[TRIANTAFYLLIDES, P., STAVRINIDES, A. LOIZOU, JJ.]

MICHAEL PISSOURIOS,

Appellant-Plaintiff,

v.

ARIF YOUSOUF MOUSTAFA,

Respondent-Defendant.

(*Civil Appeal No.* 4932).

Road Traffic—Collision—Negligence—Contributory negligence—Collision at cross-roads—Respondent driving along major road—Possibility of danger emerging from the square at the side of the avenue (said major road) reasonably apparent—Respondent's failure to keep a proper look-out held to be negligence constituting one of the causes of the collision—Apportionment of liability—Appellant held to be 80% to blame—Respondent held to be 20% to blame—See further infra.

Negligence—Road traffic—Duty of users of the road to one another—Possibility of danger reasonably apparent as distinct from a mere possibility of danger which would never occur in the mind of a reasonable man—Duty to take precautions—Principles applicable.

Contributory negligence—Negligence—Road Traffic—Apportionment of liability—See supra.

In this case the appellant appeals against the dismissal, by the District Court of Paphos, of his civil action against the respondent whereby he was claiming damages for negligence of the respondent which resulted in a collision between a motor-cycle ridden by the appellant and a car driven by the respondent on June 4, 1967, in the centre of the town of Paphos.

The facts sufficiently appear in the judgment of the Court whereby the parties were both held to blame for the collision, the appellant to an extent of 80%, the respondent to an extent of 20%.

Cases referred to :

Nance v. *The British Columbia Electric Railway Company Ltd.* [1951] A.C. 601 ;

Nicolaides v. *Economides* (1963) 2 C.L.R. 78 ;

Lang v. *London Transport Executive and Another* [1959] 3 All E.R. 609 ;

Fardon v. *Harcourt—Rivington* [1932] All E.R. Rep. 81 ;

London Passenger Transport Board v. *Upson* [1949] A.C. 155.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Paphos (Malachtos, P.D.C. and Papadopoullos, D.J.) dated the 4th September, 1970, (Action No. 357/68) whereby his claim for damages for injuries he sustained in a road accident was dismissed, and judgment was given in favour of the defendant on his counterclaim for the amount of £77.

L. *Papaphilippou*, for the appellant.

L. *Clerides*, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P. : In this case the appellant appeals against the dismissal, by the District Court in Paphos, of his civil action against the respondent by means of which he had claimed damages for negligence of the respondent which resulted in a collision between a motor-cycle ridden by the appellant and a car driven by the respondent on the 4th June, 1967, in the centre of Paphos.

The trial Court absolved the respondent from any fault, having found that the appellant was the only one to be blamed for the collision ; it, also, gave judgment in favour of the respondent in respect of a counterclaim for the amount of £77 and ordered the appellant to pay the costs of the action.

The trial Court proceeded, none the less, to assess the damages which the appellant would have recovered had it been held that the respondent was solely responsible for the accident ; such damages being £264.500 mils special damages and £1,150 general damages.

The learned trial Judges had before them the evidence of two eye-witnesses only, *viz.* of the appellant and of the respondent, and they preferred the evidence of the respondent ; as we have not been persuaded that we should interfere

with the conclusion of the trial Court in this respect, we shall proceed to decide this appeal on the basis that the collision took place in, substantially, the manner stated by the respondent ; we are, however, entitled to draw from the evidence accepted by the Court below our own inferences.

The scene of the collision was Grivas Digenis Avenue and the exact point of the impact was at the junction formed by the avenue, a small square to the right of the avenue and The 1st of April street to the left of the avenue (as one drives eastwards). The respondent was driving eastwards along the avenue towards the said junction and the appellant was proceeding on his motor-cycle through the square towards the same junction, with the intention to cross the avenue and enter The 1st of April, street.

It is to be derived, from evidence on record which has not been rejected by the trial Court, that anybody in the position of the respondent would, had he been keeping a proper look-out, have noticed the appellant coming from the square and attempting to cross the avenue.

It is not in dispute that there is no sign requiring traffic entering the junction from the square to halt ; and we do accept, as the trial Court did, that the appellant did not halt before entering such junction.

It was stated in, *inter alia*, *Nance* v. *The British Columbia Electric Railway Company Ltd.* [1951] A.C. 601, at p. 611, that : " Generally speaking, when two parties are so moving in relation to one another as to involve risk of collision, each owes the other a duty to move with due care, and this is true whether they are both in control of vehicles, or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle." This principle has been applied by this Court in quite a number of cases (see, for example, *Nicolaides* v. *Economides* (1963) 2 C.L.R. 78).

In *Lang* v. *London Transport Executive and Another* [1959] 3 All E.R. 609, there was applied the principle that : " If the possibility of the danger emerging is reasonably apparent, then to take no precautions is negligence ; but if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extraordinary precautions." This principle had been stated in *Fardon* v.

Harcourt-Rivington [1932] All E.R. Rep. 81, and was referred to with approval in *London Passenger Transport Board* v *Upson* [1949] A.C. 155.

In the present case the possibility of traffic—and, therefore, of danger—emerging from the square should have been reasonably apparent to anybody driving along Grivas Digenis avenue at about midday in the centre of Paphos ; consequently, the failure of the respondent to keep a proper look-out, with the result that he did not see in time the appellant coming from the square, was negligence on his part which constituted one of the causes of the collision. Had the respondent seen the appellant in time he, undoubtedly, could have taken avoiding action which might have averted the collision ; especially, as respondent's car hit the motor-cycle after it had crossed nearly the whole width of the avenue, while proceeding towards The 1st of April street on the opposite side of the avenue.

For the above reasons we find that the respondent was partly responsible for the accident.

There remains to be decided, next, what are, respectively, the parties' shares of the blame for the collision : Viewing the evidence as a whole we hold that the appellant, who emerged from the square and attempted to cross the avenue without taking any precautions to avoid a collision with traffic proceeding along such avenue, contributed, by his own negligence, to the occurrence of the collision to an extent of 80% ; and that the respondent contributed, by his negligence, to an extent of 20%.

As the amounts of damages assessed have not been challenged there should, therefore, be given judgment in favour of the appellant for the round figure of £283 and the judgment against him, in respect of the counterclaim, should be reduced to £61, from £77.

The respondent to pay to the appellant one third of the costs both in the Court below and on appeal, on the basis of the scale applicable to the amount for which judgment has been given in his favour.

Appeal allowed ; order for costs as above.