1982 November 22

[DEMETRIADES, LORIS, PIKIS, JJ.]

PAVLOS PAVLOU,

Appellant-Defendant.

v.

ANDREAS LAZAROU,

Respondent-Plaintiff.

(*Civil Appeal No.* 6303).

Negligence—Road accident—Apportionment of liability—Bringing an unlighted object into a thoroughfare at night constitutes prima facie evidence of negligence—Collision between tractor drawing a plough and car moving in the same direction—Plough not adequately illuminated—Apportionment of liability, 75% on tractor driver and 25% on a car driver, upheld.

These proceedings arose out of a collision at night time between a tractor drawing a plough and a taxi which were driven in the same direction: Apart from its front lights the only other mark illuminating the presence of the tractor on the road was a torch tied to the rear mudguard shedding dim light to the rear. The plough was altogether unlighted. The trial Court found the tractor driver liable for negligence casting the greater blame for the accident on him; and also held the taxi driver guilty of contributory negligence to the extent of 25%.

Upon appeal by the tractor driver against the findings of the trial Court as to liability as well as its apportionment:

Held, that bringing an unlighted object into a thoroughfare at night constitutes, prima facie evidence of negligence; that the appellant, in breach of his duties to other users of the road, including the taxi driver, failed to illuminate appropriately the tractor in a way signifying its presence on the road from a distance that would allow other users to take precautionary measures; that the dim light thrown by the torch, tied to the rear mudguard of the tractor, served, at best, to signify the area

occupied on the road by the tractor; that the duty of the appellant did not end there; that he was dutybound to light adequately the plough as well; that the real evidence furnished by the brake marks left on the road by the taxi suggests that its driver took steps, to avert the collision but without managing to avert it; that it was perfectly upon the trial Court in this case to find the appellant liable in negligence; and that the apportionment of liability made by the trial Judge however, can under no circumstances be held to justify the submission of the appellant that an unreasonably high responsibility was placed upon the appellant for the accident; consequently the appeal must be dismissed.

Appeal dismissed.

Cases referred to:

Katsiou v. Shiakallis (1969) 1 C.L.R. 346;

Karayiorghis v. Kyriacou (1974) 1 C.L.R. 133;

Sofocleous and Another v. Georghiou and Another (1978) 1 C.L.R. 149;

Eteria Leoforion Lefkonicou Ltd. v. Pampori (1974) 12 J.S.C. 1280.

Appeal.

Appeal by defendant against the judgment of the District Court of Paphos (Demetriou, S.D.J.) dated the 21st August, 1981 (Action No. 646/78) whereby he was ordered to pay to the plaintiff the sum of £425.- as damages caused to plaintiff's car which was involved in an accident with defendant's tractor.

E. Korakides, for the appellant.

Th. Varda (Miss), for the respondent.

DEMETRIADES J.: Having heard Mr. Korakides for the appellant we consider it unnecessary to call upon counsel for the respondent to address us in reply. Mr. Justice Pikis will deliver the judgment of the Court.

PIKIS J.: Liability for a road accident that occurred on 30th August, 1978, on the main Paphos/Limassol road is the only subject raised in this appeal. The collision involved a taxi owned by the respondent, driven by an employee of his at the time and, a tractor drawing a plough driven by the appellant.

The accident occurred in the following circumstances as the trial Court found. The two vehicles were proceeding in the same direction at an hour of darkness between 7.30 to 8.00 in the evening. Apart from its front lights the only other mark illuminating the presence of the tractor on the road was a torch tied to the rear mudguard shedding dim light to the rear. The plough was altogether unlighted. Consequently its presence on the road was mostly obscured. Demetriou, S.D.J., as he then was, after reviewing a number of cases that bear on the subject of liability of persons propelling unlighted objects on a road at night found the appellant liable for negligence casting the greater blame for the accident on him. He did not absolve, on the other hand, the taxi driver of responsibility holding him answerable in part for the damage produced on account of contributory negligence, to the extent of 25%. Neither the damage sustained by the car of the appellant nor the vicarious liability ascribed to the respondent for the acts of his servant are issues on appeal.

By the present appeal the findings of the trial Court as to liability as well as its apportionment are challenged on behalf of the tractor driver. The submission is in essence twofold. Firstly, that appellant ought to have been freed of liability for the accident and, secondly, if liable at all the blame resting on him ought to be much lower than the trial Court held it to be.

In the submission of Mr. Korakides the exhibition of dim light at the rear of the tractor more than discharged the driver of his responsibility to make the presence of the vehicles propelled by him on the road conspicuous to other users. He made this submission notwithstanding the finding of the trial Court, inevitable in the light of the evidence, that the light exhibited by the torch was weak, inadequate to illuminate the presence of the plough let alone mark the area occupied by it on the road. He relied in support of his submission on three decisions of the Supreme Court and on one of the Famagusta District Court, notably *Andreas Kyriakou Katsiou* v. *Antonios N. Shakallis* (1969) 1 C.L.R., 346; *Michalakis Karagiorghis* v. *Iordanis Kyriacou* (1974) 1 C.L.R. 133; *Sofocleous and Another* v. *Georghiou and Another* (1978) 1 C.L.R. 149 and *Eteria Leoforion Lefkonicou Ltd.* v. *Sotiris Antoni Pampori* (1974) 12 J.S.C.

1280, (a decision of the Famagusta District Court delivered by myself).

The above cases establish primarily the following principles: (a) Bringing an unlighted object into a thoroughfare at night constitutes prima facie evidence of negligence (*Shakallis supra*). This is but a result of the application of the basic duty of care owed by users of the road to their fellow users. One of their duties is to make the presence of the vehicle they drive onto a road conspicuous so that other users may adjust their position accordingly; (b) parking a vehicle on the road in a way obstructing the reasonable use of the thoroughfares may, depending on the circumstances, constitute nuisance quite independently of the illumination of the scene (*Sofocleous supra*). The use of the road must on every occasion be reasonable which in turn is determined by reference to the rights of others.

The case of *Eteria Leoforion* (supra) adds nothing to the principles above stated except furnish an illustration of their application. The defendant in that case was held guilty of negligence and accountable for the injuries sustained by the plaintiff to the extent of 75% because of failure in an hour of darkness to light appropriately a trailer drawn by his tractor. He was found to have introduced a danger on the road with foreseeable risks to other users of the road.

It was perfectly open to the trial Court in this case to find the appellant liable in negligence. In breach of his duties to other users of the road, including the servant of the respondent, he failed to illuminate appropriately the tractor in a way signifying its presence on the road from a distance that would allow other users to take precautionary measures. The dim light thrown by the torch, tied to the rear mudguard of the tractor, served, at best, to signify the area occupied on the road by the tractor. The duty of the appellant did not end there. He was dutybound to light adequately the plough as well. The real evidence furnished by the brake marks left on the road by the taxi suggests that its driver took steps to avert the collision but without managing to avert it. In the opinion of the learned trial Judge the care with which the taxi driver was driving his vehicle was not the one expected of a prudent driver. Because of this he was found to have been at fault and his acts causative

of the damage his employer suffered. He was found, in part, to have been the author of his master's damage.

Had there been a cross-appeal we might take a different view from the trial Judge with regard to his finding attaching contributory negligence to the servant of the respondent. Be that as it may we shall not concern ourselves with that aspect of the case further for the matter does not pose for consideration. The apportionment of liability made by the trial Judge however, can under no circumstances be held to justify the submission of the appellant that an unreasonably high responsibility was placed upon the appellant for the accident. Consequently the appeal is dismissed with costs.

Appeal dismissed with costs.