1979 March 20

[STAVRINIDES, HADJIANASTASSIOU, MALACHTOS, JJ.]

ANTONIS NICOLAOU AND ANOTHER,

Appellants-Defendants,

v.

ANDREAS CHARALAMBIDES,

Respondent-Plaintiff.

(Civil Appeal No. 5426).

Negligence—Road accident—Cyclist knocked down by motor-vehicle at night time—Good street light and motor-vehicle driven with lights on—Trial Judge accepting version of cyclist that he was cycling 2-3 ft. from left pavement—Finding of trial Judge that driver of motor-vehicle failed to have a proper lookout and was entirely to blame for the accident sustained—Cyclist could not have contributed to the accident, having regard to the evidence adduced.

The respondent-plaintiff was knocked down by a car driven by appellant-defendant 1 whilst he was cycling in Regina Str. Nicosia at night time. The trial Judge after rejecting the version of the appellant as to how the accident occurred and accepting the version of the respondent, that he was cycling 2-3 feet from the left pavement, found that the appellant was solely to blame for the accident. In giving his reasons for so finding the trial Judge stated that although the accident occurred at night time, there was good street light, and the appellant was driving with lights on; and had he been driving with due care and a proper lookout he ought to have seen the cyclist earlier and from a much longer distance.

Upon appeal by the defendants:

Held, dismissing the appeal, that what amounts to negligence depends on the facts of each particular case and that the categories of negligence are never closed; that the degree of care required in the particular case depends on the accompanying circumstances and may vary according to the amount of the risk

to be encountered and to the magnitude of the prospective injury; that the trial Judge found that the appellant failed to have a proper lookout and that he was entirely to blame for the accident because of his negligent driving; that this Court is in agreement with the trial Judge that the appellant was at fault and wholly to blame for the accident and is not prepared to say otherwise, because, having regard to the evidence adduced, the respondent could not have contributed to the accident (see *Jones* v. *Livox* [1952] 2 Q.B. 608 at p. 615); and that, accordingly, the appeal will be dismissed (p. 121 *post*).

Appeal dismissed.

Cases referred to:

Charalambides v. *Michaelides* (1973) 1 C.L.R. 66;

Glasgow Corporation v. *Muir* [1943] A.C. 448 at p. 456 (H.L.);

Jones v. *Livox* [1952] 2 Q.B. 608 at p. 615.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Demetriades, P.D.C.) dated the 31st March, 1975, (Action No. 1669/73) whereby defendant 1 was found to be entirely to blame for a traffic accident and both defendants were ordered to pay to the plaintiff the sum of £2,700.– as special and general damages.

Chr. Chrysanthou, for the appellant.

N. Zomenis, for the respondent.

Cur. adv. vult.

STAVRINIDES J.: We have already announced the result of this appeal, and Mr. Justice Hadjianastassiou will give the reasons for dismissing it.

HADJIANASTASSIOU J.: The only point raised in this appeal is whether the defendants were entirely to blame for the accident in view of the evidence before the trial Court.

On April 10, 1971, the plaintiff, Andreas Charalambides, of Nicosia, claimed in his statement of claim that whilst he was lawfully and properly cycling in Regina Street in Nicosia, in the direction of the Paphos Gate Police Station, the first defendant, who was driving motor car CN 364 belonging to the second defendant, drove the said car negligently and in breach of his

statutory duty with the result of colliding with him causing him personal injury, loss and damages.

On April 20, 1974, the defendants repudiated the allegations of the plaintiff and alleged in their statement of defence that the damages caused to the plaintiff were due exclusively to his own negligence.

On January 27, 1975, both advocates appearing for the parties agreed before the trial Court that both the special and general damages to which the plaintiff would be entitled on a full liability basis was the amount of £2,700.-

As we said earlier, the accident occurred at about 5.45 p.m. on December 27, 1972 when the plaintiff was cycling along Regina Street towards Paphos Gate Police Station. It was dark and he had the lights of his bicycle on. When he reached the taxi office in that area, he was following a motor car that was proceeding very slowly. That car did not stop to enter into the main road. At the same time, he saw a car coming from the opposite direction of Paphos Gate and proceeding towards Metaxas Square. On reaching the white line he stopped and rested on his foot. The car in front of him drove away, and having looked to the right and then to the left, he saw that the road was clear and started off proceeding towards the entrance of the car park. The road was well lit, and after he started off from the white line, he crossed the road and came to a point that was 4 or 5 ft. to the left as one faces the entrance of the car park. He was 2-3 feet away from the pavement and then he turned and took a straight course towards Paphos Gate. He passed the entrance to the parking place, and having covered a distance of about 20-25 ft., he heard the screeching of brakes. Immediately he was pushed and fell on the road. When the collision occurred, he was at a distance of about 2-3 ft. from the left pavement. As a result of that accident, his left leg was fractured.

In cross-examination, he said that because of the collision, he lost his balance and fell down. He denied that it was not correct that the car hit him on the side. He explained that he started from a point near the taxi office and reached a point on the other side in a diagonal course, but he never intended, and he never said in a statement to the police that he was in a diagonal position when the accident occurred.

As is the case usually with personal accidents, the allegation of negligence was contested before the trial Court, and defendant No. 1 claimed that when the accident occurred, he was driving from Ipiros Square towards Paphos Gate with his lights on. He was keeping to the left of the road, and after he passed the uphill which was near the taxi office, covering a distance of about 100 meters, he noticed a cyclist (the plaintiff) crossing the road from right to left. He applied brakes in order to stop and when his car came to a standstill, he noticed the cyclist falling on the road and landing on his right side. He admitted that the right front side of his car came into contact with the cyclist, but he added that when he first noticed the cyclist crossing the road in a diagonal course, he was very near him. He explained that one of the reasons he was forced to apply brakes violently was because he saw him suddenly emerging into his path. His speed just before the accident was between 10–15 m.p.h.

In cross-examination, he said that he saw the plaintiff cycling in the middle of the road and denied that his car came into contact with the bicycle. Questioned by Court why he did not notice the plaintiff earlier, he said that he did not see him before and that it was possible that he came from behind one of the parked cars.

The learned trial Judge, having considered the evidence of both sides in that controversy, and having considered the arguments advanced by both counsel, to persuade him which of the two drivers was at fault, he accepted the version of the plaintiff in toto and found that the defendant driver was solely to blame for that accident. In giving his reasons, the learned trial Judge said that although the accident occurred at night time, there was good street light, and the defendant was driving with his lights on. It was most illogical, the Judge added, to infer that the cyclist came out of the stationary cars and that the driver of the car in question had no time to see him. In explaining his stand, the learned Judge said that had the driver been driving with due care, he ought to have seen the cyclist earlier, and from a much longer distance. Finally, the trial Judge believed the version of the plaintiff and observed that the defendant did not impress him as having given to him the whole picture of what happened on that night, obviously because he was not driving with a proper lookout.

The defendants, feeling dissatisfied with the decision of the learned Judge, lodged an appeal, and the grounds of appeal were (1) that the finding of the trial Court that the defendants were liable and/or totally liable for the accident was wrong in law and/or in fact and was not justified by the evidence and all the circumstances of this case; and (2) that the reasoning behind the trial Judge's finding in believing the plaintiff and disbelieving the defendant was wrong and not justified.

It has been said time after time that negligence is a specific tort, and in any given circumstances is the failure to exercise that care which the circumstances demand. It is equally important to add that what amounts to negligence depends on the facts of each particular case and that the categories of negligence are never closed: see *Christos Charalambides* v. *Polyvios Michaelides*, (1973) 1 C.L.R. 66. It may consist in omitting to do something which ought to be done, or in doing something which ought to be done either in a different manner or not at all. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The standard of foresight of the reasonable man is in one sense an impersonal test. The reasonable man is presumed to be free both from over-apprehension and from over-confidence. (See *Glasgow Corporation* v. *Muir*, [1943] A.C. 448 H.L. at p. 456 per Lord McMillan). The degree of care required in the particular case depends on the accompanying circumstances and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury.

In the present case, the learned trial Judge found that the defendant failed to have a proper lookout and that he was entirely to blame for the accident because of his negligent driving, and we find ourselves in agreement that the appellant-defendant was at fault and wholly to blame for the accident, and we are not prepared to say otherwise, because in our view the respondent, having regard to the evidence adduced, could not have contributed to the accident. (See *Jones* v. *Livox*, [1952] 2 Q.B. 608 at p. 615).

In our view, the respondent took every reasonable step and had acted as a reasonable prudent man in halting before ente-

ring the road but at that time the appellant emerged into the road driving without due care and attention, with the result of colliding with the respondent.

For the reasons we have given, we affirm the decision of the learned trial Judge, and dismiss the appeal with costs. 5

Appeal dismissed with costs.