

1963
March 14

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PANAYIOTIS
NICOLAIDES

v.
GEORGHIOS
ECONOMIDES

[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES JJ.]

PANAYIOTIS NICOLAIDES,

Appellant-Plaintiff,

v.

GEORGHIOS ECONOMIDES,

Respondent-Defendant.

(Civil Appeal No. 4412).

Civil Wrongs—Negligence—Road Accident—Negligence is always relevant to time, place and other circumstances—Failure to see what is plainly visible is negligence—When two persons are so moving in relation to one another that there is risk of collision between them each owes a duty to the other to take care to avoid the accident—Rule in Nance v. The British Columbia Electric Railways Company Ltd., (1951) A.C. 601, at p. 611, applied.

Practice—Damages—Trial Courts should always assess damages in accident cases, unless there are exceptional reasons—So that the High Court may be able to deal with them and thus bring the litigation to an end.

The plaintiff had been walking along Kyprianou street Famagusta, on the right side of the road, but not on the pavement. Whilst trying to cross the road he was struck and injured by a car driven by the respondent-defendant in the middle of the road. Ahead of the defendant there was a stationary bus, which momentarily attracted his attention and took his eyes off the road.

The defendant saw the plaintiff in the road but there was nothing to suggest that the appellant-plaintiff would attempt to cross the road. On these facts the District Court dismissed appellant-plaintiff's action for £1,000 damages, and the High Court in dismissing the plaintiff's appeal against dismissal:—

Held, (1) a motorist must pay care and attention to the traffic which is ahead of him or which must reasonably be expected to be there.

(2) There is also the general rule that when two parties are so moving in relation to one another that there is a risk of collision between them, each owes a duty to the other to take care to

avoid the accident ; see *Nance v. The British Columbia Electric Railways Company Ltd.*, (1951) A. C. 601 at p. 611 to which this Court has referred to on an earlier occasion.

(3) However, it must also be taken into account that negligence is always relevant to time, place and circumstances and the enquiry must be to ascertain, if possible, who caused the accident.

(4) Assuming the appellant looked back, as he said he did, before he started to cross the street he failed to observe the car which was plainly approaching. Failure to see what is plainly visible is negligence. As a reasonable person he ought not to have advanced in the path of the on-coming car.

Appeal dismissed.

Per curiam : Before parting with this case we have a further word with respect to damages. They were not assessed at trial. Unless there are exceptional reasons for not doing so the trial Court should always assess them in accident cases, so that, where necessary, the High Court will be able to deal with them and thus bring the litigation to an end.

Case referred to:

Nance v. The British Columbia Electric Railways Company Ltd.
(1951) A.C. 601, at p. 611, *applied*.

Yiannakis Kyriacou Pourikkos v. Mehmet Fevzi, reported in this volume p. 24 *ante*.

Appeal.

Appeal against the judgment of the District Court of Famagusta (Attalides P.D.C., and Loizou D.J.) dated the 10.11.62 (Action No. 869/62) dismissing plaintiff's claim for £1000 damages for personal injuries which he suffered due to the negligent driving of the defendant.

M. L. Montanios, for the appellant.

G. Michaelides, for the respondent.

The judgment of the Court was delivered by :—

WILSON, P. : This is an appeal from the judgment of the District Court of Famagusta given on November 10, 1962, dismissing the plaintiff's action without any order as to costs. The claim arises out of a motor car accident which occurred in Kyprianou Street at Famagusta on March 1, 1962. The plaintiff had been walking up the street towards the school, on the right side but not on the

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pavement. While crossing from right to left at an oblique angle and when he was near or past the middle of the road in the direction in which he was going he was struck by a motor car owned and driven by the defendant.

The car was travelling slowly and stopped almost at the moment of impact. The plaintiff was knocked to the road and injured ; he was taken to a doctor who attended him immediately after the accident and later he was treated by his own doctor.

We are not concerned with the amount of damages. The appeal is against the whole of the judgment but it has been argued with respect to liability only. The main ground is that the trial Court failed to consider certain portions of the evidence, particularly an admission by the respondent : “ Well, I did not see him ; I was looking elsewhere.”

The defendant was driving slowly on the left side of Kyprianou Street. A number of school girls were coming out of the Gymnasium ; they were in various parts of the street but not close enough to be a danger in so far as the motorist was concerned at the time the accident happened. Also, on the same side of the street ahead of him was a bus—5 to 6 feet in width—in a stationary position. This attracted his special attention which involved momentarily taking his eyes off the road in front of him. (He had seen the plaintiff on the right side of the road moving in the same direction as the defendant but there was nothing at that time to warn the defendant that the plaintiff was about to change his course). In this short period of time the plaintiff moved over to the road and arrived in a position a few yards in front of the defendant’s car.

After observing the bus, the defendant looked back to the road in front of him and saw the plaintiff in the position just described, too close to avoid the impact which occurred. The period of time which elapsed during the occurrence of the events I have just mentioned was probably not more than five seconds.

The appellant’s contention is that the defendant ought never to have taken his eyes off the road in front unless he had first come to a stop, and that driving on when his attention was momentarily diverted to the left amounted to negligence : He was the sole cause of the accident. Alternatively, the Court ought to have found both parties at fault.

We have considered these submissions very carefully but we are unable to give effect to them. A motorist must

pay due care and attention to the traffic which is ahead of him or which must reasonably be expected to be there. There is also the general rule that when two parties are so moving in relation to one another that there is a risk of collision between them each owes a duty to the other to take care to avoid the accident ; *Nance v. The British Columbia Electric Railways Company Ltd.* (1951) A.C. 601, at page 611 to which this Court has referred to on an earlier occasion. (*Yiannakis Kyriakou Pourikkos v. Mehmet Fevzi* reported in this volume p.24 *ante*).

However, it must also be taken into account that negligence is always relevant to time, place and circumstances and the enquiry must be to ascertain, if possible, who caused the accident. In this case we are of the opinion that it was the fault of the plaintiff himself. Assuming he looked back, as he said he did, before he started to cross the street he failed to observe the car which was plainly approaching. This was the effective cause of the collision. Failure to see what is plainly visible is negligence. As a reasonable person he ought not to have advanced in the path of the oncoming car.

However, we do not need to decide this case only on this point. The plaintiff's counsel has been unable to point out any error in the reasoning of the judgment given at the trial. Upon this ground alone the appeal must be dismissed.

Before parting with this case I have a further word with respect to damages. They were not assessed at trial. Unless there are exceptional reasons for not doing so the trial Court should always assess them in accident cases, so that, where necessary, the High Court will be able to deal with them and thus bring the litigation to an end.

Appeal dismissed.