

1976
July 1

[STAVRINIDES, L LOIZOU, A LOIZOU, JJ.]

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ALIKI
ANTONIOU
v
THE POLICE

ALIKI ANTONIOU,

Appellant

v

THE POLICE,

Respondents

(*Criminal Appeal No 3726*)

Road Traffic—Careless driving—Line of moving traffic—Standard of duty of following driver—Question of fact in each case if duty fulfilled—On the evidence before him, trial Judge, correctly directed himself as to the test to be applied in such cases—Motor Vehicles and Road Traffic Law, 1972 (Law 86 of 1972) sections 8 and 19 5

The appellant was involved in an accident whilst driving her car along Themistochis Dervis street Nicosia at a time when there was a continuous stream of traffic on both directions of the said street She was driving at a slow speed and was following a car driven by P.W. 2. Whilst she was so proceeding the driver of the vehicle ahead of them gave a signal of his intention to turn to the right The cars following it, including the car driven by P.W. 2, stopped. The appellant who was following failed to stop in time and ran into the rear of the car of P.W. 2. A third car (that of P.W. 3) then ran into the rear of the car of the appellant 10 15

The trial Court accepted the evidence of P.W. 2 and rejected that of the appellant. P.W. 2 stated that he felt two consecutive bangs on the rear of his car within seconds of each other. Upon this evidence the trial Court drew the inference that the car of the appellant had been hit twice on the rear. The first one because the appellant failed to stop in time or short of it, and the second, when the car of P.W. 3 ran into the car of the appellant, after it had already hit the car in front of it 20

Upon appeal against conviction for the offence of careless driving counsel for the appellant contended that the trial Court was wrong in accepting the evidence of P.W. 2 and in rejecting the evidence of the appellant. 25

Held, dismissing the appeal, (1) the appellant upon whom

the burden of proof lay, has failed to persuade us that there exist such reasons that would justify this Court in disturbing the findings of fact made by the trial Judge, as well as interfering with the conclusions reached thereon.

5 (2) The trial Judge on the evidence before him correctly directed himself as to the test to be applied. It was obvious that the appellant was bound, so far as reasonably possible to keep such a position and to drive at such a distance and in such way as to enable her to deal successfully with all traffic
10 exigencies reasonably to be anticipated. The stopping of a car properly signalling its intention to go to the right which inevitably slows down or stops the following traffic is, in our view, a traffic exigency reasonably to be anticipated, which the appellant by failing to keep at a safe distance or failing to keep a proper
15 look-out and notice this exigency in time was guilty of driving without due care and attention (pp. 143-144 of the judgment post). (See *Scott v. Warren* [1974] R.T.R. p. 104 and *Parnell v. Metropolitan Police District Receiver and Another* [1976] R.T.R. 201).

20 *Appeal dismissed.*

Cases referred to:

Scott v. Warren [1974] R.T.R. 104;
Brown & Lynn v. Western S.M.T. Co. Ltd. [1945] S.C. 31 at p. 35;
25 *Parnell v. Metropolitan Police District Receiver and Another* [1976] R.T.R. 201.

Appeal against conviction.

30 Appeal against conviction by Alik Antoniou who was convicted on the 11th May, 1976 at the District Court of Nicosia (Criminal Case No. 33748/75) on one count of the offence of driving without due care and attention, contrary to sections 8 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86/72) and was sentenced by Artemides, D.J. to pay £6. - fine.

35 *E. Vrahimi (Mrs.)* for the appellant.
A.M. Angelides, Counsel of the Republic, for the respondents.

STAVRINIDES, J.: The judgment of the Court will be delivered by Mr. Justice A. Loizou.

40 A. LOIZOU, J.: The appellant who has been found by the District Court of Nicosia, guilty of the offence of driving motor-

car under Reg. No. DM 124 on a road without due care and attention, contrary to sections 8 and 19 of the Motor Vehicles and Road Traffic Law, 1972, (Law 86/72) appeals against the said conviction, on the ground that the findings of fact by the trial Court based on the credibility of witnesses, and particularly because of the conflict that exists between the real and oral evidence, were wrong. 5

The facts of the case are the following:

On the 17th November, 1975 at about 2 p.m. there was a continuous stream of traffic on both directions of Themistoclis Dervis street in Nicosia. In the line of traffic proceeding from the direction of Acropolis, towards the centre of the town, there were motor-car under Reg. No. FB 514 driven by Papademetriou (P.W. 2) followed by motor-car under Reg. No. DM 124 driven by the appellant and the third one under Reg. No. HC 11 driven by Akis Michaelides (P.W. 3). They were all going at a slow speed and whilst so proceeding, the driver of a vehicle ahead of them gave a signal of his intention to turn to the right. The cars following it, including motor-car Reg. No. FB 514, stopped. The appellant who was following it, failed to stop in time and ran into its rear. The third car then ran into the rear of the car of the appellant. 10
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The evidence of Papademetriou (P.W. 2) was accepted by the trial Court as he was treated by it as an independent witness, and rightly so, in our view, as he stood to lose nothing whoever was to blame for the accident. He emphatically stated that he felt two consecutive bangs on the rear of his car within seconds of each other; upon this the inference was drawn that the car of the appellant had been hit twice on the rear. The first one because the appellant failed to stop in time or short of it, and the second, when the car of Akis Michaelides ran into the car of the appellant, after the first one had already hit the car in front of it. The trial Judge found support for this version in the testimony of Akis Michaelides (P.W. 3) who witnessed the collision between the car of the appellant and motor-car FB 514 and hit on the car of the appellant when the latter rebounded after the impact with its preceding car. The trial Court rejected the version of the appellant which was to the effect that she was driving slowly behind the motor-car of Papademetriou and that when she was about the length of the car or half that length behind it, the vehicle of Michaelides ran into the rear of her car which was 25
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in consequence pushed forward and bumped into the rear of the car of Papademetriou.

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5 We have listened carefully to the argument advanced by counsel for the appellant in support of the appellant's complaint that the trial Court was wrong in accepting the evidence of witness Papademetriou and in rejecting the evidence of the appellant. Having gone through the evidence, we have no hesitation in accepting each one of the primary facts found by the Judge and the conclusions drawn thereon.

10 The appellant upon whom the burden of proof lay, has failed to persuade us that there exist in this case, such reasons that would justify this Court in disturbing the findings of fact made by the trial Judge, as well as interfering with the conclusions reached thereon.

15 The trial Judge on the evidence before him correctly directed himself as to the test to be applied in cases of this kind. It was obvious, on the evidence adduced, that the appellant was bound, so far as reasonably possible, to keep such a position and to drive at such a distance and in such way as to enable her to deal
20 successfully with all traffic exigencies reasonably to be anticipated. The stopping of a car properly signalling its intention to go to the right which inevitably slows down or stops the following traffic is, in our view, a traffic exigency reasonably to be anticipated, which the appellant by failing to keep at a safe
25 distance or failing to keep a proper look-out and notice this exigency in time, was guilty of driving without due care and attention.

30 In the case of *Scott v. Warren* [1974] Road Traffic Reports page 104, Lord Widgery, C.J. accepted the words of Lord-Justice Clerk in the case of *Brown & Lynn v. Western S.M.T. Co. Ltd.* [1945] S.C. 31, at p. 35, as indicating a standard to be observed by the following driver appropriate in civil cases, but also as setting out the obligation on the following driver when
35 the matter is a criminal one charged under section 3 of the Road Traffic Act of 1972 when it cannot be higher. We feel it appropriate to quote here the said test.

40 "We were urged in the course of debate to substitute our own definition of the limits of a following driver's duty, and even to prescribe the proper interval at which successive vehicles should keep station when travelling in a city street.

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I am not prepared to do so. The distance which should separate two vehicles travelling one behind the other must depend upon many variable factors—their speed, the nature of the locality, the other traffic present or to be expected, the opportunity available to the following driver of commanding a view ahead of the leading vehicle, the distance within which the following vehicle can be pulled up, and many other things. The following driver is, in my view, bound so far as reasonably possible, to take up such a position, and to drive in such a fashion, as will enable him to deal successfully with all traffic exigencies reasonably to be anticipated: but whether he has fulfilled this duty must in every case be a question of fact, just as it is a question of fact whether, on any emergency disclosing itself, the following driver acted with the alertness, skill and judgment reasonably to be expected in the circumstances.”

It is, indeed, a question of fact depending on the circumstances of each case (see also *Parnell v. Metropolitan Police District Receiver and another* [1976] R.T.R. 201) and, therefore, once the findings of fact of the trial Court were justified by the evidence adduced and on the conclusions reached, the appellant was rightly found guilty as charged, in the sense that he had failed to discharge, in the circumstances, his obligation as a driver following another vehicle, the present appeal is dismissed.

Appeal dismissed.