1988 December 28

(STYLIANIDES, KOURRIS, AND BOYIADJIS, JJ.)

LYGIA FLOURENTZOU,

Appellant-Defendant 2,

v.

1. GEORGHIOS CHRISTODOULOU,

Respondent 1-Defendant 1,

2. ELEFTHERIA TOURAPI,

Respondent 2-Plaintiff.

(Civil Appeal No. 7141).

Statutory duty — Breach of — When a member of the public has a cause of action — Test applicable — Breach of parking regulations — Does not give a right of action.

Negligence — Road traffic — Breach of parking regulations — In the circumstances does not amount to negligence.

Appeal — Apportionment of liability — Interference with, on appeal — Principles applicable.

The appellant parked her car in breach of traffic regulations. Respondent 1, who was driving his motor car, carrying respondent 2 (plaintiff) as a passenger, ran into the parked car at its rear offside part.

The trial Judge apportioned liability 30% on the appellant and 70% on respondent 1. Hence this appeal. The accident occured in broad daylight. The weather was fine. The line of vision was about 500 meters. There was ample space for respondent 1 to by-pass the parked car.

Held, *allowing the appeal*: (1) The question when a breach of statutory duty confers on a member of the public a right to claim damages in a civil action has been expounded in *Coot and Another v. Stone* [1971] 1 All E.R. 657.

(2) In the light of the language used in the regulation forbidding parking along double yellow lines the conclusion is that the Regulations do not confer on a member of the public a right to claim damages in a civil action

(3) The action of the appellant does not constitute negligence on her part 5

(4) There will be no Bullock order as to costs because it was not reasonable for the plaintiff-respondent 2 to sue the appellant

Appeal allowed with costs

Cases referred to 10

Katsiou v Shakallis (1969) 1 C L R 346,

Despotis v Tseriotou (1969) 1 C L R 261,

Brown and Another v Thompson [1968] 2 All E R 708,

Uddin v Associated Portland Cement Manufacturers Ltd [1965] 2 All E R 213, 15

Coot and Another v Stone [1971] 1 All E R 657,

Kythreotis v Constantinou (1984) 1 C L R 811

Appeal.

Appeal by defendant 2 against the judgment of the District Court of Nicosia (Demetriou, Ag P D C) dated the 28th February, 20 1986 (Action No 2987/81) whereby the sum of £5,600 - general and special damages for injuries suffered in a traffic accident was awarded to the plaintiff.

A Dikigoropoulos, for the appellant

A Hadjioannou, for the respondent 2 25

Respondent 1 appeared in person

Cur adv vult

STYLIANIDES J The Judgment of the Court will be delivered by Mr. Justice Kourris.

KOURRIS J This is an appeal by the appellant-defendant 2 30 from the Judgment of the District Court of Nicosia in case No 2987/81 whereby respondent 2-plaintiff was awarded the sum of £5,600 general and special damages for injuries she sufferred in a

traffic accident. The appeal is directed against the apportionment of liability made by the trial Court whereby the trial Judge has apportioned liability 70% against respondent-defendant 1 and 30% against appellant-defendant 2.

5 The approach of this Court to appeals against apportionment of responsibility is well-settled. The Court will not interfere with such apportionment made by trial Courts, save in exceptional cases, as where there is some error in principle or the apportionment is clearly erroneous; and an appellate court will not readily substitute its 10 own discretion for that of the trial Court. Some of the cases are *Katsiou v. Shakallis* (1969) 1 C.L.R. 346; *Despotis v. Tseriotou*, (1969) 1 C.L.R. 261; *Brown and Another v. Thompson*, [1968] 2 All E.R. 708; *Uddin v. Associated Portland Cement Manufacturers Ltd.* [1965] 2 All E.R. 213 at p. 218.

15 The findings of the learned trial Judge are not in dispute and *counsel for the appellant contended that on the facts as found by* the trial Judge the appellant should not have been found to have contributed at all to the accident in question.

The appellant, on 9.4.1981, parked her car No. FK 595 along 20 Grivas Dhigenis Avenue, Engomi, outside the Ledra Hotel. At that stretch of the road, there were two yellow lines which is a traffic sign prohibiting the parking of cars. The appellant parked her car in breach of the traffic regulations. The respondents 1 who was driving motor car No. JE 570 and carrying respondent 2 as a 25 passenger, ran into the parked car at its rear offside part, as a result of which both cars sustained damage and the respondent 2 suffered injuries.

The accident happened at about 3.00 in the afternoon in broad daylight, with bright weather on a straight stretch of the road with 30 a line of vision of about 500 meters. The width of the road at the scene of the accident is 40 ft. and it is divided by a continuous white line, thus, leaving a width of 20 feet for each direction.

The version of respondent 1 was that whilst driving along the road another car overtook him and got in front of him, and then he 35 saw the parked car of the appellant at a distance of 10 - 15 feet and he could not avoid the collision. The trial Judge also found that the appellant parked her car for about 2 minutes before the collision and that the respondent 1 was driving at about 30 m.p.h.

Counsel for the appellant suggested that on the evidence the

appellant was not negligent at all and the breach of the traffic regulations on her part did not give a civil right to the respondent 2 to bring an action against her.

The question when a breach of a statutory duty confers on a member of the public a right to claim damages in a civil action has been admirably expounded in the case of *Coot and Another v. Stone* [1971] 1 All E.R. 657. This case was adopted by our Court in the case of *Kythreotis v. Constantinou* (1984) 1 C.L.R. 811. It was held in that case that the general rule was that where a statute or a regulation imposed a public duty and provided a remedy, e.g. a fine or other penalty in respect of a breach of that duty, it did not confer on a member of the public a right to an alternative remedy, e.g a right to claim damages in a civil action, unless the language and purpose of the relevant statutory provision was such as to bring it within an exception to the general rule, such as where it was enacted for the protection of a particular class of persons. Davis, L.J. in his Judgment at p. 661, referred to the case of *Phillips v. Brittania Hygenic Laundry Co. Ltd.*, where Lord Atkin put the test as follows: «The question is whether these regulations, viewed in the circumstances in which they were made and to which they relate, were intended to impose a duty which is a public duty only or whether they were intended, in addition to the public duty, to impose a duty enforceable by an individual aggrieved.

We are of the view, bearing in mind the language used in the regulation forbidding parking along the double yellow lines that the Regulations do no confer on a member of the public a right to claim damages in a civil action.

We now propose to deal with the question whether there was common law negligence on the part of the appellant.

Counsel for respondent 2 contended that the appellant was negligent in that she parked her car along a double yellow line, in a road frequented by heavy traffic, and that she did not heed the traffic at all, but she was talking to some person.

We do not think that the contention of learned counsel for the respondent 2 gives rise to negligence on the part of the appellant. Neither do we uphold the opinion of the learned trial Judge that she was negligent because she failed to park her car in the parking place of the Ledra Hotel and that she spoke to a person who was

coming from the yard of the hotel. The appellant had her car parked for 2 minutes before the collision. The respondent 1 was driving his car at about 30 m.p.h. in broad daylight on a straight stretch of the road with a line of vision of about 500 meters and
5 with a space of about 14 feet to pass. The fact that he ran into the back of the parked car obviously shows that he failed to have a proper lookout and that he is solely to blame for this accident.

In the circumstances, we are of the view that on the findings of fact of the trial Court, the apportionment is clearly erroneous; we
10 hold the view that respondent 1 - defendant 1 is solely to blame for this accident. The appeal is allowed, and the Judgment of the trial Court is set aside.

There will be Judgment for the respondent 2 - plaintiff for £5,600 against respondent 1 - defendant 1 only.

15 With regard to costs, we are of the view that the respondent 1 - defendant 1 should pay the costs of respondent 2 - plaintiff here and in the Court below. We do not propose to apply the well-known Bullock order in the present case because it was not reasonable for the respondent 2 - plaintiff to sue both
20 defendants, as looking at all the facts which the plaintiff knew, being a passenger in respondent's 1 - defendant's 1 car when the writ was issued she has a choice to sue either of the defendants. Consequently, the respondent 2 - plaintiff will pay the costs of the appellant - defendant 2 here and in the Court below.

25 *Appeal allowed.*