[STAVRINIDES, A. LOIZOU, MALACHTOS, JJ.]

CHRISTAKIS HJICONSTANTINOU THROUGH HIS FATHER AND LAWFUL GUARDIAN ANDREAS HJICONSTANTINOU,

Appellant–Plaintiff.

v.

THEODOROS HJISAVVIDES,

Respondent–Defendant.

(*Civil Appeal No.* 5286).

Negligence—Contributory negligence—Road accident—Pedestrian hit by motor vehicle—Two conflicting versions—Driver's version that accident was caused by sudden dashing of pedestrian accepted by trial Judge—Pedestrian found solely to blame for the accident—Such finding not so erroneous or unwarranted by the evidence as to make it proper or necessary for Court of Appeal to interfere.

Findings of fact—Credibility of witnesses—Principles on which Court of Appeal will interfere with findings of fact of a trial Court based on its own evaluation of the credibility of witnesses.

Whilst the respondent–defendant was proceeding from Meneou to the direction of Kiti village, in the Larnaca District, he saw on the side of the road to the right and coming towards him a crowd of teenagers walking on the berm of the road. And whilst he was so proceeding at a speed which the trial Court found to be 30–40 miles per hour, the appellant–plaintiff dashed from the crowd and crossed the road from right to left. The respondent, on seeing him so dashing, applied his brakes, but the accident was not avoided.

The trial Judge accepted the version of the respondent and his witnesses and came to the conclusion that the accident was caused solely by the sudden dashing of the appellant, which under the circumstances, was not reasonably foreseeable to happen.

Appellant contended (a) that the findings of the trial Court were wrong, having regard to the evidence adduced and the credibility of witnesses and (b) that the trial Judge on the evidence as accepted by him ought to have found the respondent

guilty of contributory negligence. (After stating the principles on which Court of Appeal interferes with findings of fact made by a trial Court).

Held, (1) on the evidence adduced and bearing in mind the arguments advanced in this appeal, we do not think that this is a case where we could interfere by disturbing the findings of fact of the trial Court. We are satisfied that no trial Court could reasonably make any different findings on such evidence.

(2) The view taken by the learned trial Judge to the effect that the appellant was solely to blame is not so erroneous or unwarranted by the evidence as to make it proper or necessary for this Court to interfere in the matter. (See pages 91–92 of the judgment *post*).

Appeal dismissed.

Cases referred to:

Moumdjis v. *Michaelides and Others* (1974) 1 C.L.R. 226, at p. 237.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C.) dated the 12th January, 1974, (Action No. 4370/72) whereby plaintiff's action for damages for personal injuries received in a road traffic accident, was dismissed.

T. Eliades, for the appellant.

St. Erotokritou (*Mrs.*), for the respondent.

STAVRINIDES, J.: The judgment of the Court will be delivered by Mr. Justice A. LOIZOU.

A. LOIZOU, J.: This is an appeal from the judgment of the District Court of Nicosia, by which the claim of the appellant for damages for personal injuries received in a road traffic accident, was dismissed with costs.

The appeal was argued on two grounds:

(a) That the findings of the trial Court were wrong, having regard to the evidence adduced and the credibility of witnesses.

(b) That the trial Court by accepting the evidence for the respondent ought to have found at least that there was contributory negligence on the part of the respondent.

As it is almost always the case in proceedings arising out of traffic accidents, the trial Court was faced with two conflicting versions and it preferred, as truthful and credible, the version for the respondent.

It was an uncontested fact that the respondent hit the appellant with the left headlamp of his motor car Reg. No. BA. 999, after leaving 60 ft. brake-marks and whilst the appellant was at a distance of less than a foot inside the left edge of the asphalt in relation to the respondent's direction, whilst proceeding with his family from Meneou to the direction of Kiti village in the Larnaca District. In fact, after the respondent came out of a speed-limit area, he saw on the side of the road to the right and coming towards him, a crowd of teenagers, walking on the berm of the road. Whilst so proceeding at a speed which the Court found to be 30-40 miles per hour, the appellant dashed from the crowd and crossed the road from right to left. The respondent, on seeing him so dashing, applied his brakes, but the accident was not avoided. The appellant was hit on his left thoracic side. The vehicle left another 20 ft. of brake-marks before it came to a standstill. The brake-marks are in a straight line but in an oblique direction as against the left edge of the asphalted part of the road, starting at a distance of about 2' 7" and ending at a point about 8 inches from the same side of the road.

It was the version of the appellant and his witnesses that he was standing on the left edge of the road, picking blossoms which were thrown into the road from the nearby garden when the respondent's car came and hit him.

It was alleged that the respondent whilst driving had on his lap his child, a fact that detracted his attention from the road and that he was driving at an excessive speed. These, were claimed to be factors conducive to the respondent's lack of proper look-out and the cause of the accident. Both allegations were denied by the respondent and his witnesses. The learned trial Judge accepted the version of the respondent and his witnesses and came to the conclusion that the accident was caused solely by the sudden dashing of the appellant which, under the circumstances, was not reasonably foreseeable to happen. He further rejected, as unsatisfactory, the version of the appellant and his witnesses, as not affording a rational explanation for the accident. His reasoning was that if the

child was standing—as it was claimed to be—for such a long time on the road, it would be a static obstruction clearly visible from a long distance and for a long time; so, it would have been avoided, without the sudden reaction of the respondent, even if there was a momentary detraction of the driver's attention.

By the first ground of appeal this Court was asked to set aside the findings of fact of the trial Judge, based, as they were, on his view of the credibility of witnesses.

It has been repeatedly stated that this Court will not readily interfere with the findings of fact of a trial Court based on its evaluation of the credibility of witnesses, since trial Courts have the advantage of watching their demeanour in the witness box, whereas, this Court, would have to rely on the transcribed record of their evidence. (See *Moumdjis* v. *Michaelides and Others* (1974) 1 C.L.R. 226, at p. 237).

However, on the evidence adduced and bearing in mind the arguments advanced in this appeal, we do not think that this is a case where we could interfere by disturbing the findings of fact of the trial Court. We are satisfied that no trial Court could reasonably make any different findings on such evidence.

Turning now to the second ground of appeal, namely that the trial Judge on the evidence, as accepted by him ought to have found the respondent guilty of contributory negligence, we have come to the conclusion that the view taken by the learned trial Judge to the effect that the appellant was solely to blame is not so erroneous or unwarranted by the evidence as to make it proper or necessary for this Court to interfere in the matter. There was nothing in the behaviour of the pedestrians on the right side of the road indicating that anyone from that crowd would try to cross the road or that there was a possibility of danger emerging therefrom, or his speed was in the circumstances excessive or such that it should have been reduced in seeing the pedestrian or that he should have sounded his horn merely because a crowd of teenagers was walking properly on the side of the road.

In our view, this accident would never have happened but for the sudden dashing across the road of the appellant. The respondent having been put in a position of danger, reacted by applying his brakes, which was natural and reasonable, in

the circumstances. But even if this avoiding action by the respondent was held to be a wrong step, we do not think, having regard to the circumstances, that he had sufficient time or opportunity to take any other more effective avoiding action in the agony of the moment.

In the result, the present appeal is dismissed with costs.

Appeal dismissed with costs.