1988 July 11

(DEMETRIADES, STYLIANIDES, PIKIS JJ.)

GEORGHIOS CHRISTOFOROU AS ADMINISTRATOR OF THE ESTATE OF THE DECEASED ANTONIS CHRISTOFOROU (No. 2)

Appellant-Plaintiff.

v.

1. GEORGHIOS ASPROFTAS,
2. ANDREAS MALIOTIS LTD.,

Respondents-Defendants.

(Civil Appeal No. 7142).

Negligence — Road traffic collision — User of major road — Absence of duty to anticipate, in the absence of forwarning, emergence of motorist from a side road.

Negligence — Road traffic collision — Avoiding action by user of major road — The pressure from an unforeseen risk — Importance of.

A motorcyclist entered a junction of a major road with a minor road from the minor road without stopping at the halt sign or anywhere else and, as a result, collided with the rear side of a lorry driven along the major road.

The brakes of the motorcycle were defective. The motorcyclist made an effort to bring his motorcycle to a halt by applying pressure on the ground with his feet.

Visibility of the lorry driver towards the direction of the motorcyclist was limited by a row of trees. The lorry driver noticed the motorcyclist when a short distance separated the two vehicles. Thus he felt that, if he applied brakes, he would, in all probability, make collision a certainty. He swerved to the right. But he did not manage to avoid the collision.

As a result of the collision the motocyclist died. The action brought by his personal representatives was dismissed on the ground that the lorry driver was not to blame for the collision. Hence this appeal.

Held, dismissing the appeal (1) The amenity of the lorry driver to manoeuvre his car in a way other than that in which he, in fact,

manoeuvred it, was limited by the proximity of the motorcycle and the absence of a real opportunity to change direction or increase his speed dramatically.

(2) *From Vakanas v. Thomas and Another* (1982) 1 C.L.R. 530 and *Adamis and Another v. Eracleous* (1982) 1 C.L.R. 746 there emerges the absence of a duty on the part of the user of a major road to anticipate, in the absence of fore warning, the emergence of a motorist from a side road without stopping and when unsafe so to do; and the pressure under which the driver operates when confronted with an unexpected and unforeseen risk on the road.

Appeal dismissed. No order as to costs.

Cases referred to:

Vakanas v. Thomas and Another (1982) 1 C.L.R. 530;

Adamis and Another v. Eracleous (1982) 1 C.L.R. 746.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Artemides, P.D.C.) dated the 31st March, 1986 (Action No. 6200/83) whereby his claim for damages as a result of a traffic accident was dismissed.

P. Lysandrou, for the appellant.

N. Zomenis, for the respondents.

Cur. adv. vult.

DEMETRIADES J.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: This is an appeal by the administrators of the estate of Antonis Christoforou against the judgment of the District Court of Nicosia, dismissing their action for damages raised under s.58 of the Civil Wrongs Law (Cap. 149), and section 34 of the Administration of Estates Law (Cap. 189).

The deceased, a young man of 20, met with his death in a road accident at the junction of Pentelikon and Vyzantion Street, Nicosia. There was hardly any dispute about the facts that led to the collision. The deceased drove a motorcycle along Vyzantion Street and was heading in the direction where the road intersects with Pentelikon Street. Entry into the junction from the side of Vyzantion Street is controlled by a halt sign; whereas no like

restriction affects the users of Pentelikon Street. The realities of the junction were that Pentelikon Street was a major and Vyzantion Street a side road.

The deceased entered the junction without bringing his motorcycle to a standstill at the halt sign or anywhere else and, entered the junction at a time when the lorry driven by Georghios Asproftas was crossing it. As a result he collided with the rear side of the 24 feet long lorry, his motorcycle overturned and himself suffered fatal injuries.

The reason for the failure of the deceassed to stop at the halt line was likewise not in issue. The brakes of the motorcycle were defective, a fact that made it impossible for the deceased to exercise control over the vehicle he was driving. He made, what must have been, an agonizing effort to bring his motorcycle to a halt by applying pressure on the ground with his feet. The soles of his shoes bore evidence of that. For his part the lorry-driver, on sensing imminent risk of a collision, swerved his car rightwards, away from the direction of the motorcyclist, and proceeded forward in the hope of averting a collision. Any other course, he explained, would have precipitated the collision in view of the short distance that separated his lorry, loaded as it was with five tons of merchandise, with the motorcycle. Visibility in the direction of the motorcyclist was limited by a row of trees on the corner of the road. Therefore, he had no opportunity to notice the deceased earlier. He noticed the motorcyclist when a short distance of 30 ft. separated the two vehicles. Thus he felt that if he applied brakes he would; in all probability, make collision a certainty.

The learned trial Judge exonerated the lorry-driver of negligence, holding there was little he could do to avoid a collision. The course he followed was not only reasonable but possibly the only course that offered some hope of averting the accident. He therefore, dismissed the action.

Before debating the ground of appeal it is opportune to record the circumstances, again uncontested, under which the deceased assumed control of the motorcycle: It belonged to a friend who parked it outside a games club (σφαιριστήριο), with instructions that no one should drive it in his absence. Notwithstanding the injunction the deceased assumed control of it, an inevitable inference from the evidence; soon he realised to his peril that its

brakes were defective. Because of his inability to bring the vehicle under control he entered the junction and collided with a lorry in the circumstances and with the results earlier explained.

The appeal presented under various headings, revolved on the suggested error of the trial Court to find the lorry-driver liable in negligence for failure to take avoiding action reasonably warranted in the circumstances of the case. The lorry-driver should have followed, in the submission of counsel, one of two courses: Either apply brakes - an option open to him - or increase his speed considerably to get through the junction as quickly as possible - an alternative option equally propitious to the discharge of his duty to the motorcyclist.

Both submissions overlook the basic fact that when the lorry-driver noticed the motorcyclist on the road - and had no opportunity to sense his presence earlier - only a distance of 30 feet separated the two vehicles. The inability of the motorcyclist to bring his vehicle under control made the collision virtually inevitable. As the trial Court observed the application of brakes and any reduction of the speed of the lorry incidental thereto, would have made the collision a certainty; whereas the course followed offered a chance of avoiding the accident. The amenity of the lorry-driver to manoeuvre his car in any other way, was limited by the proximity of the motor-cycle and the absence of a real opportunity to change direction or increase his speed dramatically.

Counsel complained that the trial Court did not pay heed to the principles adopted or evolved in two decisions of the Supreme Court cited to him, namely, *Vakanas v. Thomas and Another** and *Adamis and Another v. Eracleous***.

Although not specifically cited, the principles espoused in the above cases find expression in the judgment of the trial Court, particularly the absence of a duty on the part of the user of a major road to anticipate, in the absence of fore-warning, the emergence of a motorist from a side road without stopping and when unsafe so to do; secondly, the pressure under which the driver operates when confronted with an unexpected and unforeseen risk on the road. In those circumstances, as explained in *Adamis*, supra, he

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* *(1982) 1 C.L.R. 530.*
** *(1982) 1 C.L.R. 746.*

does not have the coolness or the breathing space necessary to ponder rival courses.

Far from agreeing that the trial Court misdirected itself in any way, we are of the view that its findings were perfectly warranted by the evidence, if not inevitable, whatever view one may take of the facts. The exoneration of the lorry-driver from liability in negligence and the sequential dismissal of the action against his employers, too, sued as vicariously liable for his acts, make unnecessary examination of any other issue taken on appeal, including the assessment made of the damage to which the appellants would be entitled if successful. We consider it pertinent, nonetheless, to commend on one submission of counsel founded, as it appears to us, on a misconception of the issues that may be legitimately explored in civil proceedings. Counsel submitted that the conduct of the owner of the motorcycle in allowing his brakes to be defective, should not be divorced from the issue of liability raised in the cause. The obvious answer is that the issues are limited by the pleadings and confined to the parties to the proceedings. Very sensibly we think that the owner of the motorcycle was not joined as defendant. The deceased after all, assumed control of his motorcycle without his consent and contrary to his instructions.

The appeal is dismissed. Be it with reluctance, we shall not make an order as to costs.

Appeal dismissed.
No order as to costs.