1975
Sept. 12

OMIROS CONSTANTINOU

v.

STAVROS KATSOURIS AND ANOTHER

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

OMIROS CONSTANTINOU,

Appellant-Defendant,

v.

STAVROS KATSOURIS AND ANOTHER,

Respondents-Plaintiffs.

(Civil Appeal No. 5421).

Negligence—Contributory negligence—Collision between vehicles moving in the same direction—Sharp turning to the right and cutting across the road by driver moving ahead after slowing down and signalling and looking momentarily in his rear view mirror—Said driver guilty of contributory negligence through failure to keep at all material times a proper look out as regards other traffic approaching from behind.

Road Traffic—Duty to keep a proper look out—Is one that is cast on all drivers at all times and in all circumstances.

Court of Appeal—Inferences to be drawn from primary facts—Court of Appeal is in as good a position as a trial Court to draw such inferences.

Whilst respondent-plaintiff was driving his car along St. Paul Street, in Ayios Dhometios, he was being followed by a car driven by the appellant-defendant. The respondent slowed down and signalled that he was going to turn to his right, both with his right hand and a trafficator; he, also, looked in his rear view mirror and, having seen no vehicle coming from behind, he proceeded to turn sharply to his right, cutting across the road, in order to leave his wife at the entrance of an elementary school on the other side of the road; while his car was still in the middle of the road the car driven by the appellant came up from behind and collided with his.

The brake-marks found by the police indicate that the appellant was overspeeding to a certain extent; and when he saw ahead of him respondent's car turning

in the middle of the road he applied his brakes in an unsuccessful effort to avoid the collision. The trial judge found that the appellant had not been keeping, at the time, a proper look out and held that the collision was due solely to appellant's negligence.

According to evidence on record, there was quite good visibility from the place of impact and towards the direction from which both vehicles were coming; and according to independent police evidence such visibility extended up to a bend which was at a distance of about 100 metres away.

Held, (1) In the present case the decision concerning the responsibility for the collision is not to be reached solely on the basis of findings of primary facts, that is to say, depending on which of the two conflicting versions of the drivers involved is to be believed, but a great lot, depends, also, on inferences to be drawn from primary facts; and this Court is in as good a position as a trial Court to draw such inferences. (See *Patsalides* v. *Afsharian* (1965) 1 C.L.R. 134 and *Benmax* v. *Austin Motor Co. Ltd.* [1955] 1 All E.R. 326).

(2) Having in mind the evidence regarding the visibility we cannot resist the practically inevitable inference that had the respondent driver been taking at all material times—(and not only when he looked momentarily, at some stage, in his rear view mirror)—a proper lookout as regards other traffic approaching from behind, when he was to turn sharply across the road to his right, he ought to have noticed, in time, before he turned right, the car of the appellant which was following him.

(3) It is correct that the respondent driver signalled with his hand and with a trafficator that he was about to turn right, but this cannot, in our view, exonerate him completely from blame. The duty to keep a proper lookout is one that is cast on all drivers at all times and in all circumstances, but it was an especially heavy one in the case of the respondent driver who was about to turn right cutting across the road. (See Charlesworth on Negligence, 5th ed. p. 495, paragraph 823 and Mazengarb on Negligence on the Highway, 4th ed. pp. 333, 334).

(4) We have reached the conclusion that in the light of the principles governing the exercise of our relevant powers, we should interfere with the finding of the trial Court that the appellant was solely to blame and we should apportion, ourselves, the liability between him and the respondent driver. Appellant's liability is apportioned as being to the extent of two thirds and that of the respondent to the extent of one third.

Appeal allowed.

Cases referred to:

Nicolaou v. *Zayer* (1974) 1 C.L.R. 156;

Patsalides v. *Afsharian* (1965) 1 C.L.R. 134;

Benmax v. *Austin Motor Co., Ltd.*, [1955] 1 All E.R. 326;

Christofi and Another v. *Nicolaou* (1973) 1 C.L.R. 170.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Kourris, S.D.J.) dated the 12th April, 1975, (Consolidated Actions Nos. 5190/74 and 3590/74) whereby he was ordered to pay to the plaintiffs the sum of £837.- as damages for the injuries they have sustained due to his negligence in a traffic collision.

Ph. Clerides, for the appellant.

Z. Katsouris with *Ph. Valiandi*, for the respondents.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court delivered by:-

TRIANTAFYLLIDES, P.: In this case, by a judgment given in two consolidated actions (DCN 3590/74 and DCN 5190/74), the appellant was ordered to pay to the two respondents (the plaintiffs in the said actions) the amounts of £445 and £392, respectively, as damages. The actions were instituted as a result of a collision between a car, No. CB109, driven by the plaintiff in Action 5190/74 (in which his wife, the plaintiff in Action 3590/74, was a passenger) and a car, No. GC303, driven by the

appellant; a counterclaim of the appellant in Action 5190/74 for £537 damages was dismissed, as it was found by the trial Court that the collision was due solely to the negligence of the appellant.

The appellant by this appeal has challenged the above finding, but he does not deny that he is to blame, also, for the collision; his counsel has argued that the driver of car CB109 should have been found guilty of contributory negligence.

There does not, therefore, arise any question of disturbing the award of damages to the plaintiff in Action 3590/74, because she cannot be prejudicially affected by a finding that, her husband, the driver of car CB109, in which she was a passenger, was guilty of contributory negligence; nor has the appellant pressed for an order for contribution against her husband, and in his favour, in case the husband were to be found to have contributed through his own negligence to the injuries of his wife.

The salient facts of this case are briefly as follows :-

On the 11th January, 1974, car CB109 was being driven along St. Paul Street, in Ayios Dhometios, in a direction away from the centre of Nicosia; it was being followed by car GC303; the respondent driver of car CB109 slowed down and signalled that he was going to turn to his right, both with his right hand and a trafficator; he, also, looked in his rear view mirror and, having seen no vehicle coming from behind, he proceeded to turn sharply to his right. cutting across the road, in order to leave his wife at the entrance of an elementary school on the other side of the road; while his car was still in the middle of the road the car driven by the appellant came up from behind and collided with his.

As was, quite fairly, conceded, during the hearing of this appeal, by counsel for the appellant, the brake-marks which were found by the police indicate that his client was overspeeding to a certain extent; and when he saw ahead of him car CB109 turning in the middle of the road he applied his brakes in an unsuccessful effort to avoid the collision. As found by the trial judge the appellant had not been keeping, at the material time, a proper lookout.

In the present case the decision concerning the responsibility for the collision is not to be reached solely on the basis of findings of primary facts, that is to say, depending on which of the two conflicting versions of the drivers involved therein is to be believed (as was, for example, the position in *Nicolaou* v. *Zayer*, (1974) 1 C.L.R. 156, where this Court refused to interfere on appeal with the trial Court's decision as to liability), but a great lot, indeed, depends, also, on inferences to be drawn from primary facts; and as it was held in, *inter alia*, *Patsalides* v. *Afsharian* (1965) 1 C.L.R. 134, this Court is in as good a position as a trial Court to draw such inferences (see, also, *Benmax* v. *Austin Motor Co., Ltd.* [1955] 1 All E.R. 326).

According to evidence on record, there was quite good visibility from the place of impact towards Nicosia, that is in the direction from which both vehicles were coming; according to the independent evidence of the police such visibility extended up to a bend which was at a distance of about 100 metres away.

Having that in mind, we cannot resist the practically inevitable inference that had the respondent driver of car No. CB109 been keeping at all material times—(and not only when he looked momentarily, at some stage. in his rear view mirror)—a proper lookout as regards other traffic approaching from behind, when he was to turn sharply across the road to his right, he ought to have noticed, in time, before he turned right, the car of the appellant which was following him; it is correct that the respondent driver signalled with his hand and with a trafficator that he was about to turn right, but this cannot, in our view, exonerate him completely from blame. The duty to keep a proper lookout is one that is cast on all drivers at all times and in all circumstances, but it was an especially heavy one in the case of the respondent driver who was about to turn right cutting across the road (see, *inter alia*, Charlesworth on Negligence, 5th ed., p. 495, paragraph 823); in Mazengarb on Negligence on the Highway, 4th ed., it is stated at pp. 333, 334 :- "In ordinary circumstances, if a driver turns out of and across the line of traffic, after giving the usual signal, he acts negligently unless he has at least reasonable ground, beside the mere fact of his

warning, for believing that he can cut across without endangering approaching traffic. There is a heavy burden on the driver turning to establish an excuse for failure to see the other vehicle".

With all the foregoing in mind, we have reached the conclusion that in the light of the principles governing the exercise of our relevant powers, we should interfere with the finding of the trial Court that the appellant was solely to blame and we should apportion, ourselves, the liability between him and the respondent driver (as was done, for example, in *Christofi and Another* v. *Nicolaou*, (1973) 1 C.L.R. 170). We still, however, think that the mainly blameworthy driver was the appellant; and we, therefore, have decided to apportion the liability for the collision as being to the extent of two thirds that of the appellant and to the extent of one third that of the respondent driver.

The judgment, therefore, of the trial Court should be varied accordingly and there should, also, be judgment on the counterclaim, to the extent of its one third, against the respondent driver (who is the plaintiff in Action 5190/74).

This appeal is allowed accordingly; the order as to costs made by the trial Court, against the appellant, should not be disturbed, but the respondent driver should pay him the costs of the present appeal.

Appeal allowed; order for costs as above.