doubtful whether, in the circumstances of the case and bearing in mind the condition of the road and the existence of a continuous straight white line marking the area which could be used by cars keeping the left - hand side of the road which was only ten and a half feet, it was reasonable and safe for any car to try to overtake from the left using part of the asphalt and the four feet berm which was on the left even if he had an intention to turn to the left. 5

The sole question which poses for consideration before us is whether it was reasonable for the respondent to expect that another car might be overtaking the queue of the cars headed by the tanker which stopped to afford him the opportunity to turn right into the side - road, by proceeding on the left - hand side of such cars and travelling along the berm at a point where the part of the road for use did not leave room for overtaking. 10

We have no difficulty in finding that the respondent could not reasonably foresee that a car would suddenly emerge from the side of the other cars in the way that the car of the appellant suddenly emerged. 15

In the result we find that the learned trial Judge rightly came to the conclusion that the accident was solely due to the negligence of the appellant and, therefore, this appeal fails and is hereby dismissed with costs. 20

Appeal dismissed with costs