[VASSILIADES P. JOSEPHIDES & STAVRINIDES JJ.]

DEMETRAKIS HAIRETTINIS,

Appellant-Plaintiff,

v.

AGAMEMNON ARISTIDOU,

Respondent-Defendant.

(*Civil Appeal No.* 4739).

Negligence—Contributory negligence—Road accident—Collision between two vehicles—Apportionment of liability—Court of Appeal not satisfied that it should be interfered with—Approach of the Court of Appeal to appeals against apportionment of liability—Principles applicable.

Apportionment of liability—Appeal against apportionment of liability made by trial Courts—Approach of the Court of Appeal—See above.

Contributory negligence—Negligence—Apportionment of liability—Approach of the Court of Appeal—Principles applicable—See above.

Cases referred to:

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

Despotis v. *Tseriotou* (reported in this Part at p. 261 *ante*);

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

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

The facts sufficiently appear in the judgment of the Court whereby they declined to interfere with the apportionment of liability made by the trial Court.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Boyadjis Ag. D.J.) dated the 15th May, 1968 (Action No. 345/67) whereby he was found 80% liable and defendant 20% liable for a traffic collision.

R. Michaelides, for the appellant.

G. Talianos, for the respondent.

The judgment of the Court was delivered by:

VASSILIADES, P.: This appeal arises from a road collision between two vehicles. It is the kind of case which is frequently before the Courts nowadays; and the principles on which this Court approaches appeals in such cases, have been repeatedly stated. I may mention some recent cases where earlier ones have been referred to. See *Christodoulou* v. *Angeli* (1968) 1 C.L.R. 338; *Stavrou* v. *Papadopoulos* (reported in this Part at p. 172 *ante*). In the present case the appellant complains against the apportionment of liability made by the trial Judge. As regards the amount of damages, counsel on both sides following a commendable practice in the interests of litigants, have agreed on the amount at the trial Court; and the award was made on the basis of the agreed amount.

The facts of the case are not complicated. They are clearly before us as described by the learned trial Judge in his careful judgment. On those facts, the trial Judge took the view that both drivers were responsible for the collision; and apportioned the blame (and the consequential liability) at 20 per cent on the part of the respondent and 80 per cent on the part of the appellant. The trial Judge found that the appellant-(plaintiff in the action) was negligent because –

"(a) he disobeyed the traffic signs which directed him to turn to his left and informed him that the straight road ahead of him was closed to traffic;

(b) he was driving at a speed of 40 miles per hour on a non-asphalted road under construction and despite the fact that traffic signs all along his way warned him that road works were being carried out and that he should drive slowly. Plaintiff's speed in the circumstances was excessive;

(c) he was driving on the wrong side of the road;

(d) he failed to give any warning of his approach to a bend, even to a side road according to his own version, having regard to the unique circumstances and condition of the road on which he was driving at the time."

As the apportionment of liability is the matter for decision in this appeal, we might as well refer also to the findings of the trial Judge regarding the negligence of the other driver, the respondent in this appeal. In that connection the Judge says:

> "Although he (the respondent) was not proceeding to a T junction in the proper sense of the word, yet on his own version of the facts, he was negotiating a bend which afforded him no visibility and while extensive road works were being carried out in the vicinity, around and along such bend, and yet he failed to give any warning of his approach by sounding his horn or otherwise, and he further failed to keep to the left hand side of the road."

These are the facts upon which the trial Judge proceeded to make the apportionment of the blame for the collision; and the consequential liability.

Learned counsel for the appellant submitted that on the facts as found by the trial Judge and on the evidence upon which he made his findings, the apportionment of the blame is wrong; and should be corrected by this Court. The blame, he submitted, should be equally placed on the two sides.

It has already been pointed out that this being a matter which depends on the view of the facts as seen by different persons, may lead to different assessment of the blame. It is a matter of opinion and individual assessment. What we have to consider, is whether, approaching the matter on the principles which have been adopted in earlier cases, we should interfere with the apportionment made by the trial Court. There have been cases where this has been done; but as a result of the appellant persuading this Court, by reference to the record, that the apportionment of the trial Court was wrong to such an extent as to make intervention necessary in the interest of justice.

In *Constantinou* v. *Beaumont*, (reported in this Part at p. 241 *ante*) which followed *Stavrou* v. *Papadopoulos* (*supra*) the Court tried to put the matter as simply as it could be done; and said that –

> "This Court adopts the view taken in the *Stavrou* case, following *Brown and Another* v. *Thompson* [1968] 2 All E.R. 708, to the effect 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 Judge."

That approach was adopted in *Despotis* v. *Tseriotou* (reported in this Part at p. 261 *ante*) which was heard in this Court on May 8, 1969.

I do not think that it is helpful to elaborate further on dicta found in these cases. Making the same approach in this appeal, we must ask ourselves whether we have been persuaded by the appellant that the apportionment of the trial Judge is so erroneous, as to make it necessary for us to intervene. It is not a matter where one or more of us would be called upon to decide the apportionment as a trial Court. The position of the trial Judge who has before him the witnesses and all the other material in the first instance is different. Here we must start from the findings and the assessments made by the trial Court; and unless we are satisfied that the trial Court's apportionment must be altered or be set aside, we should not interfere. There have been cases where we have been so satisfied; and we altered the apportionment. In this case we have not been so satisfied and we must not interfere. The appellant having failed in this connection he fails in his appeal; and the appeal must be dismissed with costs.

Appeal dismissed with costs.