

1981 January 20

[A. LOIZOU, DEMETRIADES AND SAVVIDES, JJ.]

IOANNIS SOTERIOU,

Appellant-Plaintiff,

v.

STELLA KYPRIANIDOU AND OTHERS,

Respondents-Defendants.

(Civil Appeal No. 5856).

Negligence—Road accident—Running down case—Pedestrian stepping down from pavement onto the road whilst motor vehicle passing by him at speed of 5–10 m.p.h.—And knocking himself on rear left door of motor vehicle—Driver of motor-vehicle could not reasonably foresee, in the circumstances, that pedestrian would have moved in the way he did—Not liable in negligence.

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Whilst the appellant, a man of 76 years of age, was walking on the left pavement of Sir Arthur Crossfield Street, in the centre of Limassol town, respondent 1 was driving her car, along that road at a speed of 5–10 m.p.h. and to the same direction as that followed by the appellant. At a particular moment the appellant suddenly stepped down from the pavement onto the road and whilst the car of the respondent was passing him by, knocked himself on the rear left door of the car and was injured. The road in question was 12 ft. wide but on the pavement on the opposite side there were two saloon cars, partly parked on the pavement and partly on the road, occupying 2 ft. of it, thus leaving 10 ft. of road for other road users.

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In an action for damages the trial Court, having found that the facts were as above stated, dismissed the action and hence this appeal.

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Held, that there was nothing negligent in the conduct of the respondent to render her liable for damages to the plaintiff; that she could not reasonably foresee, in the circumstances, that the appellant whilst walking on the pavement to her left and

when overtaking him with sufficient room between her car and the pavement, he would have moved in such a way as to hit himself on the rear of her car; that in fact, she had already passed him clearly before he stepped down suddenly from the pavement without himself making sure that it was safe for him to move to the direction he did; that the respondent was driving at such a safe distance from the edge of the pavement that it could not be said that she was negligent in any way; that it was the appellant's negligence that was the cause of the accident and very rightly the trial Judge dismissed his claim; accordingly the appeal must be dismissed.

Appeal dismissed.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Hadjitsangaris, S.D.J.) dated the 13th May, 1978 (Action No. 347/76) whereby his claim for damages for personal injuries sustained in a traffic accident was dismissed.

A. Lemis, for the appellant.

Y. Agapiou, for the respondent.

A. LOIZOU J. gave the following judgment of the Court. This is an appeal from the judgment of a Judge of the District Court of Limassol, whereby the claim of the appellant for damages for personal injuries sustained in a traffic accident was dismissed with costs.

The facts as found by the trial Judge, after deciding upon the credibility of the various witnesses who gave evidence before him, are as follows:

The appellant, a man of 76 years of age, was on the 3rd August, 1975, walking on the left pavement of Sir Arthur Crossfield Street in the centre of Limassol town. The respondent was at that time driving her car under registration No. GP 761, along that road at a speed of 5-10 m.p.h. and to the same direction as that followed by the appellant. At a particular moment the appellant suddenly stepped down from the pavement onto the road and whilst the car of the respondent was passing him by, knocked himself on the rear left door of the car and was injured. The respondent who had noticed the appellant walking on the pavement, on hearing that knock at the rear

of the car, stopped immediately, came down from her car and saw the appellant on the ground. The car was left at its resultant position and the Police Investigator who arrived promptly at the scene took the necessary measurements and prepared a plan. His findings showed that the car of the respondent had stopped in a somehow oblique position with its rear left wheel 2 1/2 ft. and its front left wheel 3 1/2 ft. from the corresponding points of the pavement on that side of the road. This position is understandable if one takes into account the natural reaction of the respondent in stopping her car immediately upon hearing that knock.

The road is 12 ft. wide but on the pavement on the opposite side there were two saloon cars, partly parked on the pavement and partly on the road, occupying 2 ft. of it, thus leaving 10 ft. of road free for the other road users.

The version of the appellant that whilst walking on the pavement he got off it as there were people in front of him and he proceeded walking on the edge of the road for about 10 to 15 paces when the car of the respondent came and hit him from behind and threw him down in a prone position, was rejected by the trial Judge as he did not impress him as a truthful witness; his testimony was in contradiction to the statements he gave to the Police and to the real evidence which, on the contrary, was compatible to the testimony of the respondent and her witness.

Counsel for the appellant has challenged the findings of the trial Judge, especially those based on the credibility of the respondent and her witness on the ground that there were discrepancies between her statement to the police and her testimony in Court and that her defence witness, though admittedly seen there at the scene of the accident, did not give a statement to the Police. The matters were satisfactorily dealt with by the trial Court and having looked at the totality of the evidence, both oral and real, we have come to the conclusion that the findings of the trial Court based on the credibility of these witnesses, were duly warranted in the circumstances.

Furthermore, on these facts as found by the trial Court there was nothing negligent in the conduct of the respondent to render her liable for damages to the plaintiff. She could not reasonably foresee, in the circumstances, that the appellant

whilst walking on the pavement to her left and when overtaking him with sufficient room between her car and the pavement, he would have moved in such a way as to hit himself on the rear of her car. In fact, she had already passed him clearly before he stepped down suddenly from the pavement without himself making sure that it was safe for him to move to the direction he did. The respondent was driving at such a safe distance from the edge of the pavement that it could not be said that she was negligent in any way. It was the appellant's negligence that was the cause of the accident and very rightly the trial Judge dismissed his claim. 5 10

For all the above reasons this appeal is dismissed with costs.

Appeal dismissed with costs.