

1979 May 22

[TRIANTAFYLLIDES, P., STAVRINIDES AND L. LOIZOU, JJ.]

YEKTA SALIH AND ANOTHER,

Appellants,

v.

ANTONAKIS E. SOFOCLEOUS AND 3 OTHERS,

Respondents.

(Civil Appeal No. 4946).

*Findings of fact—Credibility of witnesses—Appeal—Road accident—
Two conflicting versions—Once trial Court accepted version of
one of the drivers as to how accident occurred and having regard
to the evidence and the real evidence, rightly so Court of
Appeal not justified to interfere.*

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*Negligence—Contributory negligence—Road accident—Collision between
motor vehicles coming from opposite directions—Conclusion
as to liability influenced by brake marks left by one of the vehicles
—Such vehicle leaving one line of brake marks—Issue that its
brakes must have been defective raised for the first time on appeal
—No evidence on such issue adduced at the trial—From the mere
fact that there was only one line of brake marks Court of Appeal
cannot, in the absence of any evidence, act as an expert and come
to any conclusion as to the state of the brakes.*

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The appellants were defendants 1 and 2 respectively in an action
in the Court below in which the respondents were the plaintiff
and defendants 3, 4 and 5. The plaintiff, whilst a passenger in
a bus driven by defendant 1, as the servant or agent of defendant
2, was injured in a traffic accident in which the bus collided with
a taxi driven from the opposite direction by defendant 3.

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Before the trial Court there were two sharply conflicting
versions as to how the accident occurred, each of the two drivers
blaming the other that he was following the wrong side of the
road. The trial Court accepted the version of the taxi driver
and found that the bus driver (appellant 1) was entirely to
blame for the accident. In coming to this conclusion the trial

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Court was considerably influenced by the brake marks left by the taxi which clearly indicated its position immediately before the collision, and the position of the point of impact.

5 Upon appeal by the bus driver the grounds of appeal related to the credibility of the witnesses and the findings of fact and especially the finding that the taxi driver was not to blame at all for the accident. It was, also, argued that because there was only one line of brake marks left by the taxi its brakes must have been defective. This point was raised for the first time in this
10 Court. At the trial not one word was said about defective brakes nor was there any evidence either that the brakes were defective or that even assuming they were such defect might have contributed to the accident.

15 *Held, dismissing the appeal, (1)* that this Court has not been persuaded by the arguments advanced that once the trial Court has accepted the version of the taxi driver and, having regard to the evidence adduced and the real evidence, rightly so, it would be justified in interfering with the judgment.

20 (2) That this Court does not feel that it could from the mere fact that there was only one line of brake marks and in the absence of any evidence, act as an expert and come to any conclusion as to the state of the taxi's brakes; that it would not be prepared to say that even assuming that the brakes of the taxi were not in perfect order the taxi driver could, having regard to
25 the facts and circumstances of this case, be burdened with any degree of negligence; and that, accordingly, the appeal must be dismissed.

Appeal dismissed.

Appeal.

30 Appeal by defendants 1 and 2 against the judgment of the District Court of Limassol (Malachtos, P.D.C. and Loris, D.J.) dated the 19th November, 1970, (Action No. 1208/67) whereby they were ordered to pay to the plaintiff the sum of £ 9, 875.—special and general damages for injuries suffered by him as a
35 result of a traffic accident.

A. Dana with Sh. Hilmi (Miss) for the appellant.

Ant. Lemis, for respondent 1.

Y. Agapiou, for respondents 2, 3 and 4.

Cur. adv. vult.

TRIANFAYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice L. Loizou.

L. LOIZOU J.: The appellants were defendants 1 and 2 respectively in Action No. 1208/67 of the District Court of Limassol and the respondents were the plaintiff and defendants 3, 4 and 5 in the said Action.

By the Action the plaintiff was claiming damages for injuries received in a traffic accident which occurred at about 4.30 hours on the 9th March, 1967 on the Limassol/Ypsonas road between the 56th and 57th milestones.

The plaintiff was a passenger in motor bus No. TAH 818 driven by defendant No. 1 as the servant or agent of defendant No. 2, who was the owner of the bus, from Limassol to Akrotiri. At the same time defendant No. 3 was driving the second vehicle involved in the accident, a taxi under registration No. TAE 776, from the opposite direction. The said taxi was registered in the name of defendant 5 as hire purchaser and also in the name of defendant No. 4 for security purposes only. The driver of the taxi was the servant of defendant No. 5 who also had the possession and control of the vehicle. As a result of the accident the plaintiff fell off his seat and sustained a severe injury on the spine and spinal cord.

In a matter of minutes after the accident a Police Officer, P.W.1, Andreas Assimenos arrived at the scene and in the presence and with the help of defendant 1 prepared a sketch which was produced at the trial as *exhibit 1*. Defendant 3, the taxi driver, as well as the plaintiff had in the meantime been taken to hospital as they were both injured. At the scene of the accident the asphalted part of the road is 20 feet 6 inches wide with usable berms on either side. Visibility from the point of impact in the direction of Ypsonas is unlimited whereas in the opposite direction there is a bend a hundred feet away but as the view was not obstructed as this was not a built up area one could see at a considerable distance beyond the bend. On the side of the taxi there was a line of brake marks 63 feet long starting from a point 3 feet 6 inches from the taxi's nearside edge of the asphalt proceeding in an oblique direction and ending at the point of impact which, as marked on the sketch, is 7 feet 6 inches from the edge of the asphalt again on the taxi's nearside. The re-

sultant position of the two vehicles as found by the policeman who went to the scene are also marked on the sketch. The bus had its offside front wheels on its offside berm of the road and its rear nearside edge was 12 feet from the nearside edge of the asphalt. In other words the whole of the bus was on its wrong side of the road. The taxi had its front wheels on its offside berm of the road and its rear wheels in the field. The point of impact was underneath the bus as found at its resultant position. Both vehicles were damaged on their nearside front mudguards which indicated that these were the parts of the vehicles which came into collision.

The trial Court had before it two sharply conflicting versions as to how the accident occurred.

The version of the bus driver (defendant 1) was that whilst he was proceeding in the direction of Akrotiri and as he was negotiating the left hand bend keeping to its correct side of the road he noticed a taxi coming from the opposite direction keeping to its wrong side of the road and driven at a high speed. He reduced his speed and started blowing his horn but nevertheless the taxi continued on its way on its wrong side of the road. Fearing a head on collision and as he could not swerve to his left as there was a carob tree in the field next to the ditch he swerved to the right in order to avoid the accident but nevertheless the violent collision that ensued could not be avoided. Two witnesses called for defendant 1 who were passengers in his bus gave evidence in support of his version.

The version of the taxi driver (defendant 3), on the other hand, was that as he was driving in the direction of Limassol keeping to his nearside of the road and when he had approached the bend he noticed the bus coming from the opposite direction keeping to its wrong side of the road. He dipped his lights but the bus continued on its wrong side. He then applied his brakes and drove to the right in an endeavour to avoid the accident but he did not manage to do so. The trial Court had no hesitation in accepting the version of the taxi driver and found the bus driver entirely to blame and consequently awarded to the plaintiff against defendants 1 and 2 (appellants in this Court) £ 9, 500.- general damages and £ 375.- agreed special damages. It is clear that in coming to this conclusion the trial Court were

considerably influenced by the brake marks left by the taxi, which clearly indicated its position immediately before the collision, and of the position of the point of impact. The existence of the line of brake marks as shown on the sketch was not challenged at the hearing but the argument on behalf of the appellants was that they might have been left by some other vehicle on another occasion prior to the accident. The Police Officer whom the Court believed had no doubt at all about the position of the point of impact where the line of brake marks ended because at that point there was earth and broken glass scattered round it within a radius of a few feet. In fact this was admitted by the bus driver himself who also said in evidence that he pointed out to the Police Officer the point of impact but he added that its position was more to the centre of the road.

By this appeal the appellants attack the judgment of the Court only in so far as liability is concerned and do not challenge the quantum of damages. The grounds of appeal relate to the credibility of the witnesses and the findings of fact and especially the finding that defendant 3, the taxi driver, was not to blame at all for the accident. It may be added at this stage that the appeal was abandoned in so far as respondents 3 were concerned. Having considered this case we have not been persuaded by the arguments advanced that once the trial Court has accepted the version of defendant 3 and, having regard to the evidence adduced and the real evidence, rightly so in our view, we would be justified in interfering with the judgment; but during the hearing of the appeal it was vigorously argued on behalf of the appellants that because there was only one line of brake marks left by the taxi its brakes must have been defective. This point was raised for the first time in this Court. At the trial not one word was said about defective brakes nor is there any evidence either that the brakes were defective or that even assuming they were such defect might have contributed to the accident.

It is well settled that negligence depends on a breach of duty; it is a man's carelessness in breach of duty to others. The test of contributory negligence, on the other hand, is whether a person is acting as a reasonable man with reasonable care for his own safety. And in cases where it is necessary for the Court to ascribe liability for the damage to more than one person regard must be had not only to the causative potency of the acts or

omissions of each of the parties but to their relative blameworthiness.

5 In the present case we do not feel that we could from the mere fact that there was only one line of brake marks and in the absence of any evidence, act as experts and come to any conclusion as to the state of the taxi's brakes. Nor would we be prepared to say that even assuming that the brakes of the taxi were not in perfect order the taxi driver could, having regard to the facts and circumstances of this case, be burdened with any degree of negligence.
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In the result this appeal is dismissed with costs.

Appeal dismissed with costs.