1988 June 30

(A. LOIZOU, P., DEMETRIADES, PIKIS, JJ.)

1. EVAGORAS IOANNOU,
2. N. P. LANITIS LTD.,

Appellants-Defendants,

v.

1. GEORGHIA CHRYSOSTOMOU,
2. MICHALAKIS PACHITIS,
ADMINISTRATORS OF THE ESTATE
OF THEODOSIS CHRYSOSTOMOU,

Respondents-Plaintiffs.

(Civil Appeal No. 7401).

Findings of fact — Credibility of witnesses — Interference with, by this Court — Principles applicable.

Road traffic collision — Apportionment of liability — In the circumstances of this case there is no room for interference by this Court.

The facts of this case sufficiently appear from the judgment of the Court.

Appeal dismissed. No order as to costs.

Appeal.

Appeal by defendants against the judgment of the District of Nicosia (Artemides, P.D.C.) dated the 19th May, 1987 (Consolidated Actions Nos. 2830/84 - 2833/84) whereby they were ordered to pay to the plaintiffs various amounts as damages as a result of a traffic accident.

G. Pelaghias with N. Ioannou (Mrs.), for the appellants.

Chr. Vakis with A. Georghiou, for the respondents.

A. LOIZOU P. gave the following judgment of the Court. The sole issue before the learned President who tried the case in the first

instance, and also before us today on appeal and the subject of its cross-appeal which in the course of the hearing was withdrawn, is that of the liability of the two drivers involved in a traffic accident that occurred on the 27th March 1983 on the main Nicosia-Troodos road, in which two vehicles were involved, a Mercedes saloon car under Registration No. FJ 101 and a motor lorry under Registration No. FR 021.

The facts of the case as emanating from the evidence and the respective version of the two sides are set out in the Judgment of the learned President and are briefly these.

Appellant No. 1 was driving the said motor-lorry in the direction of Troodos in the course of his employment with appellants No. 2, who were the owners of same. At about 6.00 p.m. and between the 10th and 11th milestone, it came into a violent collision at a point which is about one foot to the right of the dividing line of the road, that i on the side of the oncoming saloon car which was driven by the deceased for whose estate and dependants action No. 2830/84 was instituted. The version of the respondents supported by two witnesses, was that the deceased was driving the saloon-car in question on the proper side of the road, when suddenly the oncoming lorry turned right, got into their path and after colliding with the car of the deceased, it proceeded into the fields and stopped at a distance of about 250 ft away.

On the other hand, the version of the appellant was that the motor-car came towards him and he hooted his horn but the driver of the other car took no notice of it so he himself applied his brakes and veered to his right-hand side there being no other vehicle coming from the opposite direction at the time, the deceased however stopped his vehicle on his side to the road, hence the collision.

The learned President, after evaluating the testimony of the various witnesses and deciding upon their credibility proceeded to view the real evidence in its proper perspective and in the light of the importance that should be attached to it as repeatedly stated by this Court in many of its judgments, concluded that the appellant was to blame by 60% and the deceased, who is now represented by his personal representatives in these proceedings was to blame by 40%.

It was, as was rightly so observed by the Learned President, a difficult case to resolve and of course it is more difficult for us on

appeal who do not have the benefit of listening to the testimony of witnesses and watching their demeanour in the witness box but who have to evaluate the situation from the transcribed record of the case and indeed the argument of counsel of either side.

In the light of the totality of the circumstances and the findings of the learned President and the principles governing the interference by this Court with such findings and the conclusions drawn thereon based on the credibility of witnesses as accepted by the trial Court, we have come to the conclusion that we are not justified in interfering with the apportionment of liability as found by the learned President.

For all the above reasons the appeal and of course the cross appeal which has already been withdrawn are dismissed and in the circumstances there will be no order as to costs either of the appeal or the cross appeal.

Appeal dismissed. No order as to costs.