1982 April 5

[A. LOIZOU, STYLIANIDES AND PIKIS, JJ.]

GEORGHIOS PANTELI,

Appellant–Defendant,

v.

PETROS HERACLEOUS,

Respondent–Plaintiff.

(*Civil Appeal No.* 6237).

Negligence—Road accident—Collision between cars driven in opposite directions—Respondent driving on his proper side of the road At proximate distance between two cars appellant overtaking a preceding car and thus driving on the wrong side of the road —Once respondent was keeping his proper side he had no reason to take any extraordinary precaution before seeing appellant's car on the wrong side of the road—Measures taken by respondent, applying his brakes and engaging third gear, on facing danger suddenly created by negligence of appellant, did not fall short of what a reasonable driver might, in the agonizing circumstances, take for his own safety—Accident caused entirely by negligence of appellant.

These proceedings arose out of a collision between two motor cars driven by the appellant and the respondent, respectively, from opposite directions. The accident occurred whilst the appellant was overtaking a preceding car and in doing so it took the right hand side of the road and obstructed the path on which the respondent was driving his car. The distance between the two cars at the crucial moment was so short that when the respondent realized the imminent danger of a head-on collision, between the two cars, he applied brakes hard and engaged third gear, whereas the appellant tried at the last moment to swerve to his proper side of the road but that proved to be too late and a collision occurred on the respondent's side of the road. The accident occurred at or near a bend, and just after the respondent had come out of a left-hand bend.

The trial Court found that the sole cause of the collision was the fact that the appellant was wrongly driving his car on the wrong side of the road on which at the same time the respondent was properly driving his own car and that the respondent was unable in the circumstances to take any other avoiding action and by applying his brakes he did what could reasonably be done to meet the dangerous situation created by the negligent driving of the appellant. Upon these findings it held that the collision was caused entirely by the negligence of the appellant.

Upon appeal Counsel for the appellant contended that once the respondent had admitted that he had seen the on-coming vehicle from a distance of 100 meters, he was also negligent and in any event contributed to the accident by his own failure to take reasonable care for his own safety.

Held, that the mere fact of saying that he had seen the on-coming vehicle from a distance of 100 meters, does not imply that that was the moment that the appellant started overtaking; that nothing of this sort is suggested by the trial Court in its reference to that fact which, on the contrary, accepted that the appellant started overtaking at such proximate distance that he could take no other avoiding action than what the respondent did in the circumstances; that on the totality of the circumstances this Court has come to the conclusion that before the respondent saw the car driven by the appellant coming on the wrong side of the road for the purpose of overtaking the preceding car, he had no reason to take any extraordinary precaution once he was keeping its proper side of the road; that the only question, therefore, to be resolved is whether the measures taken by the respondent on facing the danger suddenly created by the negligence of the appellant fell short of what a reasonable driver might, in the agonizing circumstances, take for his own safety; that on the findings of the trial Court, which were duly warranted by the evidence before it, and rightly not contested in this appeal this question has to be answered in the negative and consequently this appeal must be dismissed.

Appeal dismissed.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Boyadjis, Ag. P.D.C. and G. Nicolaou D.J.)

dated the 30th January, 1981 (Action No. 2852/78) whereby he was adjudged to pay to the plaintiff the sum of C£1,975.- as damages suffered by him in a traffic collision.

P. Angelides, for the appellant.

Chr. Chrysanthou, for the respondent.

A. Loizou J. gave the following judgment of the Court. This is an appeal from the judgment of a Full Court sitting in Nicosia by which the appellant/defendant was adjudged to pay to the respondent/plaintiff the sum of C£1,975.- being the agreed damages suffered by the respondent from a collision of his vehicle with that of the appellant which the trial Court found to have been caused entirely by the negligence of the appellant and at the same time exonerated the respondent from any blame and consequently found him not liable either for negligence or contributory negligence.

The facts of the case as found by the trial Court and which are not contested in this appeal, are briefly these:-

In the early evening of the 24th June, 1976, the respondent was driving his Mercedes car, under registration No. GH.541, on the Morphou—Nicosia road in the direction of Nicosia, keeping well to his left-hand side of the road, when at a certain point he saw a red Rover car (registration No. E.F. 160)—which ultimately was found to be driven by the appellant from the opposite direction—overtaking a preceding light blue van and in doing so taking its right-hand side of the road, thus obstructing the path on which the respondent was properly driving his own car and causing the collision in question. The distance between them at that crucial moment was so short that the respondent realized the imminent danger of a head-on collision between the two cars, applied brakes hard and engaged third gear, whereas the driver of the other car tried the last moment to swerve to his proper side of the road but that proved to be too late and a collision occurred on the respondent's side of the road.

The Police were called in and after surveying the scene, P.C. Georghios Karaolis took various measurements and prepared a sketch plan not to scale which showed the formation of the road and other pieces of real evidence bearing on the case. It appears therefrom that the tarmac of the road at the scene

was 18 ft. wide divided along its length by a broken white line. On the left-hand side of the road with reference to the direction of Nicosia there was a berm, one foot wide, beyond which there was a deep ditch followed by a high bank. On the opposite side of the road there was a berm 4 ft. wide. The accident occurred at or near a bend and more specifically just after the respondent had come out of a left-hand bend. Both vehicles had their lights on at the time and in the collision the right-hand side of the front of the respondent's car and the offside of the appellant's car were involved. It appears that when at the last moment the appellant tried to regain his proper side of the road, the latter's car was facing diagonally to its left on the respondent's side of the road and that was the reason why its offside was the part involved in the collision.

The brake-marks found on the scene by the Police Investigator were attributed to the tyres of the car of the respondent and were 79 ft. long and within his side of the road; at their starting point, offside one was 2 ft. from the said white line and ended only one foot from this line.

On the aforesaid facts the trial Court concluded that the sole cause of the collision was the fact that the appellant was wrongfully driving his car on the wrong side of the road on which at the same time the respondent was properly driving his own car and that the respondent was unable in the circumstances to take any other avoiding action and he did, by applying his brakes, do what could reasonably be done to meet the dangerous situation created by the negligent driving of the defendant. Upon that they held that this collision, from which arose the agreed damage suffered by the respondent, was caused entirely by the negligence of the defendant.

It has been argued on behalf of the appellant that the respondent once he had admitted that he had seen the on-coming vehicle from a distance of 100 meters, he was also negligent and in any event contributed to the accident by his own failure to take reasonable care for his own safety.

In our view the mere fact of saying that he had seen the on-coming vehicles from a distance of 100 meters, does not imply that that was the moment that the appellant started overtaking. In fact, nothing of this sort is suggested by the trial Court in

its reference to that fact which, on the contrary, accepted that the appellant started overtaking the blue van at such proximate distance that he could take no other avoiding action than what the respondent did in the circumstances.

On the totality of the circumstances before us, we have come to the conclusion that before the respondent saw the car driven by the appellant coming on the wrong side of the road for the purpose of overtaking the preceding car, he had no reason to take any extraordinary precaution once he was keeping its proper side of the road. The only question, therefore, we have to resolve is whether the measures taken by the plaintiff on facing the danger suddenly created by the negligence of the appellant fell short of what a reasonable driver might, in the agonizing circumstances, take for his own safety.

On the findings of the trial Court, which were duly warranted by the evidence before it, and rightly not contested in this appeal, we find that this question has to be answered in the negative and consequently we dismiss this appeal with costs.

Appeal dismissed with costs.