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

MARIOS CHR. ALEXANDROU,

Appellant-Plaintiff,

v.

GEOFFREY CHARLES GAMBLE,

Respondent-Defendant.

(Civil Appeal No. 5076).

Negligence—Contributory negligence—Road accident—Collision between two vehicles moving in opposite directions—Appellant (plaintiff) cutting across the path of oncoming traffic in order to cross the road—Held wholly to blame—Finding of trial Court that there was no contributory negligence on the other party not so erroneous as to call for intervention of the Court of Appeal.

Contributory negligence—Road accident—Driving at a high speed or exceeding the prescribed limit—Not sufficient per se *to establish negligence*—Radif *v.* Paphitis, *1964 C.L.R. 392,* distinguished—*Contributory negligence being negligence causative of the accident, it cannot be said on the totality of the material before the Court that the speed at which the respondent was driving was causative of the said collision.*

Speed—Excessive speed—Not per se *sufficient to establish negligence—See further* supra.

Apportionment of liability—Made by trial Courts—Should not be lightly interfered with by Court of Appeal.

The appellant in this case complains against the decision of the District Court of Limassol by means of which his claim, as plaintiff, for damages for negligence, against the defendant (now respondent) was dismissed, and, also, judgment was given against him (on the counterclaim by the said defendant-respondent) for the sum of £125. The Supreme Court dismissing the appeal held that no sufficient reasons were shown by the appellant why it should interfere with

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the judgment appealed from. The facts of the case sufficiently appear in the judgment of the Court.

Cases referred to :

Quinn v. *Scott* [1965] 1 W.L.R. 1004;

Barna v. *Hudes Merchandising Corporation* (reported in Bingham's Motor Claims Cases, 7th edn., p. 104);

Radif v. *Paphitis*, 1964 C.L.R. 392, *distinguished*;

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

Goke v. *Willett and Another*, "The Times", of March 8, 1973;

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

Ekrem v. *McLean* v. (1971) 1 C.L.R. 391.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Loris, Ag. P.D.C. and Hadjitsangaris, D.J.) dated the 27th March, 1972, (Action No. 1646/69) whereby his claim for damages for negligence against the defendant was dismissed and he was ordered to pay to the defendant the sum of £125.- on a counterclaim.

P. Pavlou, for the appellant.

R. Michaelides, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :-

TRIANTAFYLLIDES, P. : The appellant complains against the decision of a Full District Court in Limassol by means of which his claim, as plaintiff, for damages for negligence, against the respondent, as the defendant, was dismissed, and, also, judgment was given against him, on a counterclaim, for the sum of C£125.

The salient facts of this case, as they appear on the face of the record, are as follows :-

On May 9, 1969, the respondent was driving his car from Limassol towards Zakaki, along Franklin Roosevelt avenue, while the appellant was riding his motor-cycle in the opposite direction. The appellant was following, at a safe distance, a lorry which was proceeding ahead

of him; this lorry prevented the appellant from having a clear view of what was ahead of him on the road.

The width of the asphalted part of the road at the place where, eventually, a collision took place between the car of the respondent and the motor-cycle of the appellant, was about fourteen feet, and there were usable berms on both sides of the road, about five feet wide.

There was good visibility towards both directions, that is towards Limassol and towards Zakaki.

The collision took place on the right-hand side of the road in relation to the direction in which the appellant was proceeding, and at a place just under three feet away from the edge of the asphalted part of the road; the point of impact was very near the entrance of the Nemitsas factory, to which the appellant was proceeding at the time. The appellant had just cut across the road in order to enter the Nemitsas factory when he collided with the car of the respondent which was coming from the opposite direction.

The trial Court held that the appellant was entirely to blame for the collision, in view of the way in which he cut across the path of oncoming traffic; and the main issue in this appeal is whether or not we should interfere with this finding, so as to hold that respondent was to blame too; it having not been argued that the appellant is entirely free from blame.

The main contention of counsel for the appellant has been that the respondent was driving, at the time, at an excessive speed and that, because of this, he should have been held liable in negligence for the collision to an extent even greater than the appellant.

Even if we were to proceed on the basis of the assumption that the respondent was, just before the collision, driving at a high speed, or exceeding the prescribed speed-limit in a built-up area, we cannot, in any case, accept the proposition, put forward by counsel for the appellant, that doing so was, inevitably, sufficient *per se*, and irrespective of the circumstances of the present case, to establish negligence. That such a proposition is not correct is to be derived from, *inter alia*, *Quinn v. Scott* [1965] 1 W.L.R. 1004, and *Barna v. Hudes Merchandi-*

sing Corporation (the full report of which is not available, but which is sufficiently reported in Bingham's Motor Claims Cases, 7th ed., p. 104).

In relation to the above matter we have been referred, by counsel for the appellant, to *Radif v. Paphitis*, 1964 C.L.R. 392, and reliance was placed on passages in the judgment therein as establishing that excessive speed was *per se* sufficient to establish negligence, or at least contributory negligence, in the case of a traffic collision. We have perused the full record of the *Radif* case and we have no difficulty in saying that such case was decided in the light of its own special circumstances, all of which are not set out in the judgment on appeal; one of them was that the driver who was found to be negligent, because of driving at an excessive speed, had been travelling at such a high speed that, as a result, he was not able to pull up in time or to bring his car under control and he went over to the wrong side of the road and then into an adjoining field where he struck the other party to those proceedings. It is, thus, clear that the *Radif* case is distinguishable from the present case.

That speed, in itself, is not sufficient to support a finding of negligence, or of contributory negligence, is to be derived, too, from *Ioannou* v. *Michaelides* (1966) 1 C.L.R. 235, which was decided by the Supreme Court subsequently to the *Radif* case and, actually, by the same bench which decided that case (see, in particular, the judgment of Josephides, J. in the *Ioannou* case).

In *Goke* v. *Willett and Another* (which was reported in the London "Times" of March 8, 1973) it was held that contributory negligence is negligence causative of the accident. We do not think that in the present case it can be said on the totality of the material before us, that the speed at which the respondent was travelling was causative of the collision. We have no reason to disagree with the trial Court that the cause of such collision was the negligence of the appellant, who did not notice, according to his own evidence, the respondent's car coming from the opposite direction, until he—the appellant—had practically crossed over to his wrong side of the road; it is, thus, obvious that the appellant

did not keep a proper lookout just before trying to proceed to the opposite side of the road, or that he cut across the road without being in a position to keep a proper lookout.

It has been contended that there was not clear visibility towards the direction from which the respondent was coming and that, therefore, the appellant could not have seen the oncoming car of the respondent even if he had been keeping a proper lookout. This contention as to lack of clear visibility is not supported by the evidence of the policeman who investigated the traffic accident; he said that there was good visibility from the point of impact in both directions; and there is, also, the evidence of another driver who, after having negotiated a slight bend at least one hundred yards away from the point of impact, was overtaken by the respondent along a straight part of the road leading up to where the collision occurred; it is, thus, obvious, in the circumstances, that if the appellant was keeping a proper lookout he should have seen not only the respondent's car but, also, that of the said other driver, approaching from the opposite direction.

It has, also, been argued, in an effort to establish contributory negligence on the part of the respondent, that he failed to pull up in time or take appropriate avoiding action when he saw the appellant's motor-cycle in front of him; but there is simply nothing on record which shows that there was time or sufficient opportunity for the respondent to have acted as aforementioned when the appellant's motor-cycle cut all of a sudden across the path of his car.

Having paid due regard to all relevant considerations we find no reason for which to interfere, on appeal, with the finding of the trial Court that one of the parties, the appellant, was solely to blame, without any contributory negligence on the part of the respondent.

As was pointed out in the *Goke* case, *supra*, even if the appellate Court might itself have taken a different view as to the apportionment of liability, the apportionment of a trial judge should not be lightly departed from; as it was put in, *inter alia*, *Ioannou* v. *Mavridou* (1972)

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1 C.L.R. 107, *Ekrem* v. *McLean* (1971) 1 C.L.R. 391 and in the other case of *Ioannou, supra,* the finding of the trial Court that only one party was to blame, and that there was no contributory negligence of the other party, is not so erroneous as to call for this Court's intervention.

This appeal is, therefore, dismissed with costs.

Appeal dismissed with costs.