[ZEKIA, J. and ZANNETIDES, J.]

STYLIANOS SAVVA of Lapithos and OTHERS

Appellants

v.

ANDREAS CHR. MYLONA of Lapithos

Respondent.

(Civil Appeal No. 4255)

1958
May 29, July 4

STYLIANOS SAVVA AND OTHERS v. ANDREAS CHR. MYLONA

Motor Traffic—Road accident—Negligence—Collision—Between a scooter and a pedestrian—Death of the pillion rider—Evidence—Inconsistent with inevitable accident—Collision could only be caused by the negligence either on one or on both sides—Balance of probabilities—Pointing to the negligence of the defendant rider either solely or jointly with the pedestrian—On either view the action against the rider succeeds.

This was an action by the personal representatives of the deceased D.S. who died as a result of personal injuries received in a road accident when a scooter ridden by the respondent collided with a pedestrian. The deceased was at the time the pillion rider of the scooter. The Court of trial dismissed the action on the ground that there was no evidence showing negligence of the respondent. The facts were undisputed. The Supreme Court reversed this judgment on the broad ground that the trial Court misdirected itself in that it has drawn wrong inferences from the undisputed facts. The facts sufficiently appear in the judgment of the Court.

Held : (1) On the undisputed facts the theory of inevitable accident is excluded.

(2) There remain two possibilities, *viz.* the collision was due to the negligence either of the rider or of the pedestrian, or to the negligence of both.

(3) In this case the defendant rider on the balance of probabilities was negligent in that, at the material times was driving at an excessive speed, failed to slow down and keep a proper look out.

(4) Consequently, the possibility or probability that the pedestrian too might have been negligent is immaterial, because if it were so, the defendant would then be negligent jointly with the pedestrian, in which case again the claim of the appellants would succeed.

Appeal allowed.
Case remitted back to the Lower Court to assess damages and apportion same among the dependants and/or heirs of the deceased.

Cases referred to :

Eames v. *Capps,* 92 S.J. 314;

Bray v. *Palmer* (1953) 2 All E.R. 1449;

France v. *Parkinson* (1954) 1 All E.R. 739;

Kayser v. *London Passenger Transport Board* (1950) 1 All E.R. 231.

Appeal.

The appellants appealed against the judgment of the D.C. of Kyrenia dated the 24th March 1958 (Evangelides, D.J.) in action No. 45/57 dismissing their claim for damages for negligent driving against the respondent.

A. Liatsos for the appellants.

Lefcos Clerides for the respondent.

Cur. Adv. Vult.

The facts sufficiently appear in the judgment of the Court, delivered by :

ZEKIA, J. : The appellants are the parents and the heirs of Demetris Stylianou, the victim of the accident in this case. Defendant 1 was the pedestrian involved in the collision with the scooter motorcycle ridden by defendant 2 (the respondent). The deceased Demetris was the pillion rider of the scooter which collided with the pedestrian and as a result of the collision lost his life. Appellants as the dependants of their son, the victim, claim—

(a) £1,000 damages as loss of pecuniary support, etc., and

(b) as persons entitled to his estate another sum of £500.

The proceedings against defendant 1 (the pedestrian) were discontinued before the trial started.

The facts of the case are : On the 16th September, 1956, in the evening at about 6.45 p.m. defendant 2 with the

deceased as a pillion rider was riding his scooter with lights on a straight and asphalt road on Lapithos—Myrtou main road in the direction of Vasilia—Myrtou when he collided with defendant 1, a pedestrian on the said road. As a result of the impact the pillion rider and pedestrian were found lying in the middle of the road injured; the former had a broken skull and died 2 hours later in a doctor's clinic. The pedestrian was a passenger in a van travelling in the opposite direction. The van had stopped at a point about 75 feet away from the point of impact in the direction of Lapithos. The said passenger had left the van which was stationary at the time at the extreme left of the road being the proper side on the right hand side of the road (going to Lapithos) and for doing so she had to cross the road at some point or other near the point of impact. The driver of the van noticed the scooter coming from the opposite direction from a distance of 90 feet away from the van with lights on and travelling at a speed of 25—30 miles per hour. The scooter passed the van and soon after he heard shouts. He turned back and found the deceased and the pedestrian lying in the middle of the road next to each other. The injured persons were helped into the van and taken into a clinic. The score marks 4 feet and 6 inches in length were found on the road near the place of the accident which were apparently made after the accident by the scooter. The road at the place of accident as well as for a long distance in both directions is a straight one with 10 feet asphalt and with a usable berm with four feet wide on each side. In other words at the place of accident there was an 18 feet wide road available for the users of the road. There was a bridge (only 10 feet wide) which was close to the place of accident but some paces beyond it. There were no marks indicating the application of brakes at or about the scene of the accident. There was no traffic on the road. Save the stationary van there was no obstacle between the oncoming scooter and the pedestrian involved in the accident. Nothing unusual with the road. More likely so at the time of the year the accident occurred. An ex-traffic inspector gave expert evidence and after visiting the place he stated that if a scooter travels at a speed of 30 miles per hour it requires a distance of 75 feet in order to stop. This includes braking distance and thinking distance.

If the brakes of the scooter had been applied he would have expected signs of it on the surface. He gave the opinion that a driver overtaking a stationary vehicle should slow down, sound his horn and be alert in case someone might emerge from behind the lorry.

Plaintiffs by their statement of claim, paragraph 4, had alleged negligence not only on the part of the motorist but also on the part of the pedestrian. Paragraph 4 reads :—

"At a distance of about 2 miles west of Lapithos defendant 2, while there was a stationary vehicle on the left side of the road (direction leading to Lapithos) so negligently and without exercising due care drove his vehicle on which the deceased was at the time a pillion passenger, so that he came into collission with defendant 1 who at the time negligently emerged from the back of the stationary vehicle and was crossing the road, as a resuult of which collission the deceased sustained injuries and subsequently died from fracture of the skull and haemorrhage.".

In reply to defendants, appellants by paragraph 2 in their reply gave further particulars touching the alleged negligence on the part of the respondent the motorist as follows :

"Plaintiffs in answer to para. 1 (b) of the statement of defence of defendant No. 2 say that the said defendant has been negligent in not avoiding the accident as under the circumstances he had an ample and reasonable chance to notice defendant 1 crossing the road in time to slow down and/or apply the brakes so as to avoid the said collision.".

Respondent by his statement of defence, paragraph 3, alleged that the accident was not due to any negligence on his part and that it was an inevitable accident.

More or less this was the material relating to the cause of accident before the learned Judge who said "No evidence whatsoever has been produced showing that defendant 2 was negligent or in any way responsible for the traffic accident as a result of which the deceased died.".

We are unable to agree with this finding which is based on inferences from undisputed facts. We are dealing with an alleged civil liability where a judgment in one way or

other may be entered on the balance of probabilities. From the available evidence it is clear that the accident under review is not in the nature of an inevitable accident in itself. Either the pedestrian or the motorist or both of them were negligent. This is the only reasonable inference to be drawn in the circumstances of this case. If, therefore, on the facts of the case which stand undisputed, the plaintiffs prove on a balance of reasonable probabilities derivable from the surrounding facts that either the respondent alone or together with ex-defendant 1 was negligent in bringing about the fatal accident, then plaintiffs are entitled to succeed. From the evidence it appears that the collision took place in the middle of the road, the scooter having hit the pedestrian who happened to be at the place of impact. We know that the pedestrian after leaving the stationary van proceeded in the direction of Vasilia—Myrtou intending to cross the road at some point or other in order to reach her house in the neighbourhood across the road. On analysis the following possibilities present themselves for consideration:

1. The motorist might have been unaware of the presence of the lady on the road and noticed her at the point of impact when it was too late for him to avoid hitting her by either changing direction or applying brakes. He might not have noticed her presence until the accident occured;

2. The motorist might have seen the pedestrian earlier walking on the road but all of a sudden she might have moved herself in front of the scooter or he miscalculated her movements and did not adjust himself to the situation. The lady might have contributed in the negligence to some extent in causing the accident. Other possibilities in favour or against the respondent in our view remain in the domain of surmise and conjecture.

It is the duty of all road users to keep a proper look out to avoid colliding with other road users and the rule applies with greater force to motor or motor car drivers travelling at a speed. The Highway Code, Article 24, reads "Be careful when passing standing vehicles and other

obstructions; a pedestrian may dodge out from behind them.".

While on this topic we might cite also a statement from Humphreys, J., in *Kayser* v. *London Passenger Transport Board* (1950) 1 All E.R. 231, at p. 233:

"Where the driver of a vehicle is satisfied that persons who are lawfully entitled to cross the road, whether they are on a pedestrian crossing or not, are out of danger from him if he goes on in the normal course, is entitled to do so but only at such a pace as will enable him to stop almost immediately should the persons who are crossing do anything dangerous or negligent.".

At night driving a driver must be able to pull up within limits of his light. The above are not rules of law but are sound rules of the road which a driver with ordinary skill, care and prudence should observe and unless there are exceptional circumstances justifying a departure, the non-observance of these rules almost would amount to negligence.

From the facts of the present case it appears that respondent was travelling 25—30 miles per hour when passing by the stationary van. He did not apply his brakes and very likely kept going at this speed until the collision took place. He is definitely negligent in not slowing down and/or keeping a proper look out when he first sighted the stationary van from a distance of 90 feet or so. He is solely to be blamed if the accident occurred under the circumstances given in possibility No. 1. Possibility No. 2 reminds us of the facts in the case of *Eames* v. *Capps* (92 S.J. 314). There, like the present case, the pillion passenger of a motor cycle was killed when the cycle collided with a pedestrian. The motor cyclist was not negligent but the pedestrian was. But by the evidence there it was established that the pedestrian stopped on seeing an approaching motor cycle with lights on but on the last moment stepped in front of him. We are unable to fit this case to *Eames* v. *Capps* because there is no evidence to support a similar conduct on the part of the pedestrian. On the contrary the respondent himself did not allege such a conduct on the part of the lady in his statement of defence. On the other hand, if the motorist was misguided by the movement of the pedestrian by having

acted on the assumption that she would continue her walk across the road at a normal pace so that by the time he reached the spot the road would have been clear for him to pass but the pedestrian unexpectedly stopped in the middle of the road, again in such circumstances he rendered himself a contributory to the negligence which caused the accident because he did not slow down earlier and as a result was unable to stop in time to avoid the accident.

It seems to us the learned Judge did not consider adequately the question whether the motorist and the pedestrian might not have been at least jointly negligent towards the innocent passenger in view of the fact that the collision in this case could not have been an inevitable one as it was alleged by the motorist and the pedestrian in their statements of defence. Characteristically the one did not blame the other of the accident. A collision in the centre of a good, straight and wide road could only be caused by negligence either on one or on both sides. We think *Bray* v. *Palmer* (1953) 2 All E.R. 1449 and *France* v. *Parkinson* (1954) 1 All E.R. 739 lend support to the view we have taken.

We are of the opinion, therefore, that the respondent is either solely or jointly with the pedestrian liable for negligence towards the pillion passenger, the victim, and he should pay damages according to Law. The case is hereby remitted to the trial Judge to assess the damages and also apportion the same among the dependants and/or heirs. Appeal allowed with costs.

Appeal allowed with costs.