

[TRIANTAFYLIDIS, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]
GEORGHIOS AVGOUSTI,

Appellant-Plaintiff,

v.

PAVLOS HJICHRISTODOULOU AND ANOTHER,

Respondents-Defendants.

(Civil Appeal No. 5261).

1976
Jan. 30

GEORGHIOS
AVGOUSTI

v.

PAVLOS
HJICHRISTO-
DOULOU
AND ANOTHER

*Negligence—Contributory negligence—Road accident—Collision—
—Opportunity for respondent to try to avoid collision—
Not utilized properly—Guilty of contributory negligence.*

5 In this road accident case the trial judge dismissed
appellant's-plaintiff's action having accepted as correct
the version of the respondent-defendant as to how the
collision occurred.

10 As regards, however, the issue of contributory negli-
gence on the part of the respondent it appears that the
trial judge, without giving any reason in this respect,
did not take sufficiently into account the evidence of a
witness, who was called by respondents—and believed
by the judge—and who testified that appellant's vehicle
15 started zigzagging along the road at a time when res-
pondent's lorry was about 400 feet away from it.

Held, (1) There existed, in the circumstances, an
opportunity for respondent, to try to avoid a collision,
but he failed to utilize it properly.

20 (2) The proper course is to find respondent liable to
the extent of 25%; and that the appellant should be
burdened only with the remaining 75% of the liability.

Appeal allowed.

Appeal.

25 Appeal by plaintiff against the judgment of the Dist-
rict Court of Nicosia (Nikitas, D.J.) dated the 31st
October, 1973, (Action No. 7452/71) whereby plaintiff's
action for damages was dismissed and the sum of £84.-

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plus costs was awarded to the defendants by way of counterclaim.

Ch. Loizou, for the appellant.

A. Dikigoropoulos, for the respondents.

The judgment of the Court was delivered by :-

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TRIANTAFYLLIDES, P. : This case arose out of a collision between a lorry driven by respondent 1, while in the employment of respondent 2, and a bus driven by the appellant.

The trial judge found that the appellant's claim, as plaintiff, for damages which had been agreed to be £176, could not succeed, because, having accepted as correct the version of respondent 1 as to how the collision occurred, he proceeded to hold that the appellant had, through his own negligence, placed respondent 1 into a situation for which such respondent was not at all to blame. There was, also, given judgment against the appellant on a counterclaim for £84.

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Though we are not entirely in agreement with certain parts of the reasoning in the judgment of the trial judge, we have not been satisfied, on the whole, that this is a case in which we should interfere with his findings as regards how the collision occurred; there were contradictions in the evidence adduced by both sides and the judge who saw the witnesses giving evidence was entitled to decide whom to believe.

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As regards, however, the issue of the existence of contributory negligence on the part of respondent 1 it appears that the trial judge, without giving any reason in this respect, did not take sufficiently into account the evidence of a witness, who was called by the respondent—and believed by the judge—and who testified that the bus started zigzagging along the road at a time when the lorry was about 400 feet away from it. In our view there existed, in the circumstances, an opportunity for respondent 1, the driver of the lorry, to try to avoid a collision, but he failed to utilize it properly. We think, therefore, that the proper course is to find respondent 1, and consequently, also, his employer, respondent 2, liable to the extent of 25%; and that the appellant

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should be burdened only with the remaining 75% of the liability.

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5 It follows, thus, that the judgment appealed from should be varied so that there shall be judgment in favour of the appellant against both respondents, on the claim, for C£44, and judgment against the appellant on the counterclaim for C£63.

10 As regards the costs of the action the respondents are to receive half its costs (there being left, however, unaffected any specific orders for costs made at any particular interlocutory stage), and there should be no order as to the costs of this appeal.

Appeal allowed.

Order for costs as above.