[VASSILIADES, P., JOSEPHIDES, HADJIANASTASSIOU, JJ.]

THE ESTATE OF THE DECEASED ALEXANDROS CHRISTOU THROUGH THE ADMINISTRATRIX ELLI ALEXANDROU,

Appellant-Defendant,

v.

STELLA KOMODROMOU AND OTHERS,

Respondents-Plaintiffs.

(*Civil Appeal No.* 4822).

Negligence—Contributory negligence—Apportionment of liability—Road accident—Collision between two vehicles—Findings of fact made by trial Court—Approach of the Court of Appeal in appeals of this nature—Principles well settled—Court of Appeal not persuaded that the findings of the trial Court and the apportionment of liability they have made were in any way unsatisfactory.

Road accident—Collision—Negligence—Contributory negligence—Apportionment of liability—See supra.

Appeal—Findings of fact—Apportionment of liability—Approach of the Court of Appeal in appeals of this nature well settled.

Apportionment of liability—In negligence cases—Apportionment of liability is in itself a finding of fact.

The appeal and cross-appeal in this case arose from a road collision between a lorry and a saloon car. The collision was apparently very forcible and the consequences were grave indeed. Two of the persons travelling in the saloon car, the driver and one of his passengers lost their lives on the spot. The trial Court went fully into the case dealt with the evidence in detail and made their findings. The trial Court came to the conclusion that both drivers were guilty of negligence and apportioned between them the liability for damages. For the reasons which the trial Court state in their judgment, they found that the liability should be apportioned to the extent of 20% for the deceased driver of the saloon car and 80% for the driver of the lorry. Against this judgment the personal representatives of the deceased driver of the saloon car took the appeal and the driver of the lorry (defendant No. 2) took the cross-appeal.

The appellants argued that the deceased driver of the saloon car was not to blame at all for the accident, whereas the respondent driver of the lorry (defendant No. 2) contended that the correct apportionment ought to be one third to the deceased driver and two thirds to himself.

Dismissing both the appeal and the cross-appeal, the Court:

Held, (1). The approach of this Court to findings of fact and the particular approach to findings leading to apportionment of liability are well settled : This Court will not disturb such findings unless persuaded by the appellant that there are sufficient reasons for doing so. This has been expressed in a variety of ways but the effect is the same (*Patsalides* v. *Afsharian* (1965) 1 C.L.R. 134 ; *Imam* v. *Papacostas* (1968) 1 C.L.R. 207). See also *infra*.

(2)—(A). The issue of negligence in a case of this nature is decided on the findings regarding the facts relevant to negligence ; and the apportionment of liability depending on such findings, is also practically a finding of fact.

(B). Thus the primary responsibility for finding and apportioning negligence rests with the trial Court ; and its decision should not be disturbed unless this Court is persuaded that there are sufficient reasons justifying intervention. And this is so even where one or more members of this Court may be inclined to think that as trial Judges they might have made a different apportionment. We may refer to three of the recent cases where the matter was discussed and this Court's approach was stated : *Constantinou* v. *Beaumont* (1969) 1 C.L.R. 241 ; *Despotis* v. *Tseriotou* (1969) 1 C.L.R. 261 ; and *Hairettinis* v. *Aristidou* (1969) 1 C.L.R. 283.

(3). We have not been persuaded by either side that the findings of the trial Court were in any way unsatisfactory. Upon those findings we hold that the apportionment made should not be disturbed.

Appeal and cross-appeal dismissed ; no order as to costs.

Cases referred to :

Constantinou v. *Beaumont* (1969) 1 C.L.R. 241 ;
Despotis v. *Tseriotou* (1969) 1 C.L.R. 261 ;
Hairettinis v. *Aristidou* (1969) 1 C.L.R. 283 ;
Patsalides v. *Afsharian* (1965) 1 C.L.R. 134 ;
Imam v. *Papacostas* (1968) 1 C.L.R. 207.

The facts sufficiently appear in the judgment of the Court.

Appeal and cross-appeal.

Appeal and cross-appeal against the judgment of the District Court of Famagusta (Savvides and Pikis, D.JJ.) dated the 17th May, 1969 (Consolidated Actions No. 112/66, 1764/66 and 368/66) whereby the liability for a road collision between a saloon car and a lorry was apportioned to the extent of 20% for the driver of the saloon car and 80% for the driver of the lorry.

Ph. Clerides, for appellant-defendant No. 1.

N. Pelides, for respondent-defendant No. 2.

Ch. Kyriakides, for respondents-plaintiffs in Action 112/66.

D. Georghiades, for *C. Indianos* for respondent-plaintiff in Action No. 368/66.

C. Melissas, for respondent-plaintiff in Action No. 1764/66.

Cur. adv. vult.

The judgment of the Court was delivered by :—

VASSILIADES, P.: The appeal and cross-appeal before us arise from a road collision between a lorry and a Peugeot saloon car to which we shall refer for convenience, as " the small car ". The collision occurred at about midday on October 1, 1965, on the main Famagusta-Carpas road, near Tricomo " Y " junction where there was clear visibility for considerable distance on both sides of the approach to the point of impact.

The collision was apparently very forcible and the consequences were grave. Two of the persons travelling in the small car, the driver and one of his passengers lost their lives on the spot. The driver of the lorry was prosecuted but we are not here concerned with those proceedings. In due course three civil actions were filed for damages ; two of them in the District Court of Famagusta within the jurisdiction of which the accident took place and one of them in the District Court of Nicosia where one of the defendants resided. Eventually the Nicosia action was transferred to Famagusta where the three actions were consolidated and were heard together. At the opening of the trial counsel agreed on the amount of the damages in each action amounting to a total of £10,550. The claim was strongly contested on the issue of negligence as between the drivers of the two vehicles.

The trial Court (Savvides and Pikis, D.JJ.) gave their judgment on May 17, 1969. In a carefully and well considered judgment, running for some 16 pages, the trial Court went fully into the case, dealt with the evidence in detail and made their findings. The Court came to the conclusion that both drivers were to blame and apportioned between them the liability for damages according to the extent in which each driver was found to have contributed to the cause of the collision. For the reasons which the trial Court state in their judgment, they found that the liability should be apportioned between the two drivers to the extent of 20% for the deceased driver of the small car and 80% of the driver of the lorry. Against this judgment each of the two took the appeal and cross-appeal now before us.

Counsel for the representatives of the deceased driver of the small car (who is the first appellant) argued his case on two main grounds : First that the driver of the small car was not to blame at all and he should not have been found negligent ; and secondly that if negligent, his contribution to the cause of the collision was much less than 20% and the apportionment of liability should be varied accordingly. In the course of the hearing learned counsel did not press his second point and we think that, in the circumstances, he was justified in taking this course. So at this stage, as far as the main appeal is concerned, we only have to deal with the complaint that the driver of the small car was not to blame at all for the accident.

The second defendant who filed the cross-appeal complains that the apportionment of 80% of liability made by the trial Court, is too high in his case. Counsel on his behalf submitted that the apportionment should be 60% and 40% respectively ; or at most two thirds of the liability to the lorry driver and one third to the driver of the small car.

The approach of this Court in appeals of this nature is well settled. The number of road traffic cases coming up on appeal is increasing almost parallel with the increase of motor traffic on the road, which is, of course, not unnatural. One of the consequences of the increase in the number of cases is that the law on the point, develops in a larger variety of circumstances. We may refer to three of the recent cases where the matter was discussed and this Court's approach was stated : *Constantinou* v. *Beaumont* (1969) 1 C.L.R. 241 ; *Despotis* v. *Tsieriotou* (1969) 1 C.L.R. 261 ; and *Hairettinis* v. *Aristidou* (1969) 1 C.L.R. 283.

In the case before us we have to deal both with the general approach of this Court to findings of fact by the trial Court and the particular approach to findings leading to the apportionment of liability. As regards findings in general, it is well settled that this Court will not disturb findings made by the trial Court (who had the opportunity of receiving at first hand and assessing directly the evidence) unless this Court is persuaded by the appellant that there are sufficient reasons for doing so. See *Patsalides* v. *Afsharian* (1965) 1 C.L.R. 134 ; *Imam* v. *Papacostas* (1968) 1 C.L.R. 207. This has been expressed in a variety of ways but the effect is the same.

The issue of negligence in a case of this nature, is decided on the findings regarding the facts relevant to negligence ; and the apportionment of liability depending on such findings, is also practically a finding of fact. Thus the primary responsibility for finding and apportioning negligence rests with the trial Court ; and its decision should not be disturbed unless this Court is persuaded that there are sufficient reasons justifying intervention. And this is so even where one or more members of this Court may be inclined to think that as trial Judges they might make a different apportionment.

In this case the argument advanced on behalf of the appellants was mainly based on figures and calculations of time and measurements, as frequently argument in cases of this nature is inclined to run, based on drawings, measurements and expert evidence. The argument was to the effect that the driver of the small car was entitled to assume that travelling on a major road, he had precedence over traffic coming from a secondary road ; and that had the lorry waited for a small fraction of a second, the small car on the major road would have passed ; and no collision would take place. Therefore, the cause of the collision, it was submitted, was the attempt of the lorry driver to cross the path of the small car by running into a major road instead of waiting for the small car to pass.

The argument advanced on behalf of the lorry driver on the other hand, reversed the position ; if the driver of the small car, it was argued, did not travel so fast and kept to his proper side of the road, the accident would not have taken place. The trial Court in making their findings have to take all these matters into consideration ; and this is what the trial Court very carefully did in this case, as one can see from their judgment.

We have not been persuaded by either side that the findings of the trial Court were in any way unsatisfactory. Upon those findings we hold that the apportionment made should not be disturbed.

In the result both the appeal and the cross-appeal fail ; and are dismissed. Both appeals having failed, we make no order as to costs. As regards the appearance of the other parties, it seems that it was hardly necessary for the purposes of the appeal ; and perhaps notice need not have been given to them. In any case having only appeared for the purpose of watching the appeal, we think that in the circumstances of this case and in view of the amounts agreed and awarded, we should make no order for costs in their favour against either of the appellants.

In the result both appeal and cross-appeal are dismissed ; with no order for costs.

Appeal and cross-appeal dismissed ; no order as to costs.