1974
May 3

ELIAS T. KLEOVOULOU AND ANOTHER

v.

GEORGHIOS ANDREA

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

ELIAS T. KLEOVOULOU AND ANOTHER,

Appellants - Defendants,

v.

GEORGHIOS ANDREA,

Respondent Plaintiff.

(Civil Appeal No. 5223).

Negligence—Contributory negligence—Apportionment of liability—Appeal—Principles upon which the Court of Appeal will intervene—Excavator moving in the reverse, in the course of loading a lorry, and knocking down the driver of the said lorry while he was waiting lorry to be loaded—Liability of excavator driver apportioned to 70 per cent—That of the plaintiff lorry driver (now respondent) to 30 per cent—On that basis £1,715 awarded as damages for personal injuries—But the Court of Appeal considering that the excavator was making a lot of noise and that the lorry driver was standing in the area of loading operation, held that had the lorry driver (respondent) been keeping a sufficient, in the circumstances, look out, he could have tried to get out of the excavator's way—And that, therefore, he (the respondent-lorry driver) was more to blame than he was found by the trial Court—His liability increased by 15% (i.e. to 45%)—With the result that the award is reduced to £1,347.

Apportionment of liability—Negligence—Contributory negligence—Approach of the Court of Appeal to appeals turning on apportionment of liability—See supra.

Contributory negligence—Apportionment of liability—See supra.

Cases referred to:

Ioannou v. *Mavridou* (1972) 1 C.L.R. 107.

The appellants took this appeal from the judgment of the District Court of Larnaca by which they were ordered to pay £1,715 damages to the respondent in respect of personal

injuries he suffered due to their negligent conduct. It has been agreed between the parties that the damages payable on a full liability basis would be £2,450. The trial Court in apportioning the liability of the parties found that the appellants were to blame for the accident to the extent of 70% and the injured plaintiff (now respondent) was to blame to the extent of 30%.

After reviewing the facts of the case and after referring to the well settled principles upon which the Appellate Court would intervene in case of apportionment of liability the Supreme Court allowed partly the appeal, increased the respondent's liability by 15%, and reduced that of the appellants accordingly, making thus the apportionment 55% regarding the appellants and 45% regarding the respondent, with the result that the award of £1,715 was reduced to one of £1,347.

Appeal.

Appeal by defendants against the judgment of the District Court of Larnaca (Demetriades, P.D.C.) dated the 18th June, 1973, (Action No. 133/71) whereby they were ordered to pay to plaintiff the sum of £1,715.- as damages in respect of personal injuries suffered by him due to the negligent conduct of the defendants.

G. Michaelides, for the appellants.

Fr. Saveriades, for the respondent.

The judgment of the Court was delivered by:

TRIANTAFYLLIDES, P.: The appellants have appealed against the judgment of the District Court of Larnaca by means of which they were ordered to pay C£1,715 damages, in respect of personal injuries, to the respondent. It had been agreed between the parties that the damages payable on a full liability basis would be C£2,450. The trial Court found that for the accident in which the respondent was injured he was to blame, due to his own negligence, to the extent of 30% and the appellants were to blame to the extent of 70%.

The respondent was injured on the 25th June, 1970, while he was waiting, at a quarry, for a lorry, of which he was the driver, to be filled up with soil; he was run

over by an excavator by which there was being excavated soil and was loaded on to the lorry.

It was not the first time that the respondent had gone to that quarry in the course of his work and he was familiar with the operation concerned. He had parked his lorry at the place where it was to be loaded and he was standing at a spot—(as it appears from the evidence)—about twenty paces away from the front part of the lorry, on the same side of the lorry from where it was being loaded by the excavator.

The respondent was talking at the time of, or shortly before, the occurrence of the accident to appellant 2, who is the owner of the excavator and was supervising the work. The respondent did not see the excavator coming towards him before he was knocked down by it apparently while it was reversing away from the lorry in order to proceed the excavate more soil. Actually there does not exist any direct evidence by an eye-witness as to how, exactly, the accident happened.

It is common ground that immediately before the accident the respondent was looking away, and not in the direction of, the excavator. It is, also, not disputed that the driver of the excavator, appellant 1, was negligent, in that he was not keeping a proper lookout while driving the excavator.

The sole issue that has been argued before us has been the correctness of the apportionment of liability. The principles governing the intervention of this Court in order to disturb the apportionment of liability made by a trial Court have been referred to in previous judgments (see, *inter alia, Ioannou* v. *Mavridou* (1972) 1 C.L.R. 107) and it is not necessary to repeat them; in the light of such principles we have decided that we should intervene in this case for the following reasons :-

We are of the view that the inference of the trial Court that the excavator, while travelling in reverse, deviated substantially from the route that it was normally following and that, as a result, it hit the respondent, was not warranted in the circumstances of this case. It is obvious that the excavator could not have been following a definite route, which was the same all the time, while

moving backwards and forward between the lorry and the place from which soil was being excavated. Also, it is quite clear that the respondent was standing within the area where the loading of the lorry was taking place, and, particularly, at that side of the lorry from where it was being loaded; it is undeniable that the excavator was making a lot of noise and, in our opinion, had the respondent been keeping a sufficient, in the circumstances, lookout, he could have tried to get out of its way; he was, certainly, more to blame than as has been found by the trial Court. On the other hand, bearing in mind that the driver of the excavator was in charge of a vehicle which was dangerous for bystanders and that appellant 2, who was there for the purpose of supervising the work of appellant 1, had, to a certain extent, a duty to take care about what was happening, we feel that we must make such apportionment of liability as to indicate that the appellants are rather more to blame than the respondent; therefore, we reduce the liability of the appellants by only 15%, that is to say, to 55%, and we increase that of the respondent to only 45%.

The damages awarded to the respondent are consequently reduced from C£1,715 to C£1,347.

The appellants to pay to the respondent the costs of the trial on the scale appropriate to the amount of damages awarded to him; there shall be no order as to the costs of this appeal.

Appeal partly allowed.
No order as to costs.