1982 May 20

[HADJIANASTASSIOU, LORIS AND PIKIS, JJ.]

DEMETRIOS KKAFFA, MINOR THROUGH HIS FATHER GEORGHIOS KKAFFA AS NEXT FRIEND AND KIN,
Appellant-Plaintiff,

v.

KYRIACOS PETROU KALORKOTIS AND ANOTHER,
Respondents-Defendants.

(*Civil Appeal No.* 6155).

Negligence—Road accident—Collision between bicycle and motor car moving in the same direction—Version of motor car driver that when he approached the cyclist the latter swerved suddenly to his right without giving any signal believed by trial Court—Court of Appeal not persuaded to interfere with the finding of the trial Court that the cyclist was entirely to blame for the accident.

Findings of fact—Appeal—Principles on which Court of Appeal interferes with findings of fact made by a trial Court—It will only do so when a finding is not warranted by the evidence considered as a whole and the reasoning behind a finding is unsatisfactory.

Whilst the appellant-plaintiff was riding his bicycle keeping the left side of the road he was followed by a car driven by respondent-defendant 1. At a certain point of time the appellant tried to move over to the other side of the road and in the process of doing so he was hit by the car of the respondent. In an action for damages by the appellant the trial Court having believed the version of the respondent, which was to the effect that when he was about to overtake the appellant, the latter, without giving any signal, swerved suddenly to his right, found that the appellant was totally to blame for the accident and dismissed the action. Hence this appeal.

Held, that this Court, when hearing and determining an appeal, is not bound by any determinations of questions of fact made by the trial Courts, and it has power to review the

whole evidence in drawing its own inferences; that it will only do so, when a finding is not warranted by the evidence considered as a whole, and the reasoning behind a finding is unsatisfactory and/or is of the opinion that the trial Court was clearly wrong, and that the Court of Appeal should interfere to put right that which has gone wrong in the Court below, bearing always in mind that the making of such findings and the appreciation in general of the evidence at the trial is what the trial Judges are there for; that having considered the evidence as a whole, this Court has not been persuaded by the appellant to interfere with the findings of fact of the trial Court on whom the onus rested, and the acquittal of the defendants of any contributory negligence; that, therefore, the appellant was entirely to blame for the accident; accordingly the appeal must fail.

Appeal dismissed.

Cases referred to:

Ekrem v. *McLean* (1971) 1 C.L.R. 391;

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

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C. and Orphanides, S.D.J.) dated the 3rd July, 1980, (Action No. 4576/78) whereby his claim for damages for personal injuries received in a traffic accident was dismissed.

A. Danos, for the appellant.

G. Pelaghias, for the respondent.

HADJIANASTASSIOU J. gave the following judgment of the Court. This is an appeal against the judgment of the Full Court of Nicosia dated 3rd July, 1980, whereby the appellant-plaintiff was found totally to blame for the accident.

THE FACTS:

The plaintiff in this action is a young boy who at the material time was 11 years of age. He sues through his father, the defendants Kyriacos Petrou Kalorkotis and Petros Kyriacou for negligence claiming damages for personal injuries received in a road traffic accident involving the plaintiff on the one hand and defendant No. 1 on the other hand. Defendant No. 1 at the ma-

terial time was driving motor car Reg. No. BS 915 belonging to defendant No. 2. It is indeed an admitted fact in the pleadings that defendant No. 1 was driving the said car for and on behalf of the owner defendant No. 2. Just before the accident occurred the plaintiff was riding his bicycle keeping the left side of the road. At the same time, defendant No. 1 was proceeding to the same direction following the bicycle. At a certain point of time the plaintiff tried to move over to the other side of the road and in the process of this manoeuvre he was hit by the car of the defendants.

After the accident, the plaintiff was taken to the hospital where, after an examination, he was found to have suffered a comminuted fracture of the trochanteric region of the right femur (upper third of the femor) with displacement of the fragments. The plaintiff had also scratches on the head and he was complaining of dizziness and headaches. He was treated conservatively with traction to reduce the swelling and to straighten the leg and then he was placed in a plaster cast enveloping the trank from the navel down to the toes of the right limb. He was in the hospital till the 29th February, 1978. Later on, he was removed by his father to the private clinic of Doctor Papasavvas. On admission at the clinic x-rays were taken which showed that the fracture ends in a displaced position. The plaster was removed for the purpose of localizing the surgical area. It was then found by Dr. Papasavvas that there was paralysis of the peroneal nerve. An operation was performed on the 2nd October, 1978, under general anaesthesia aiming at repairing the displaced union of the fracture. For the peroneal nerve paralysis Dr. Papasavvas put the patient under a special therapy as a result of which the sensitivity in the affected area was restored gradually in four weeks' time. After persistent therapy, mobility of the affected limb started appearing in two months' time. The plaintiff after having shown considerable improvement, was released from the clinic on the 25th November, 1978, in order to enable him to attend classes, but continued being under observation as an out-patient, and was having physiotherapy treatment for quite some time thereafter.

On the 18th January, 1979, his condition was considered satisfactory and loading of the right lower limb was allowed progressively. He was re-examined on the 23rd February,

1979, and then again on the 3rd July, 1979. On the latter date the plaintiff's condition was considered satisfactory and was admitted at the clinic for a second surgical operation in order to remove the pins used for joining the fracture. On the 29th August, 1979, the plaintiff's condition was revalued and the doctor's findings were the following:

> "The patient was complaining of headaches and dizziness after mental exertion. There was pain and restriction of movements of the right hip to a small degree after exertion and during weather changes".

Objectively, the doctor noted a surgical scar 9 inches long of the outer aspect of the right thigh, 1.5 cm shortening of the right lower limb. X-rays showed full healing of the fracture. The doctor's conclusion is that with the exception of the above objective findings there were no other residuals despite the severity of the traumatization.

Indeed, the patient was also examined by Dr. Pelides whose opinion does not differ in substance from the findings of Dr. Papasavvas despite the fact that Dr. Pelides had a different view regarding the treatment extended to the plaintiff. The net result of the medical evidence was that the plaintiff sustained severe injuries in consequence of which he had to undergo two operations. He must have gone through considerable pain and inconvenience during the periods he was undergoing treatment, firstly as a patient and thereafter during the period when the treatment continued on an out-patient basis. Fortunately, the residuals of the initial severe traumatization are not serious. He may experience pain after physical exertion and during changeable weather but as Dr. Pelides stated, this may resolve in time. Also the shortening will resolve and the plaintiff will have as the only visible evidence of his misfortune the scars on his thigh, leg and forehead.

Finally, the Court had this to say:-

> "Viewing the plaintiff's condition as a whole, and having taken into consideration the pain and suffering and inconvenience he must have gone through until his condition was stabilized, we feel that although no serious after effects if at all, remained, nevertheless, he is entitled to a substantial

compensation. We find that a reasonable fair compensation in the circumstances would be an award of £2,000.—".

SPECIAL DAMAGES:

Then the Court had also dealt with the general damages claimed by way of special damages and reached the conclusion that as far as the defendant was concerned a reasonable amount for the doctor's services (not including the uncompleted second operation) should be £1,000.—. The result is that on a full liability basis the plaintiff would be entitled to £3,000.—including special damages.

LIABILITY:

The defendant denied liability alleging that the accident was due solely to the plaintiff's negligence. Counsel for the defendant, in addressing the Court, maintained that the defendant was not liable at all, not only according to his own version, but also according to the version of the plaintiff put before the Court.

The version of the plaintiff is that on the day in question he was cycling along Dorieon Street, followed by a fellow cyclist; they were keeping the left side of the street, when plaintiff reached the area of the accident an old lady standing in the yard of the house situated on the other side of the road called him for something. The plaintiff stopped, looked behind him, and having seen no cars moving about, tried to cross over to the other side of the street in a diagonal manner. When he was in the process of crossing, he heard the sound of a car approaching from behind; he looked back and saw a car about 20 feet away. He tried to avoid it by pressing on to reach the other side of the street, but did not manage to do so, as in the meantime, he was hit by the defendant's car, in consequence of which he was thrown off his bicycle and onto the road.

The trial Court, having gone through the evidence of the fellow cyclist and having compared his evidence with the statement he gave to the police, found certain serious contradictions casting serious misgivings, as the Court put it, as to his veracity. The Court further stated that it noted a tendency on his part to make his evidence as favourable as possible to the plaintiff. Finally, the Court came to the conclusion that it cannot safely rely

on the evidence of this witness, and added, even if the Court was to accept his evidence, the situation would not have changed, for the reasons the Court in due course will explain.

VERSION OF THE DEFENDANT:

The version of the defendant on the contrary is that the plaintiff was cycling on the left side of the road alongside another cyclist. He sounded his horn and the fellow cyclist fell behind and was following the plaintiff. When he approached them and was about to overtake the plaintiff, the latter, without giving any signal, swerved suddenly to his right. The defendant applied brakes but the accident was not averted.

FINDINGS OF FACT BY THE TRIAL COURT:

The trial Court, having in mind both versions, had this to say:-

> "If the plaintiff's version is accepted, then his position becomes worse for the simple reason that it would have been extremely unlikely for any reasonable driver on seeing a cyclist in the position as alleged by the plaintiff to foresee a crossing of the road. However, we cannot accept the version of the plaintiff not only because we have not been satisfied as to his veracity but also because as a whole it is an unlikely unnatural story.
>
> We find the version of the defendant more probable, and we accept it in preference to the evidence of the plaintiff and of his fellow cyclist. The accident was solely due to the sudden swerving of the plaintiff and whatever the defendant did after the creation of the emergency were steps in the agony of the moment and he cannot be saddled with liability if the said steps were not effective.
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> For all the above reasons, we find that the plantiff was totally to blame for the accident and therefore the action is dismissed".

APPEAL:

On appeal, counsel for the appellant argued that the trial Court wrongly found that the accident was due to the sole

negligence of the plaintiff and wrongly refused to admit and accept the evidence of the appellant and his witnesses. Counsel further complained that there was no evidence to support the findings of the Court.

Having listened to the contentions of counsel for the appellant, we have not deemed it necessary to call on counsel for the respondents to address us as we have found no mertit at all in the appellant's contentions. Having further considered the evidence as a whole, we have not been persuaded by the appellant to interfere with the findings of fact of the trial Court on whom the onus rested, and the acquittal of the defendants of any contributory negligence. We would, therefore, find that the appellant was entirely to blame for the accident. As it has been said time and again, this Court, when hearing and determining an appeal, is not bound by any determinations of questions of fact made by the trial Courts, and it has power to review the whole evidence in drawing its own inferences. But it will only do so, when a finding is not warranted by the evidence considered as a whole, and the reasoning behind a finding is unsatisfactory and/or is of the opinion that the trial Court was clearly wrong, and that the Court of Appeal should interfere to put right that which has gone wrong in the Court below, bearing always in mind that the making of such findings and the appreciation in general of the evidence at the trial is what the trial Judges are there for. (See *Ekrem* v. *McLean*, (1971) 1 C.L.R. 391; and *Christos Charalambides* v. *Polyvios Michaelides*, (1973) 1 C.L.R. 66).

For the reasons we have given at length, we would dismiss the appeal with costs in favour of the respondents.

Appeal dismissed with costs.