[VASSILIADES, P. TRIANTAFYLLIDES & JOSEPHIDES JJ.]

ANDREAS DESPOTIS,

Appellant-Defendant,

v.

ELENI P. TSERIOTOU,

Respondent-Plaintiff.

(*Civil Appeal No.* 4733).

Negligence— Contributory negligence— Road Traffic— Pedestrian knocked down by motor-cycle—Apportionment of liability—Not supported by the findings of fact made by the trial Court—Apportionment varied on appeal—Principles upon which the Court of Appeal will interfere with apportionment of liability made by trial Courts—Principles well settled in a line of cases—The Court of Appeal will not interfere, save in exceptional cases, as where there is some error in principle or the apportionment is clearly erroneous.

Contributory negligence—Negligence—Apportionment of liability—Approach of the Court of Appeal to appeals against apportionment of liability made by trial Courts—See also above.

Road Traffic—Road Accident—Negligence—Contributory negligence—Pedestrian knocked down by a motor-cycle—Apportionment of liability—See above.

Apportionment of liability in cases of negligence and contributory negligence—See above.

Appeal—Appeals against apportionment of liability—Approach of the Court of Appeal—Principles applicable—See above.

This is an appeal and cross-appeal against the apportionment of liability made by the trial Court in a traffic accident case. The trial Court found that the plaintiff (respondent) was 30 per cent to blame and the defendant (appellant) 70 per cent to blame for the accident.

In varying the apportionment of liability made by the trial Court, the Supreme Court:—

Held, (1). The approach of this Court to appeals of this nature is well settled. Where a trial Judge has apportioned

liability his apportionment should not be interfered with on appeal, save in exceptional cases (as where there is some error in principle or the apportionment is clearly erroneous); and an appellate Court will not readily substitute its own discretion for that of the trial Court. See *Constantinou* v. *Beaumont* (reported in this Part at p. 241 *ante*); *Christodoulou* v. *Angeli* (1968) 1 C.L.R. 338 at p. 346; *Lagos* v. *Yiasoummis* (1968) 1 C.L.R. 396 at p. 399; *Brown and Another* v. *Thompson* [1968] 1 W.L.R. 1003; *Stavrou* v. *Papadopoulos* (reported in this Part at p. 172 *ante*).

(2) *After reviewing the facts, Mr. Justice Josephides, who delivered the judgment of the Court, went on.....* "While bearing in mind the principles on which this Court will act in deciding whether to interfere with the apportionment of liability made by the trial Court, we are of the view that on the very findings of fact of the trial Court the apportionment ought to have been fifty-fifty, that is, that both the plaintiff and the defendant were equally to blame for the accident."

Appeal allowed. Cross-appeal dismissed.

Cases referred to:

Constantinou v. *Beaumont* (reported in this Part at p. 241 *ante*);

Christodoulou v. *Angeli* (1968) 1 C.L.R. 338 at p. 346;

Lagos v. *Yiasoumis* (1968) 1 C.L.R. 396 at p. 399;

Brown and Another v. *Thompson* [1968] 1 W.L.R. 1003;

Stavrou v. *Papadopoulos* (reported in this Part at p. 172 *ante*).

Appeal and Cross-appeal.

Appeal and cross-appeal against the judgment of the District Court of Nicosia (Ioannides Ag. P.D.C. & Santamas D.J.) dated the 15th May 1968 (Action No. 505/1968) whereby the defendant was adjudged to pay the sum of £588 to plaintiff as damages for the injuries she sustained when knocked down by a car driven by the defendant.

Ch. Loizou, for the appellant.

E. Vrahimi (*Mrs.*), for the respondent.

VASSILIADES, P.: Mr. Justice Josephides will deliver the judgment of the Court.

JOSEPHIDES, J.: This is an appeal and a cross-appeal against the apportionment of liability made by the District Court of Nicosia in a traffic accident case. The trial Court found that the plaintiff was 30 per cent to blame and the defendant 70 per cent to blame for the accident.

The approach of this Court to appeals of this nature is well settled and I need only quote from the most recent judgment of this Court in the case of *Sofoclis Constantinou* v. *Gordon Beaumont* (reported in this Part of p. 241 *ante*), where it was held that where a trial Judge has apportioned liability his apportionment should not be interfered with on appeal, save in exceptional cases (as where there is some error in principle or the apportionment is clearly erroneous); and an appellate Court will not readily substitute its own discretion for that of the trial Court. See also *Christodoulou* v. *Angeli* (1968) 1 C.L.R. 338 at p. 346; *Lagos* v. *Yiasoumis* (1968) 1 C.L.R. 396 at p. 399; *Brown and another* v. *Thompson* [1968] 1 W.L.R. 1003; and *Stavrou* v. *Papadopoulos* (reported in this Part at p. 172 *ante*). With that principle in mind we proceed to consider the present case.

This Court is rather handicapped because the trial Court did not make specific findings of fact before proceeding to give the reasoning for their conclusion. But from what it appears in their judgment, this accident happened while the plaintiff-respondent was crossing the "Solomos bridge" in Nicosia from one side of the road to the other. The Solomos bridge is a two-lane street, with traffic going on the one side and coming on the other. On the morning in question the plaintiff had alighted from her bus and she was about to cross the one lane of the bridge to go on to the island between the two lanes in order to catch another bus on the other side of the bridge. As she was doing so she was knocked down by the defendant who was riding a light motor-cycle.

It is not in dispute that he was driving at a speed of about ten miles an hour. What is really in dispute is whether either or both of the parties were careful enough in the circumstances. The defendant admits that he was careless but as it was submitted by his learned counsel he should not have been blamed for more than fifty per cent for this accident. On the other

hand the plaintiff in her cross-appeal contended that she was not to blame at all for the accident. The trial Court found that the plaintiff did not look carefully to her right in order to see whether any vehicle was approaching at that time.

Pausing there, it should be stated that vis-a-vis the plaintiff the traffic came only from her right (as already stated this was a two-lane bridge), so that she ought to look only to her right to avert any possible risk from any vehicle. The trial Court goes on to say that "had she done this, she would have been able to see the defendant coming towards her. Not only she would have done so but she should have focussed her attention continuously towards her righthand side in order to avoid any danger and avoid putting other people in danger as well. She was crossing the road and she had the primary duty to take extreme care to do that". There we do not agree fully with the view of the trial Court as regards the high degree of duty placed on the pedestrian. She certainly had a duty to take care but we need not go further than that. There is no evidence that there was any "pedestrian-crossing" nearby; and the cyclist owed a duty to the pedestrians to be careful.

As regards the defendant, the trial Court found that he did not keep a proper look out, drawing this inference from the fact that he noticed the plaintiff very shortly before he was hit by her, as he alleged. The trial Court went on to say in their judgment that "he should have exhibited a special degree of care in the circumstances, in view of the fact that as the evidence goes, people were crossing the road at that particular time", and they concluded that "it is obvious that, had he exhibited this care, he should have been able to avoid the accident in view of (a) his low speed, and (b) the manoeuvrability of his vehicle, being a motor-cycle".

With regard to the low speed, we would not disagree with the comment of the trial Court, but as regards the Court's view of the manoeuvrability of the defendant's cycle, we think that they gave undue weight to that factor. In trying to avoid hitting the plaintiff in that crowded street, he might have collided with another person or vehicle.

To sum up: the position, as we understand it from the very brief judgment of the trial Court, was that the street was crowded, it was a busy morning, the plaintiff was not careful enough to look to her right, because had she looked she ought

to have seen the motor-cycle coming, but she failed to do so. On the other hand, the motor-cyclist (defendant) was coming at a low speed, at 10 miles per hour, and in the crowded street he ought to have been careful in the circumstances. They both failed in their duty to each other.

While bearing in mind the principles on which this Court will act in deciding whether to interfere with the apportionment of liability made by the trial Court, we are of the view that on the very findings of fact of the trial Court the apportionment ought to have been fifty-fifty, that is, that both the plaintiff and he defendant were equally to blame for the accident.

In the result the appeal is allowed and the cross-appeal is dismissed. The judgment of the District Court is varied and judgment is entered for the plaintiff (respondent) in the sum of £420 with costs on that scale in the trial Court; but there will be no order as to costs in this appeal.

Appeal allowed; cross-appeal dismissed; order for costs as above.