CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

ON APPEAL
AND
IN ITS ORIGINAL JURISDICTION

Cyprus Law Reports

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(TRIANTAFYLLIDES, P., LORIS, STYLIANIDES, JJ.).

RENOS PHILIPPOU,

Appellant-Plaintiff,

v.

CHRISTOFOROS ODYSSEOS,

Respondent-Defendant.

(Civil Appeal No. 6938).

Evidence — Expert witness — Duty of — Road traffic collision — Trial Judge may draw inferences from the real and other evidence as regards the existence of liability for negligence as a matter of sheer common sense, but not in the form of an expert opinion.

Evidence — Negligence — Conviction by a competent Criminal Court for driving without due care and attention after hearing — The Rule

in Hollington v. Hewthom and Co. Ltd [1943] 2 All E.R. 35 that such conviction is not admissible evidence of negligence in civil proceedings — Obiter strong criticism of the Rule.

Evidence — Negligence — Plea of guilty to a criminal charge for driving without due car and attention — It is admissible evidence in civil proceedings — How can a party exonerate himself from such formal admission.

The issue in this appeal is confined to the liability for a head-on road traffic collision. The trial Judge found that the appellant was fully to blame. The grounds of appeal are: I. The trial Judge, though he rejected the evidence of the experts; in arriving at his findings used such evidence and, furthermore, the Judge himself acted as expert.

(2) The Judge disregarded completely and failed to appreciate the formal plea of guilty of the respondent in the criminal case.

The respondent had explained his plea of guilty by alleging that he was pressed by the police constable in the presence of his advocate, but then, in re-examination, he said that he entered the plea in order to avoid protracted litigation.

Held, *allowing the appeal:* (A)(1) The duty of an expert is to furnish the Judge with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the Judge to form his own independent judgment by the application of these criteria to the facts proved in evidence.

(2) Trial Judges should not turn themselves into experts. They may look at the real and other evidence and draw inferences and reach conclusions as regards the existence of liability for negligence, not in the form of an expert opinion, but as a matter of sheer common sense.

(3) In this case the trial Judge made two crucial findings, the first about the position of respondent's car prior to application of brakes and the second about the point of impact, by using evidence of one expert, which he had earlier rejected and by acting himself as an expert on thinking distances, calculations based not only on the brake marks but, also, by addition within a few feet here, deduction of a few feet there, extension of the basic line on the plan, etc. This is sufficient for allowing this appeal.

(B) The plea of guilty is a formal admission. It is evidence of the negligence and of the act which constitute the careless driving. A person who appears before a criminal Court and pleads guilty to a charge has to prove, either that he did not know the law, or that he acted under compulsion or oppression in order to exonerate himself

from his formal admission. The formal admission in a plea of guilty before a Court of Law should be evaluated together with the rest of the evidence.

In this case there was no reason in law or justice to allow the respondent to retract before the civil Court.

Appeal allowed with costs. Retrial ordered. Costs before the trial Court to be costs in cause in the new trial.

Cases referred to:

Anastasiades v. The Republic (1977) 2 C.L.R. 97;

Kouppis v. The Republic (1977) 2 C.L.R. 361;

Shakolas v. Agathangelou and Another (1983) 1 C.L.R. 1007;

Salih and Another v. Sofocleous and Others (1979) 1 C.L.R. 248;

Siakos v. Nicolaou (1980) 1 C.L.R. 333;

Ioakim v. Soteriades (1984) 1 C.L.R. 175;

Hollington v. Hewthorn & Co. Ltd. [1943] 2 All E.R. 35;

Goody v. Odhams Press Ltd. [1966] 3 All E.R. 369;

Barclays Bank Ltd. v. Cole [1966] 3 All E.R. 948;

Jorgensen v. News Media (Auckland) Ltd. (1969) N.Z.L.R. 961;

R. v. Riley, 18 Cox 285;

Charalambous v. Police (1982) 2 C.L.R. 134;

Athienou Bus Co. Ltd. v. Vasiliou and Another (1970) 1 C.L.R. 365;

Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Chrysostomis, P.D.C.) dated the 27th March, 1985 (Action No. 2006/81) whereby his action for special and general damages for personal injuries and material damage to his car due to the negligence and/or breach of statutory duty by defendant was dismissed.

P. Pavlou, for the appellant.

A. Dikigoropoulos, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The Judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: In the early hours of the 19th January, 1981, a road accident occurred in Limassol, at Makarios III Avenue, in which motor car Registration No. HV 279 driven by the appellant in a westerly direction and motor car Registration No. FZ 83 driven by the respondent in the opposite direction were involved. The appellant sustained bodily injuries and his car was damaged.

The appellant by action in the District Court of Limassol claimed from the defendant damages - special and general - for personal injuries and material damage to his car, due to the negligence and/or breach of statutory duty by the respondent - defendant in the action.

In the meantime, in respect of this accident the respondent was prosecuted for driving without due care and attention and pleaded guilty to the charge. We shall revert to this plea of guilty later on in this Judgment.

The special damages were agreed at £3,550.-.

The trial proceeded on the issues of liability and general damages.

The trial Court decided that the respondent was not negligent and that the appellant was entirely to blame for the accident. Following a commendable practice of the first instance Courts, the trial Judge assessed the general damages of the appellant at £3,500.-. Had the plaintiff been successful, he would have been awarded £7,050.- special and general damages on a full liability basis. The action was dismissal with costs.

Hence this appeal, which is directed only against the decision concerning liability.

The quantification of the damages is accepted by both sides.

The grounds of appeal, as argued before us, are:-

1. The trial Judge, though he rejected the evidence of the experts, in arriving at his findings used such evidence and, furthermore, the Judge himself acted as expert.

2. The Judge disregarded completely and failed to appreciate the formal plea of guilty of the respondent in the criminal case,

which amounted to an admission of liability in the particular circumstances of this case.

With the advancement of knowledge, science and technology, the Courts admit evidence of expert witnesses and use their specialized opinion in order to arrive at correct decisions. An expert's evidence is admissible to furnish the Court with scientific opinion, which is likely to be outside the experience and knowledge of a Judge. The value of specialized knowledge is incontestable, being the product, as it is, of intensive reseach and experience beyond the range of the ordinary man.

In the Courts, experts are usually called in by the parties as witnesses in support of their respective contentions, where technical matters are involved. Their duty is to furnish the Judge with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the Judge to form his own independent judgment by the application of the criteria to the facts proved in evidence - (*Andreas Anastassiades v. The Republic* (1977) 2 C.L.R. 97; *Kyriacos Nicola Kouppis v. The Republic* (1977) 2 C.L.R. 361).

The parties gave in Court conflicting versions as to the position of their cars prior to the collision and the point of impact. Both called experts. Each one of the experts, in the opinion of the trial Court, proved partisan of the side that called him.

We read in the judgment:-

«I shall confine myself to saying that these two experts with their lengthy evidence expressed a completely different opinion and each one supported the version of the side that called him. Thus Tzirkallis expressed the opinion that the Plaintiff was driving on the wrong side of the road and he swerved towards his proper side and thus the collision occurred whilst the two cars were at an angle facing south, whereas Nestoras Kyriacou, supported the version of the Plaintiff. A lot of scientific sources were invoked and Newton's laws were relied upon. Also efforts were made by both to apply these scientific theories to the case in hand.

Having considered their evidence very carefully, I find myself unable to act upon it. These witnesses relied on assumptions and they failed to connect the scientific data with

the facts of this case so as to prove scientifically the correctness of their conclusions».

The trial Judge may look at the real and other relevant evidence establishing the totality of the circumstances in which an accident has happened and draw inferences and reach conclusions as regards the existence of liability for negligence, not in the form of an expert opinion, but as a matter of sheer common sense - (*Shakolas v. Agathangelou and Another* (1983) 1 C.L.R. 1007, at 1018). It is settled, however, that trial Judges should not turn themselves into experts and thus come to conclusions without the evidence of an experts (see, inter alia, *Salih and Another v. Sofocleous and Others* (1979) 1 C.L.R. 248, at 253; *Siakos v. A. Nicolaou* (1980) 1 C.L.R. 333; *Shakolas* case (supra) and *Ioakim v. Soteriades* (1984) 1 C.L.R. 175).

A plan to scale was produced by the accident investigator, PC 1995 - Fridericos Christou, P.W. 1. The point of impact was marked on it «X». This witness gave reasons, including his findings at the scene, why point «X» was the point of impact. He, further, testified that he showed this plan to the respondent - defendant on the day following the accident, who agreed with it. He was not cross-examined on this.

The trial Judge arrived at two very crucial findings of fact - the position of the defendant's car prior to the application of brakes on his proper side of the road and the point of impact, a few feet ahead of the point «X» - using evidence of the expert, which he earlier rejected, and, further, by acting himself as an expert on thinking distances, calculations based not only on the brake marks but, also, by addition with a few feet here, deduction of a few feet there, extention of the basic line on the plan, etc.

We have gone carefully through the first instance Judgment. The first ground of appeal is fully substantiated. On this ground alone the appeal would succeed.

The second ground pertains to the evidential value of the formal plea of guilty and the approach of the trial Court to that admission.

The respondent was prosecuted in connection with this accident in Criminal Case No. 7521/81. He appeared before the Court on 26th May, 1981, personally and pleaded «not guilty». The Court adjourned the case to 8th June, 1981, for hearing. On the date of the hearing he was represented by counsel, one of the

counsel that defended him later in the civil action. He applied for leave to change the previous plea from one of not guilty to one of guilty. Leave was granted. He was recharged and pleaded «guilty». The file of the case was produced by a clerk of the Criminal Registry. It is Exhibit 3. The particulars of the charge are:-

> «The accused on the 19th day of January 1981 at Limassol in the District of Limassol did drive motor car FZ 83 on a road, to wit, on Makarios III Avenue, without due care and attention.»

He admitted that this charge was in connection with the accident for which the civil action was instituted. He gave conflicting versions as to his admission in the criminal case. He said nothing in the examination in chief. In cross-examination he alleged that he pleaded guilty because he was pressed by the Police Constable in the presence of his counsel. In the re-examination he contended that he changed the plea to one of guilty in order to avoid protracted litigation (για να μην μακρυγορήσει η δίκη).

The only reference in the Judgment is at p. 134 of the record:-

> «... the Defendant offered a satisfactory explanation as to why he pleaded guilty to the charge of driving without due care and attention and thus, he rebutted the prima facie evidence of guilt».

Counsel for the repsondent referred us to *Hollington v. Hewthorn & Co., Ltd.* [1943] 2 All E.R. 35 and to a number of English cases decided on the provisions of the English Civil Evidence Act 1968.

In *Hollington* case it was decided that a conviction after hearing in a criminal case is not admissible evidence in civil litigation for a number of grounds set out therein. It was criticized in *Goody v. Odhams Press, Ltd.* [1966] 3 All E.R. 369. Lord Denning, M.R. at pp. 371-372 said:-

> «The reason is because there is a strange rule of law which says that a conviction is no evidence of guilt, not even prima facie evidence. That was decided in *Hollington v. R. Hewthorn & Co., Ltd.* I argued that case myself and did my best to persuade the court that a conviction was evidence of

guilt. But they would not have it. I thought that the decision was wrong at the time. I still think that it was wrong.»

Salmon, L.J., had this to say at p. 373:-

« I wholehearteadly agree with LORD DENNING, M.R.'s criticism of that decision. It is to be hoped, now that law reform is in the air, it may perhaps be reconsidered.»

In *Barclays Bank, Ltd. v. Cole* [1966] 3 All E.R. 948, with reference to *Hollington* case it was said at p. 949:-

«I hope that it will soon be altered. See what it means here. In order to be able to bring this civil action the platiniff bank had first to make sure that the defendant was prosecuted in the criminal court: see *Smith v. Selwyn*. Now after seeing him duly prosecuted and convicted, they are asked to prove his guilt all over again in this civil suit.

In the United States of America in similar circumstances it has recently been held that the conviction is not only receivable but is conclusive evidence: see *Hurtt Trustee v. Stirone*».

The Law Reform Committee, appointed to consider the law of evidence in civil cases, in the introduction to their report said:-

«In some recent judgments of the Court of Appeal upon whom the rule in *Hollington v. Hewthom* is still binding it has been suggested that it requires our consideration. We think so too. ... Rationalise it how one will, the decision in this case offends one's sense of justice. The defendant driver had been found guilty of careless driving by a Court of competent jurisdiction. The onus of proof of culpability in criminal cases is higher than in civil; the degree of carelessness required to sustain a conviction for careless driving is, if anything, greater than that required to sustain a civil cause of action in negligence. Yet the fact that the defendant driver had been convicted of careless driving at the time and place of the accident was held not to amount even to *prima facie* evidence of his negligent driving at that time and place. It is not easy to escape the implication in the rule in *Hollington v. Hewthom* that, in the estimation of lawyers, a conviction by a criminal Court is as likely to be wrong as right. It is not, of course, spelt out in those terms in the judgment of the Court of Appeal,

although in so far as their decision was based mainly upon the ground that the opinion of the criminal Court as to the defendant driver's guilt was as irrelevant as that of a bystander who witnessed the accident, the gap between the implicit and the explicit was a narrow one. It is in a sense true that a finding by any Court that a person was culpable or not culpable of a particular criminal offence or civil wrong is an expression of opinion by the Court. But it is of a different character from an expression of opinion by a private individual. In the first place, it is made by persons, whether Judges, Magistrates or juries, acting under a legal duty to form and express an opinion on that issue. In the second place, in forming their opinion they are aided by a procedure, of which the law of evidence forms part, which has been evolved with a view to ensuring that the material needed to enable them to form a correct opinion is available to them. In the third place, their opinion, expressed in the form of a finding or verdict of guilty or not guilty in criminal proceedings or a judgment in civil proceedings, has consequences which are enforced by the executive power of the State. ... Any layman would, we think, regard the fact of such conviction as a firm foundation for the belief that the accused had conducted himself in such a manner as to constitute the criminal offence of which he was convicted and, if such criminal offence would also constitute a civil wrong, that the accused had committed a civil wrong also. We, too, share this commonsense view. We consider that such a conviction has high probative value in establishing the cause of action in a subsequent civil action founded upon the same conduct, in which the onus of proof is lower. We have no doubt in principle that evidence of the conviction should be admissible.»

The rule in *Hollington* case was not followed in Canada and in New Zealand.

In *Jorgensen v. News Media (Auckland) Limited* (1969) N.Z.L.R. 961, not only it was heavily criticized, but all the grounds on which it was based were refuted. Turner J., said at pp. 990-991:-

«I have myself more than once said that the law of evidence is Judge-made law, directed to the control of the process by which Judges daily endeavour to do justice; and that if it

requires modification, that modification is particularly a matter with which the Judges should be entrusted. In this country there were many who when *Myers v. Director of Public Prosecutions* [1965] A.C. 1001; [1964] 2 All E.R. 881 was decided found it in their hearts to regret that the views of the majority had prevailed, and that the great days of judicial legislation in the field of evidence seemed to have come to an end. I was one of those who, with the greatest respect to their Lordships who decided it, were less than content with that decision, and for these reasons I am of opinion that neither the long time during which the Courts have consistently rejected convictions as evidence of guilt, nor any reluctance to modify existing rules in a proper case should deter this Court from taking what I conceive to be the proper course, *viz.* the rejection of *Hollington v. Hewthorn* as a decision to govern the admissibility of such evidence in the future of this country».

In England, following the Report of Law Commission, the Civil Evidence Act 1968 was enacted. The Decision in *Hollington* case is not the issue in this appeal.

By the plea of guilty an accused person admits the offence charged, i.e., the acts charged and the application of the Law thereto - *R. v. Riley*, 18 Cox 285. This is a formal admission. It is admissible in civil litigation. It is evidence of the negligence and of the acts which constitute the careless driving. It is noteworthy that the negligence sufficient to establish civil liability is all that is required to support a conviction in criminal proceedings under section 8 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86/72) under which the respondent - accused was charged - (*Charalambous v. Police* (1982) 2 C.L.R. 134).

Furthermore, however, the proof in civil cases is determined on the balance of probabilities, whereas in criminal cases there must be that degree of certainty which is expressed in the traditional words «beyond any reasonable doubt». The evidential value of a plea of guilty and the due weight that has to be attributed to it by the trial Courts were referred to in *Athienou Bus Co. Ltd. v. Kyriacos Vasiliou and Another* (1970) 1 C.L.R. 365.

A person who appears before a criminal Court and pleads guilty to a charge has to prove, either that he did not know the law, or

that he acted under compulsion or oppression in order to exonerate himself from his formal admission. The formal admission in a plea of guilty before a Court of Law should be evaluated together with the rest of the evidence. It is evidence of the commission of the civil wrong.

In the present case counsel for the accused - respondent said before the criminal Court:-

> «Accused pleads guilty with full reservation of rights to allege and prove contributory negligence on behalf of the complainant, in view of the fact that he failed to take avoiding action.»

This statement was made in the presence of the accused by his counsel and binds the accused.

The respondent was an officer in the National Guard, in full possession of his senses and with competent legal advice. He pleaded guilty and no reason in law or justice was shown to allow him to retract before the civil Court.

The trial Court acted on such flimsy and conflicting explanation, disregarded completely a serious piece of evidence before it. The Judge misdirected himself and acted on wrong principle.

For the aforesaid grounds the Judgment under appeal on the issue of liability is set aside. A new trial is ordered before another Judge.

Appeal is allowed as above.

With regard to costs the respondent to pay the costs of this appeal; but the costs before the trial Court to be costs in the cause in the new trial.

Appeal allowed.
New trial ordered.