

1984 February 2

[A. LOIZOU, MALACHTOS AND SAVVIDES. JJ.]

ANDREAS CHR. STAVRINOU.

Appellant.

v.

THE POLICE.

Respondents.

(Criminal Appeal No. 4488).

Road Traffic—Careless driving—Collision between vehicles moving in opposite directions—Bend—Duty when negotiating a bend to reduce speed at a safe limit and keep as far as possible to the left hand side of the road—Appellant had to drive on the wrong side of the road due to existence of mixed sand and shingle on his proper side of the road—He had a duty to give warning of his presence to traffic from opposite direction which he failed to do—Conviction sustained.

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Whilst the appellant was driving his car in Polemi village and was about to negotiate a right hand bend next to the surrounding wall of the village church he collided with a car driven in the opposite direction. At the time of the accident he was driving on the wrong side of the road in view of the fact that there was a heap of mixed sand and shingle in the road on his proper side of the road. Visibility from the point of impact in both directions was 30 feet. The trial Judge found both drivers guilty of the offence of driving without due care and attention in that on approaching the bend they failed to drive their respective vehicles at such a speed as to be able to stop in time when faced with each other so as to avoid the collision; and that such a failure on their part amounted to driving in a careless manner.

Upon appeal against conviction by the appellant:

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Held, that it is the duty of a driver when negotiating a bend to reduce speed at a safe limit and keep as far as possible to his left hand side of the road; that in the present case, since the appellant was bound to drive his car on the wrong side of the road due to the heap of mixed sand and shingle, he had a duty to give

warning of his presence to traffic driven from the opposite direction; that this he failed to do: accordingly his appeal must fail.

Appeal dismissed.

Appeal against conviction.

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Appeal against conviction by Andreas Chr. Stavrinou who was convicted on the 3rd December, 1983 at the District Court of Paphos (Criminal Case No. 3840/82) on one count of the offence of careless driving contrary to sections 8 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86/72) and was sentenced by Papas, D.J. to pay £10.- fine.

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Chr. Georghiades, for the appellant.

D. Papadopoulou (Mrs.), for the respondents.

A. LOIZOU J.: The judgment of the Court will be delivered Mr. Justice Malachtos.

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MALACHTOS J.: This case arose out of a motor car accident that occurred early in the morning of the 6th September, 1982 on a sharp bend of the road within the village of Polemi when a Volkswagen car under Registration No. D.W. 100 driven at the time by the appellant, came into collision with a Mini car under Registration No. JP. 659 which was driven in the opposite direction. Both drivers were prosecuted before the District Court of Paphos for driving without due care and attention contrary to sections 8 and 19 of the Motor Vehicles and Road Traffic Law of 1972 (Law 86/72) and the trial Judge after hearing evidence, found them guilty as charged and sentenced them to £10.-fine each.

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As to how the accident occurred, the only evidence before the trial Judge was the evidence of the two accused who, when called upon to make their defence, made a statement from the dock adopting their respective written statements to the Police, and the evidence of P.S.248 K. Pachitis, the Police investigator, who, soon after the accident, arrived at the scene and in the presence of both drivers took various measurements and prepared the relevant sketch, which he produced in Court as exhibit 1.

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The appellant in his statement to the police said, that at

about 6.45 a.m. on the 6th September, 1982, was driving his car from Parayia village in the direction of Paphos town with his fifteen year old nephew as a passenger. When he reached Polemi, instead of following the main road, followed a short cut. While he was driving through the village and was about to negotiate a right hand bend next to the surrounding wall of the village church, in view of the fact that there was a heap of mixed sand and shingle in the road on his left he changed side and proceeded very slowly in order to pass as the visibility was obstructed by the height of the surrounding wall of the church. At that moment he noticed the Mini car driven in the opposite direction and coming sliding towards him. He applied brakes at once and the Mini car proceeded and knocked on his car. At the time of the collision his car was stationary. The front offside mudguard of the Mini car knocked on the front offside mudguard of his car. Both cars remained at their resultant position till the arrival of the Police.

On the other hand, the driver of the Mini car in his statement to the police said that whilst driving his car through Polemi, directed towards Psathi village, and while negotiating a sharp bend just outside the church, he noticed another car from a distance of about 30 ft. driven in the opposite direction and on the wrong side of the road. He sounded his horn and applied his brakes, as due to the presence of a heap of shingle on his right hand side, the road could not accommodate both vehicles to pass. The other car did not stop and proceeded past the heap of shingle and collided with his car. At the time of the collision his car was stationary.

According to the evidence of the investigating officer, the asphalt road at the scene of the accident is 16 ft. wide with no berm on either side. The heap of mixed sand and shingle was 23 ft. long and 6 ft. 8 ins. wide. The point of impact was at a distance of 6 ft. 8 ins. from the fixed point which is an electric pole in the road attached to the surrounding wall of the church and its diameter is 8 ins. From the point of impact the visibility in both directions is only 30 ft. as the view is obstructed by the surrounding wall of the church. Both vehicles were at their resultant position. The front offside mudguard, the bumper and the bonnet of the Volkswagen car were

damaged. The width of the Volkswagen car is 4 ft. 10 ins. and its length 11 ft. No skidmarks were left by this car. The distance from the rear as well as from the front nearside corner of the Volkswagen to the heap of mixed sand and shingle, is 1 ft. The distance from the rear offside corner of this car to the surrounding wall of the church is 3 ft. 8 ins. 5

The distance from the rear nearside corner of the Mini car from the wall of the church is 3 ft. 10 ins. This car, which is 4 ft. 7 ins. wide, and 11 ft. 3 ins. long, was damaged on the radiator grill and the bonnet and skidmarks of 9 ft. long were corresponding to its rear nearside wheel and skidmarks of 7 ft. long were corresponding to the rear offside wheel. Lastly, this witness stated that the impact was not a violent one. 10

The trial Judge in his judgment, after stating that he accepted as true the evidence of the investigating officer, concluded at page 13 of the record, as follows: 15

“The vehicles of both accused collided with each other whilst their vehicles were in motion at a point of the said road where the visibility of each accused was almost nil, due to the existence of the said sharp bend of the road and the said fence of the nearby church. I further find that due to the nature of the road and its narrowness, the sharp bend, the existence of the heap of sand and the said fence abutting the road, neither accused was in a position to keep his extreme left hand side of the road. Nevertheless, I find that in the circumstances, both accused are at fault in that, on approaching the said bend they failed to drive their respective vehicles at such a speed as to be able to stop in time when faced with each other so as to avoid the collision. Such a failure on their part amounts, in my mind, to driving in a careless manner. 20 25 30

I do not attach any significance to the allegation made by the accused in their statements to the Police to the effect that each was stationary when hit by the other's vehicle, because the visibility of each accused at the time of the accident being as it was, neither accused had time to stop first before being hit, and because of the nature of the damages that each vehicle sustained. 35

It is settled law that the test as to whether a driver charged

with careless driving is at fault may be said to be whether the prosecution have proved that the defendant departed from the standard of care and skill that in the particular circumstances of the case would have been exercised by a reasonable, prudent, competent and experienced driver. Careless driving is primarily a question of fact. The test is objective in the sense that the standard of driving demanded of a driver is an objective standard. (See Wilkinson's Road Traffic Offences, 9th edition, p. 277, and *Panayiotou v. The Police*, (1972) 2 C.L.R. 29).

In the result, I find that the prosecution proved its case against both accused beyond any reasonable doubt and I therefore find both accused guilty as charged".

It has been submitted by counsel for the appellant that the findings of fact by the trial Judge are not warranted by the evidence adduced. That the appellant was driving at a very low pace at the time of the collision, it is clear from the absence of any skidmarks of his car and the evidence of the investigating officer as to the force of the impact and the resulting damage on both vehicles. The appellant, he added, did everything that a prudent driver would have done in the circumstances of the present case and, therefore, was wrongly found guilty as charged.

We must say straight away that although the reasons given by the trial Judge were not as thorough and explicit as they ought to have been, yet, he stated the law correctly and at least, as far as the appellant is concerned, he arrived at the right conclusion by finding him guilty as charged. We cannot, however, say the same as regards the driver of the other car who, at the time of the collision, was driving on his proper side of the road and at a reasonable speed.

It is the duty of a driver when negotiating a bend to reduce speed at a safe limit and keep as far as possible to his left hand side of the road. In the present case, since the appellant was bound to drive his car on the wrong side of the road due to the heap of mixed sand and shingle, he had a duty to give warning of his presence to traffic driven from the opposite direction. This he failed to do.

For the reasons stated above, we dismiss the appeal.

Appeal dismissed.