1975
June 26
—
KYRIACOS SAVVIDES
v.
ANGELIS GEORGHIOU

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, JJ.]

KYRIACOS SAVVIDES,

*Appellant-Defendant,*

*v.*

ANGELIS GEORGHIOU,

*Respondent-Plaintiff.*

*(Civil Appeal No. 5415).*

---

*Evidence—Burden of proof—Civil Action—Claim for damages arising in a traffic accident—Occurrence of accident disputed—Burden cast on plaintiff to establish his claim—Such burden discharged if judge satisfied on the basis of the balance of probabilities that plaintiff's claim well-founded.*

The respondent claimed damages for the injuries he sustained in a traffic accident which occurred on May 9, 1971. His version at the trial was that on the said date he was being carried from Famagusta to Nicosia as a passenger in a taxi, No. TDE 282, belonging to the appellant and being driven by a person in appellant's employment; at about 7.45 p.m. the driver of the taxi attempted to overtake a combine-harvester which was proceeding ahead of him, but he did not manage to do so, owing to the appearance of a vehicle coming from the opposite direction; the taxi swerved to the left and, after colliding with the harvester, overturned into a field at the side of the road; as a result the respondent was injured and was taken to hospital.

Appellant's version at the trial was that his taxi in question was never involved in that accident; that it was never driven by an employee of his with the respondent in it as a passenger; and that, therefore, he was not liable in any way whatsoever to compensate the respondent.

Respondent stated in evidence that appellant had visited him at the hospital and this evidence was supported by a witness called by him; notwithstanding certain discrepancies the trial judge accepted the evi-

dence of both the respondent and his witness on this point. The police sergeant, who investigated the accident, stated that the taxi No. TDE 282 was found, half an hour after the accident, in a field near the spot where the accident occurred; its doors were locked and its right front side was dented.

*Held*, 1. We do agree that a burden was cast on the respondent to establish his claim; but in a civil proceeding, such as the present one, this burden could be discharged if the judge was satisfied, on the basis of the balance of probalities, that the claim of the respondent, as plaintiff, was well-founded; and the appellant, as the defendant, did not put forward, before the trial Court—or before us—any alternative propable or even possible, explanation as to how the taxi in question came to be found damaged at the place where the accident has allegedly occurred.

2. On the evidence adduced it was open to the trial judge to reach, on the balance of probabilities, a decision in favour of the respondent, and this Court, as an appellate Court, has not been given any really valid ground on the basis of which we could, in the exercise of our relevant powers, interfere to set aside the trial judge's decision.

*Appeal dismissed.*

**Appeal.**

Appeal by defendant against the judgment of the District Court of Nicosia (Kourris, S.D.J.) dated the 22nd February, 1975 (Action No. 3005/73) whereby the defendant was ordered to pay to the plaintiff the sum of £740.- as damages in respect of injuries suffered by the plaintiff in a traffic accident, while being a passenger in the car of the defendant.

*A. Soupashis,* for the appellant.

*G. Ladas* with *A. Paikkos,* for the respondent.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The appellant complains against the judgment of the Court below by means of which he was ordered to pay damages to the respondent in

respect of a traffic accident which took place on May 9, 1971. The appeal is only against that part of the judgment which relates to the issue of liability.

It has been the version of the respondent at the trial that on the date in question he was being carried from Famagusta to Nicosia as a passenger in a taxi, No. TDE 282, belonging to the appellant and being driven by a person in appellant's employment; at about 7.45 p.m. the driver of the taxi attempted to overtake a combine-harvester which was proceeding ahead of him, but he did not manage to do so, owing to the appearance of a vehicle coming from the opposite direction; the taxi swerved to the left and, after colliding with the harvester, overturned into a field at the side of the road; as a result the respondent was injured and was taken to hospital.

It has, on the other hand, been the version of the appellant at the trial that his taxi in question was never involved in that accident; that it was never driven by an employee of his with the respondent in it as a passenger; and that, therefore, he was not liable in any way whatsoever to compensate the respondent.

The evidence adduced before the trial judge included, *inter alia*, evidence by the respondent that the appellant had visited him at the hospital, in the afternoon of the day after the accident, and had promised to compensate him; this part of the evidence of the respondent was supported by a witness, who was called by the respondent's side, and, notwithstanding certain discrepancies, the trial judge accepted the evidence of both the respondent and his witness on this point. Moreover, according to the evidence of the police sergeant who investigated the accident, the taxi No. TDE 282 was found, half an hour after the accident, in a field near the spot where the accident occurred; its doors were locked and its right front side was dented.

In arguing this appeal counsel for the appellant has invited us to hold that it was not open to the trial judge, on the basis of the evidence as a whole, to find that the respondent had discharged the onus of proving the occurrence of an accident as alleged by him.

We do agree that a burden was cast on the respondent to establish his claim; but in a civil proceeding, such as the present one, this burden could be discharged if the judge was satisfied, on the basis of the balance of probabilities, that the claim of the respondent, as plaintiff, was well-founded; and the appellant, as the defendant, did not put forward, before the trial Court—or before us—any alternative probable, or even possible, explanation as to how the taxi in question came to be found damaged at the place where the accident has allegedly occurred.

The fact that at that particular place there were not noticed on the asphalted part of the road any marks indicating that an accident had happened, is not, in our view, of such a decisive nature, in the light of the circumstances of the present case, as to make us intervene on appeal and reverse the relevant finding of the trial judge, because the mode in which the accident has occurred did not necessarily entail leaving any substantial marks on the asphalted part of the road.

Also, the fact that a doctor at the hospital, where the respondent was taken, stated in evidence that the respondent "took his own discharge" in the *morning* of the following day, on which, according to the respondent's version, he was visited at the hospital by the appellant in the *afternoon*, is not, in our opinion, evidence definitely establishing that the respondent did actually leave the hospital in the morning of that day, and that he did not merely inform the doctor in the morning that he intended to leave the hospital on that day, and, in fact, left later on, in the afternoon, after his meeting there with the appellant, at which, as already stated, the appellant promised to compensate him.

We certainly think that this is a case in which on the evidence adduced it was open to the trial judge to reach, on the balance of probabilities, a decision in favour of the respondent, and this Court, as an appellate Court, has not been given any really valid ground on the basis of which we could, in the exercise of our relevant powers, interfere to set aside the trial judge's decision; therefore, this appeal is dismissed with costs.

*Appeal dismissed with costs.*