

ZENON CHARALAMBOUS,

Appellant-Defendant,

v.

IOANNIS MICHAEL KOUTSIDES,

Respondent-Plaintiff.

ZENON
CHARALAMBOUS
D.
IOANNIS MICHAEL
KOUTSIDES

(Civil Appeal No. 4565).

*Civil Wrongs Negligence-- Road Traffic --Road Accident- Col-
lision of motor vehicles -Negligence--Liability-- Approach of
an Appellate Court to the findings of trial Courts on the issue
of liability Findings of trial Courts on the issue of negligence--
An Appellate Court will consider whether it was open to the
trial Court, on the evidence before them, to make the findings
in question--Regardless of what view the Appellate Court
might take of the evidence in the first instance--Petros Anto-
niou v. Yashar Elmaz. (reported in this Part at p. 210 ante)
principles laid down ubi supra at p. 212 ante applied--*

*Practice- Appeal -Findings of fact by trial Courts--Approach
of an Appellate Court to such findings on the issue of liability
etc. etc. --See under Civil Wrongs above.*

*Practice - Appeals in civil cases - Notice of appeal--Amendment--
Application for amendment of notice of appeal to cover the
question of damages not covered previously--Refused in the
circumstances of the present case.*

*Negligence Motor Vehicles -Collision--Liability--See under Civil
Wrongs above.*

*Findings of fact by trial Court --Approach to such findings by an
Appellate Court--See under Civil Wrongs, Practice above.*

Cases referred to :

*Petros Antoniou v. Yashar Elmaz, (reported in this Part at
p. 210 ante): principles laid down at p. 212 ante, applied.*

Appeal.

Appeal against the judgment of the District Court of Li-
massol (Loizou P.D.C. & Malachtos D.J.) dated the 3rd Ja-

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nuary, 1966 (Action No. 373/63) whereby the defendant was adjudged to pay to the plaintiff the sum of £5,670.450 mils by way of damages for negligence in a road accident case.

A. P. Anastassiades, for the appellant.

L. Clerides with *J. Mavronicolas*, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :

VASSILIADES, AG. P. : This is an appeal by the defendant from the judgment of the District Court of Limassol in an action for damages for negligence in a road accident case, where the trial Court found that the accident was due to the negligent driving of the defendant-appellant, and awarded £5,670.450 mils damages, and costs.

In the trial Court, the action was fought mainly on the issue of negligence, each party alleging that the collision between the two vehicles involved, was due exclusively to the negligence of the other side, the parties being the respective drivers of the vehicles; or, in any case—the defendant alleged—the plaintiff was guilty of contributory negligence, and liability as well as damages, should be apportioned accordingly.

In the course of the hearing, the parties agreed on some of the main items of the damages claimed ; and the appeal was taken against the trial Court's finding on the issue of negligence, leaving the award for damages unchallenged. The notice of appeal expressly stated that the appeal was "against so much of the judgment as it does not attribute any blame to the plaintiff for the accident".

During the hearing of the appeal, however, it appeared that the long and complicated treatment to which the plaintiff was subjected for his injuries—which naturally affected the amount of damages—raised questions of importance, both to the parties of this action, "and generally to all concerned with this type of claim", as to make it appear that further investigation in that direction might be desirable. Opportunity was, therefore, given to the appellant to apply to amend his notice so as to cover the question of damages as well.

A formal application was filed on behalf of the appellant for the purpose, supported by affidavit evidence, which was opposed on behalf of the respondent, with affidavit evidence in opposition.

After hearing Counsel on the merits of the application for amendment, we think that we can dispose of this matter by saying that in the special circumstances of this case, we should refuse the application for amendment; and we direct accordingly.

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Returning now to the merits of the appeal as it stands on the original notice, we have no difficulty in deciding the question raised therein. The approach of an Appellate Court to the findings of the trial Court on the issue of liability (which is the only question for decision at this stage) was the subject of discussion in a number of cases decided in this Court. In a similar case *Petros Antoniou v. Yashar Elmaz* (reported in this Vol. at p. 210 *ante*) delivering the judgment of the Court, I am reported to have said (at p. 212):

“The findings of the trial Court are crucial in this appeal, as the issue of liability is the main dispute; and the appeal turns on such findings. Our approach, as an Appellate Court, at this stage of the case, must be to consider and determine the question whether it was open to the trial Court, on the evidence before them, to make the findings in question. Regardless of what view we might take of the evidence in the first instance, we think that it was open to the trial Judges to find as they did”.

Further down on the same page, the judgment reads :

“The position regarding findings of facts made by the trial Court, when considered on appeal, is now well-settled in a number of cases, to which I need not specifically refer, except for *Mamas v. The Arma Tyres* (reported in this Vol. at p. 158 *ante*) where the matter was again raised”.

We do not think that we need go further with the matter. In this particular case we unanimously take the view that on the evidence before them as it appears on the record, it was certainly open to the trial Court to find as they did; and we may, moreover, add that we are, again unanimously, of the opinion that the finding of the trial Court on the question of negligence in this case was fully justified.

This appeal must, therefore, fail and be dismissed with costs, excluding costs for the 19.5.1966 for which day we make no order for costs.

Appeal dismissed. Order for costs as aforesaid.