1988 April 21

(A LOIZOU P , DEMETRIADES, STYLIANIDES, J J)

MELETIOS ROUSSOU,

Appellant-Defendant,

v

CHRISTOS ARISTODEMOU,

Respondent-Plaintiff

(Civil Appeal No 6818)

Appeal — Findings of fact — Interference with, on appeal — Principles applicable — Court does not interfere, unless the reasoning behind them is unsatisfactory or they are not warranted by the evidence — But it will interfere with conclusions from primary facts, if such conclusions could not be reasonably drawn

Negligence/Contributory negligence — Road collision — The test is objective — A motorist placed in agonizing position has to take a step, which a reasonable careful driver would fairly be expected to take in the circumstances — Curves limiting visibility of both drivers, who were coming from opposite directions — Respondent, keeping on proper side of the road, faced with appellant, coming on the *wrong side of the road — Respondent turned left and applied brakes, but a collision was not avoided — Finding that respondent was not guilty of contributory negligence upheld*

The facts of this case, as well as the principles applied by the Court, in dismissing the appeal, sufficiently appear in the hereinabove headnote

Appeal dismissed with costs

Cases referred to

Mamas v The Firm «Arma» Tyres (1966) 1 C L R 158;

Nearchou v Papaefstathiou (1970) 1 C L R 109,

Varnakides v Papamichael and Another (1970) 1 C L.R 367;

S.S. Hontestroom v. S.S. Sagaporack, S.S. Hontestroom v. S.S. Durham Castle [1927] A.C. 37;

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

Haloumias v. The Police (1970) 2 C.L.R. 154;

Charalambous v. Pillakouris (1976) 1 C.L.R. 198;

Ioannou and Another v. Michaelides (1966) 1 C.L.R. 235.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Ioannides, D.J.) dated the 10th September, 1984 (Action No. 6220/83) whereby he was found solely to blame for a road traffic accident.

A. Pandelides, for the appellant.

P. Angelides, for the respondent.

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

STYLIANIDES J.: This is an appeal from the Judgment of a Judge of the District Court of Nicosia, whereby the appellant - defendant in the Court below - was found solely to blame for a road accident that occurred on the 4th September, 1982, at Kato Deftera and in which motor car, Registration No. JL 144, driven by the appellant and motor car, Registration No. GT 590, driven by the respondent, were involved. The appellant sustained bodily injuries and his car was damaged.

The trial Judge, having found that the appellant was entirely to blame for the accident, ordered and adjudged him to pay to the respondent £991.- damages to his car. The counterclaim of the appellant for damages for personal injuries and material damage to his car was dismissed. Furthermore, the trial Judge, following a commendable practice of first instance Courts, assessed the damages of the appellant.

The two drivers and the accident investigator - P.C. Charalambous - testified on the issue of liability.

The accident occurred in the built up area of the village of Kato Deftera on the main road leading to Nicosia. The two cars were driven in opposite directions. There are curves in both directions

and thereby the visibility of the drivers was limited: 100 metres of the appellant and 60-70 metres of the respondent.

Two sharply conflicting versions were given by the two drivers.

The version of the respondent was that he was keeping his left side of the road. When on a slight bend he noticed appellant's oncoming car running uncontrolled on its wrong side of the road. He pulled more to his left and applied brakes. His car came to a standstill. The oncoming car swerved to its left, its left wheel hit the pavement. It reversed, turned and with its right rear side hit the front right of respondent's car and then mounted its left pavement and with its rear knocked the railings of an abutting yard and stopped facing the direction it was coming from.

The appellant, on the other hand, claimed that he was driving on his proper side and respondent on the middle of the road. The front part of respondent's car hit the rear wheel of his car. Due to the collision, he lost control of the car and he could not remember what happened afterwards.

The Police investigator, who visited the scene shortly after the impact, took measurements and prepared a plan in the presence of the respondent, but in the absence of the appellant, who in the meantime had been removed from the scene. He gave very helpful evidence to the Court about the condition and width of the road, the brake marks caused by the respondent's car, the resultant position of the cars, the damage to them and his other findings at the scene.

The two drivers indicated different points of impact, each one indicated a point to tally with his version, marked X1 and X3 on the plan. X1, pointed out by the respondent, is at the end of the right brake mark caused by his car on his left moiety of the road. X3, shown by the appellant, is on his side, three feet from the centre of the 20 feet wide road.

In all other respects the plan constitutes common ground in this case.

The learned trial Judge in a reserved and careful Judgment analyzed and evaluated the oral evidence in the light of the real evidence before him. He accepted the version of the respondent and rejected that of the appellant. He accepted that the point of impact was X1, where the Police Constable found scattered pieces

of glass of the broken front right light of the respondent's car, whereas nothing was found at or near point X3, shown by the appellant to be the point of impact. The trial Judge found the appellant guilty of negligence.

Having considered the question of contributory negligence, the Judge exonerated the respondent from any responsibility, as he took avoiding action by pulling more to his left and applying brakes, as, in the circumstances, a prudent careful driver would do.

The appellant by this appeal contended that the trial Court erred in finding that the point of impact was X1 and not X3; that the impact took place on the appellant's wrong side of the road. It was argued that, even on the findings of the trial Court, the respondent was to a substantial degree responsible for the accident, due to the fact that he did not pull to his extreme left and did not sound the horn.

The main complaint of counsel on behalf of the appellant is that the findings of the trial Judge were wrong, so far as the point of impact and the mode of occurrence of the accident are concerned and invited this Court to interfere with the said findings.

The findings of the trial Court will not be disturbed on appeal, unless the appellant satisfies this Court that the reasoning behind such findings is unsatisfactory, or that they are not warranted by the evidence considered as a whole. This Court interferes very reluctantly with the findings of fact and in cases where it is only a matter of justice and judicial obligations so to do. It will only interfere with conclusions drawn from primary facts if the conclusions cannot reasonably be drawn from the primary facts - (*Sofoclis Mamas v. The Firm «ARMA» Tyres* (1966) 1 C.L.R. 158; *Marikkou Nearchou v. Maria Demetri Papaefstathiou* (1970) 1 C.L.R. 109; *Varnavas G. Varnakides v. Christos Papamichael and Another* (1970) 1 C.L.R. 367; *S. S. Hontestroom v. S.S. Sagaporack, S.S. Hontestroom v. S.S. Durham Castle* [1927] A.C. 37, at p. 47; *Charalambous v. Police* (1982) 2 C.L.R. 134).

In collision cases the Court, when confronted, as in the present case, with the oral evidence of the parties, in weighing and evaluating such evidence should test it with the real evidence, which in these cases in more credible than that given by the persons who have an interest in the outcome of the trial. (See, inter

alia, *Georghios Prokopiou Haloumias v. The Police* (1970) 2 C.L.R. 154; *Demos Charalambous v. Costakis Pillakouris* (1976) 1 C.L.R. 198).

The real evidence was in sharp conflict with the evidence of the appellant, both as to the point of impact and the mode of the collision. The pieces of broken glass, found by the policeman at point X1, the brake marks of the respondent's car, the damage to the cars, support the finding that X1 was actually the point of impact.

Having given due weight to all that has been ably submitted by counsel, in the light of all the material before the Court, we are unable to disagree with the conclusions of the trial Court about the actual point of impact and as to how this accident took place.

With regard to the plea that the respondent contributed to the accident, we find no reason to interfere with the Judgment of the trial Court. The duty of a driver is to act as a reasonable prudent driver would do in the particular circumstances of each case. The test is objective. A motorist placed in an agonizing position has to take a step which a reasonable careful driver would fairly be expected to take in the circumstances. (*Christakis Ioannou and Another v. Fivos Michaelides* (1966) 1 C.L.R. 235; *Kyriacos Antoniou v. Iordanis Iordanous and Another* (1976) 1 C.L.R. 341).

The respondent was keeping his proper side of the road; faced with an oncoming car on its wrong side of the road, steered more to his left and simultaneously applied brakes. In our view he took reasonable, in the circumstances, avoiding action.

The appellant complains, also, about the assessment of his damages claimed by counterclaim. In view of the fact that his negligence is the sole cause of the accident, it is unnecessary to consider this ground of appeal.

For the foregoing reasons, this appeal fails and is dismissed with costs.

Appeal dismissed with costs.