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ANASTASSIOS
MELETIOU
& ANOTHER
v.
ANTONIOS LEMIS

[VASSILIADES, P., TRIANTAFYLIDIS, LOIZOU, JJ.]

ANASTASSIOS MELETIOU AND ANOTHER,
Appellants-Defendants,

v.

ANTONIOS LEMIS,
Respondent-Plaintiff,

(Civil Appeal No. 4785).

Road accident—Motor traffic—Collission between motor vehicles moving in the same direction—Negligence—Plea of contributory negligence rejected—Defendant (appellant driver) found solely to blame—Finding not disturbed on appeal—Approach of the Court of Appeal to appeals of this kind—Principles well settled.

Negligence—Contributory negligence—Findings made by trial Court not disturbed.

Appeal—Negligence—Plea of contributory negligence—Defendant driver found solely to blame—Appeal—Principles upon which Court of Appeal decides appeals of this kind well settled.

Cases referred to:

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

The facts sufficiently appear in the judgment of the Court dismissing the appeal by the defendants from the judgment of the trial Court whereby the defendant driver was found solely to blame.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Santamas, Ag. D.J.) dated the 3rd December, 1968 (Action No. 348/68) whereby the plaintiff was awarded the sum of £306 damages which he suffered as a result of a motor car accident.

Chr. Chrysanthou, for the appellant.

P. Pavlou, for the respondent.

VASSILIADES, P.: The judgment of the Court will be delivered by Mr. Justice Loizou.

LOIZOU, J.: This is an appeal by the defendants from the judgment of the District Court of Nicosia in Action No. 348/68 whereby the plaintiff was awarded £306 damages which he suffered as a result of a motor car accident in which the vehicles of the parties were involved. The amount of damages, including the costs, had been agreed by the parties before the hearing of the action and the only issue before the trial Court was the question of liability.

The accident in question occurred on the 9th September, 1967, on the Nicosia/Limassol road by the Melkonian Institute in the outskirts of Nicosia. The respondent was driving his car under Registration No. BD771 in the direction of Nicosia from Limassol. The first appellant was driving a lorry, Registration No. B.569, the property of the second appellant, of the type used for the distribution of soft drinks with the sides open, so that boxes of soft drinks may be loaded and unloaded from the sides; there was a third vehicle involved, a police van, under Registration No. AA648. All three vehicles were travelling in the same direction.

It is common ground that shortly before the accident the order in which the vehicles were travelling was as follows: The appellants' lorry was travelling first, followed by the police van and then the respondent's car.

The version of the respondent was that near the "Ariston" shoe factory the police van, which was proceeding ahead of him, overtook the lorry and that he followed the police van also overtaking the lorry as soon as he made sure that the road was clear; that he proceeded about 150 yards following the police van at a safe distance when he saw the van slowing down or stopping and that thereupon he pulled up a few yards behind the van. While he was about to set his car in motion again, as the police van had in the meantime started, the appellants' lorry knocked his vehicle from behind and as a result of the blow his own car was pushed forward and knocked the police van at the back.

The version of the first appellant, on the other hand, was that the respondent overtook him at a time when the police van was about 25 yards ahead of his lorry; that as soon as he overtook him the respondent swerved his car to the left

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in order to avoid on-coming traffic and brought it to an abrupt halt in front of appellant's lorry, thus blocking his way; and that inspite of the fact that the appellant applied his brakes hard he could not, in the circumstances, avoid the accident.

The learned trial Judge heard in all four witnesses including the first appellant and the respondent. The other witnesses were the police expert who investigated the accident, who was called by the respondent and the driver of the police van who was called by the appellants. We must say that the evidence of this last witness far from supporting the version of the appellants is more consistent with that of the respondent.

Be that as it may, the learned trial Judge, after weighing the evidence accepted the version of the plaintiff and found the first defendant solely to blame for the accident.

Learned counsel for the appellants to-day put forward a number of reasons why the trial Judge should not have accepted the plaintiff's version and that he should have accepted that of the defendants dismissing the plaintiff's claim.

The principles on which this Court decides appeals of this nature are now well settled; it is sufficient to say that such matters are primarily within the province of the trial Judge and if on the evidence before him it was reasonably open to him to make the findings which he did this Court will not interfere with the judgment. (See *Despotis v. Tseriotou* (reported in this Vol. at p. 261 *ante*), where reference is also made to a number of other cases on the point).

Without entering into detail, which we find unnecessary to do, we think it is clear that there was ample evidence upon which the trial Judge could reach his findings; and the able argument of learned counsel for the appellants did not persuade us that the evaluation of the evidence by the trial Judge was defective or that his findings were in any way unsatisfactory.

In the result this appeal fails and is dismissed with costs.

Appeal dismissed with costs.