1988 May 24

(A LOIZOU P SAVVIDES KOURRIS JJ)

YIANGOS SOCRATOUS

Appellant-Plaintiff

v

1 GEORGHIOS LOIZOU
2 ANDREAS IOANNOU

Respondents-Defendants

(Civil Appeal No 7181)

Negligence—Road traffic collision—Defence of inevitable accident—Burden of proof on the defendant—How such burden is discharged—Motor cyclist sliding and falling in front of trailer—Driver of trailer swerving to the right in order to avoid hitting the motor cyclist—Collision with oncoming vehicle driven by appellant from the opposite direction—On these facts driver of trailer established defence of inevitable accident

The facts of this case sufficiently appear in the hereinabove headnote

Appeal dismissed with costs

Cases referred to

Ritchie's Car Hire Ltd v Bailey (1958) 108 L J 348,

The Merchant Prince [1892] P 179

Appeal

Appeal by plaintiff against the judgment of the District Court of Limassol (Korfiotis, D J) dated the 21st November, 1985 (Action No 3856/83) whereby his action for damages for personal injuries suffered as a result of a traffic accident was dismissed

Chr. Pavlou, for the appellant.

G Pelaghias, for the respondents

A LOIZOU P gave the following judgment of the Court This is an appeal from the judgment of a Judge of the District Court of Limassol by which he dismissed the action of the appellant for damages for personal injuries suffered by him and the damage caused to his vehicle as a result of a collision on his vehicle with that of respondent 1

The facts as found by the learned trial Judge are briefly these

On the 16th February 1987 at about 11 30 a m the appellant was driving along Franklin Roosevelt Avenue in Limassol his motor-car under Registration No FM 594 At the same time respondent No 1 was driving his trailer under Registration No MP 57 from the opposite direction At the same time on the berm on the left-hand side of the trailer there was a motor-cyclist who in his effort to get on to the asphalted road slided and fell on the asphalt at a distance of two to three feet from the berm On these facts respondent No 1 was found not guilty of negligent driving Respondent No 1 in his effort to avoid hitting the said motor-cyclist applied brakes and swerved to the right with the result of colliding with the car of the appellant The learned trial Judge in arriving at his findings relied mainly on the version of the appellant himself so there is nothing more to be said except whether in such circumstances respondent No 1 could be found negligent or whether the collision was the result of inevitable accident which is a defence to an action based on negligence open to a defendant who has to establish that there was no negligence on his part in which event he will then succeed in defeating the claim The burden of proof is in such a case on the defendant

Inevitable accident has been described as that which the party charged with the offence could not possibly prevent by exercise of ordinary care, caution and skill

In *Ritchie's Car Hire Ltd , v Bailey* [1958] 108 L J 348, the defence of inevitable accident succeeded where the defendant driver had established that his collision with a kerbside tree in the early hours of the morning had been caused by his swerving to avoid striking a cat which had suddenly confronted him unforeseeably, as it run out on to the road from his near side

We have no difficulty having listened carefully to learned counsel for the appellant and gone through the records of the proceedings in coming to the conclusion that the defence of inevitable accident has been established both on the facts related

by the appellant himself and accepted by the learned trial Judge and on the rest of the circumstances of the case. The respondent discharged the burden that was on him. He had either to show what was the cause of the accident and that the result of that cause was inevitable or he should have shown all the possible causes, one or the other, of which produced the effect and that with regard to everyone of these possible causes the result could not have been avoided. *(The Merchant Prince* [1892] P. 179)

We therefore find no reason to interfere with the judgment of the learned trial Judge and the appeal fails and is hereby dismissed with costs.

Appeal dismissed with costs.