1971
July 9
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ERACLIS MICHAEL
v.
LOUKIS KATSIKIDES

]TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

ERACLIS MICHAEL,
*Appellant-Plaintiff,*

*v.*

LOUKIS KATSIKIDES,
*Respondent-Defendant.*

(*Civil Appeal No.* 4749).

*Negligence—Road traffic—Collision between motor-cycle and motor vehicle—Two conflicting versions—Open to the trial Court to absolve completely the defendant (respondent).*

*Appeal—Findings of fact made by trial Courts—And findings of fact involving credibility of witnesses—Principles on which the Court of Appeal will intervene, stated in a great number of cases—Those principles followed.*

*Findings of fact made by trial Courts—Witnesses—Credibility—Approach of the Appellate Court to appeals against such findings—See also* supra.

*Witnesses—Credibility—Findings of fact involving credibility—Appeals against such findings—Approach of the Appellate Court to such appeals—See* supra.

This is an appeal by the plaintiff whereby he complains against the dismissal by the District Court of Nicosia of the action, brought by him against the respondent-defendant for damages for personal injuries and damage to property, which he (the appellant) suffered in a road accident (collision) on July 11, 1967 ; according to his contention the collision was caused in whole, or at least in part, due to the negligence of the respondent-defendant.

The trial Court preferred the version of the defendant (now respondent) and concluded :

" From the evidence of the plaintiff himself it becomes apparent that it was his own sole negligence which brought about the accident in question for it is obvious that he was either not keeping a safe distance behind the defendant's car in order to enable himself to cope with any emergency or was not having a proper look out. We see nothing in the defendant's conduct amounting to contributory negligence. Therefore, the plaintiff's claim fails."

It is against this judgment that the plaintiff took this appeal on the ground that the trial Court ought to have found that the said accident was due, at least in part, to the negligence of the defendant (now appellant).

Dismissing the appeal, the Court :—

*Held*, (1). Regarding the powers of an Appellate Court to interfere with findings of fact made, and inferences drawn therefrom, by trial Courts, the relevant principles have been stated by this Court so often that they need not be set out once again in this judgment ; they are to be found *inter alia*, in the case of the *Electricity Authority of Cyprus* v. *Petrolina Co. Ltd.* (reported in this Part, *ante*, p. 19 at pp. 60–62 ; also, useful reference may be made, especially regarding findings of fact involving the credibility of witnesses, to the English House of Lords case of *Onassis and Calogeropoulos* v. *Vergottis* [1968] 2 Lloyd's Rep. 403, as well as to the recent case of *Breen* v. *Amalgamated Engineering Union* [1971] 1 All E.R. 1148.

(2) Having considered all relevant factors in this case and in the light of the said principles, we are of the opinion that we are not satisfied as an Appellate Court that we should interfere with the conclusions of the trial Court. For instances in which the Supreme Court declined to intervene and substitute a different conclusion in the place of a properly open to it, on the evidence, decision of a trial Court that a party to a road collision was not to blame at all, see *Ioannou* v. *Michaelides* (1966) 1 C.L.R. 235, and *Charalambous* v. *Koutsides* (1966) 1 C.L.R. 271.

(3) In the result the appeal is dismissed with costs against the appellant.

*Appeal dismissed with costs.*

Cases referred to :

*Electricity Authority of Cyprus* v. *Petrolina Co. Ltd.* (reported in this Part, *ante*, p. 19, at pp. 60–62) ;

*Onassis and Calogeropoulos* v. *Vergottis* [1968] 2 Lloyd's Rep. 403 H.L. ;

*Breen* v. *Amalgamated Engineering Union* [1971] 1 All E.R. 1148 ;

*Ioannou* v. *Michaelides* (1966) 1 C.L.R. 235 ;

*Charalambous* v. *Koutsides* (1966) 1 C.L.R. 271.

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**Appeal.**

Appeal by plaintiff against the judgment of the District Court of Nicosia (Ioannides, Ag. P.D.C. and Santamas, Ag. D.J.) dated the 19th June, 1968, (Action No. 5104/67) whereby his claim for damages for personal injuries and damage to property suffered in a traffic collision was dismissed.

*A. Georghiades*, for the appellant.

*Chr. Artemides*, for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P. : By this appeal the appellant-plaintiff complains against the dismissal by a Full District Court in Nicosia of a civil action, brought by him against the respondent-defendant, for damages for personal injuries and damage to property, which the appellant suffered in a traffic collision on the 11th July, 1967 ; according to his contention such collision was caused in whole, or at least in part, due to the negligence of the respondent.

The two conflicting versions of the parties, as to how the collision took place, are summarised in the judgment of the trial Court as follows :

> " The plaintiffs' version as to how this accident occurred is that the car driven by the defendant, which the plaintiff was following riding his motor-cycle, stopped abruptly in front of him immediately after it had been overtaken by a motor lorry. At that time the plaintiff was about 35 ft. behind him and proceeding at a speed of about 18-20 m.p.h. The plaintiff said that he could not stop within that distance since, as he said, it all happened suddenly.
>
> The defendant's version is that after the lorry overtook him, it swerved to its left in front of him since there was an on-coming car at that time. As a result he had to reduce his speed, but shortly after he had done so the plaintiff motor-cyclist crushed to the rear of his car."

On the basis of the evidence adduced before them the learned trial Court Judges reached the following conclusion :-

> " It is apparent that the only substantial difference between the two versions is whether the defendant's

vehicle was stationary at the time of the collision as the plaintiff alleged, or was proceeding at a reduced speed as the defendant alleged. On this issue we prefer the version of the defendant to that of the plaintiff and we find accordingly.

From the evidence of the plaintiff himself it becomes apparent that it was his own sole negligence which brought about the accident in question for it is obvious that he was either not keeping a safe distance behind the defendant's car in order to enable himself to cope with any emergency or was not having a proper look out. We see nothing in the defendant's conduct amounting to contributory negligence. Therefore, the plaintiff's claim fails."

Regarding the powers of an Appellate Court to interfere with findings of fact made, and inferences drawn therefrom, by the trial Court, the relevant principles have been stated by this Court so often that they need not, we think, be set out once again in this judgment ; they are to be found, *inter alia*, in the case of the *Electricity Authority of Cyprus* v. *Petrolina Co. Ltd.* (reported in this Part at p. 19 *ante* at pp. 60-62) ; also, useful reference may be made, especially regarding findings of fact involving the credibility of witnesses, to the English House of Lords case of *Onassis and Calogeropoulos* v. *Vergottis* [1968] 2 Lloyd's Rep. 403, as well as to the recent case of *Breen* v. *Amalgamated Engineering Union* [1971] 1 All E.R. 1148.

Having considered all relevant factors in this case, in the light of the said principles, we are of the opinion that we are not satisfied as an Appellate Court that we should interfere with the above-quoted conclusions of the Court below.

We might add, regarding the appellant's point that the trial Court ought, in the circumstances of the present case, to put some of the blame for the collision, by way of contributory negligence, on the respondent, that we are of the view that it was properly open to the said Court, on the material before it, not to do so. It was, indeed, the appellant who had the possibility, and responsibility, to avoid the collision, by driving at such distance and speed behind the respondent as to be able to pull up in time, in case the respondent had to slow down suddenly ; and, indeed, the respondent had to slow down considerably because of the fact that as soon as he was overtaken by a lorry, which was proceeding in the same direction as he was, the lorry swerved and came to be very closely in front of him, in an

effort to avoid a vehicle coming from the opposite direction ; therefore, we cannot see how the respondent could have been held to blame at all for acting as he did when faced, himself, with the just described emergency situation. For instances in which the Supreme Court declined to intervene and substitute a different conclusion in the place of a properly open to it, on the evidence before it, decision of a trial Court that a party to a collision was not to blame at all, see *Ioannou* v. *Michaelides* (1966) 1 C.L.R. 235, and *Charalambous* v. *Koutsides* (1966) 1 C.L.R. 271.

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

*Appeal dismissed with costs.*