1983 March 7

[L. LOIZOU, SAVVIDES, PIKIS, JJ.]

SOTERIOS PANAYIOTOU,

Appellant-Plaintiff,

v.

ATHINODOROS CHRISTOFI AND ANOTHER,

Respondents-Defendants.

(*Civil Appeal No.* 6349).

Negligence—Contributory negligence—Apportionment of liability—Road accident—Bus on main road intending to turn to the right to the side road—Visibility from the opposite direction on main road, more than 100 *metres—Bus driver noticing car on main road, from opposite direction, at distance of* 100-120 *feet—Not stopping in order to give time to car to pass before turning to the right—Guilty of negligence through not keeping a proper lookout—Driver of car guilty of contributory negligence because he was driving at a speed beyond the speed limit and failed to reduce his speed when he first noticed the bus from a distance of* 500 *feet signalling that it would turn to the right—Liability apportioned equally between the two drivers.*

Negligence—Speed—Exceeding speed limits in itself is not proof of negligence.

Findings of fact—Appeal—Approach of Court of Appeal—Findings of trial Judge, manifestly wrong and contrary to the evidence accepted by the trial Judge—Reversed.

Plea of guilty—Road accident—By taking into consideration admission of one driver that he was convicted on his plea of guilty for over-speeding and not taking into consideration admission of other driver that he was convicted on his plea of guilty for careless driving trial Judge misdirected himself and arrived at wrong conclusion that the first driver was wholly to blame.

Whilst respondent-defendant 1 was driving his bus along a main road intending to turn to a side road, to the right of the bus, appellant-plaintiff was, also, driving his car on the main

road from the opposite direction. There was a 30 m.p.h. speed limit in the area. When the bus reached the junction it turned right towards the side road; the appellant, upon noticing the bus turning, applied brakes and with the brakes so applied proceeded in a slightly oblique direction, passed by the front right corner of the bus, got on to the pavement and collided with an electric pole, after leaving 95 feet brake marks. Visibility was clear for a distance of more than 100 meters on either direction. In an action by the appellant the trial Judge after rejecting the version of the appellant as untrue and accepting that of respondent 1 found that before the latter turned right he was driving the bus at a reduced speed and signalled with the trafficator that he would turn and after it turned it "stopped almost in the middle of the main road, as he should in order to allow traffic proceeding in either direction to pass". The trial Judge further found that the appellant who was driving the car at an excessive speed, on seeing the trafficator signal before the bus turned, decided to apply brakes from fear that the bus in turning might block his way, passed in front of the bus with applied brakes after the bus had already stopped and, being unable to control his car, he went off the road onto the pavement and collided on the electric pole.

Following the above findings the trial Judge came to the conclusion that the accident was wholly due to the negligent driving of the appellant and that respondent 1 was not negligent and did not contribute to the accident.

Upon appeal by the plaintiffs:

Held, that though an appellate Court will normally not interfere with findings of fact of a trial Court unless such findings are manifestly wrong or not warranted by the evidence before it in this case the finding of the trial Judge that the bus stopped "almost in the middle of the road" is manifestly wrong and contrary to the evidence accepted and summed up in his judgment as being the version of respondent 1; that since the visibility was clear for a distance of more than 100 meters in either direction if respondent 1 kept a proper look-out ahead of him, he should have seen the on-coming car from a distance of at least 400 feet taking into consideration the fact that the two vehicles were moving towards each other and the visibility was unobstructed, and avoid turning to the right in front of the other

car; that, further, respondent 1 saw the other car for the first time when it was at a distance of 100-120 feet and he did not stop to give time to the other car to pass before turning to the right but slowed down and proceeded to the right; that he only stopped when the other car applied its brakes at a distance of 60 feet ahead of him; that, therefore, in the light of such evidence, the only reasonable inference that could be drawn is that there was negligence on the part of respondent.

(2) That since appellant, in the same way as respondent 1, could see the bus coming from the opposite direction and in fact, according to his version, he saw it from a distance of 500 feet, he could and should have seen the trafficator of the bus which was indicating that the bus was intending to turn to the right and that in fact it started turning to the right; that to turn to the right for a big bus it must have lowered its speed and according to the trial Judge, it did so; that it was, therefore, appellant's duty in the circumstances, not to drive at a speed beyond the speed limits, as admitted by him, but to reduce the speed of his car within reasonable limits, as to allow him to stop his car if the bus driver proceeded to execute his intention to proceed to the side road which he manifested by the operation of the trafficator; that though exceeding speed limits in itself is not proof of negligence in this case bearing in mind all the circumstances the excessive speed of the appellant was one of the causes that contributed to the accident and in consequence the appellant is guilty of negligence as well.

(3) That in apportioning negligence between the parties this Court has reached the conclusion that they are equally to blame.

Held, further, that the trial Judge by taking into consideration the admission of the appellant that in connection with this accident he was convicted on his plea for over-speeding, without at the same time taking into consideration the fact that respondent 1 also admitted that he was convicted on his plea for driving without due care and attention, he misdirected himself and arrived at the wrong conclusion that the appellant was wholly to blame.

Appeal allowed.

Cases referred to:

Polycarpou v. Polycarpou (1982) 1 C.L.R.182 at p.194;

Kkaffa v. Kalorkotis (1982) 1 C.L.R.372 at p.378;

Papadopoulos v. Stavrou (1982) 1 C.L.R.321 at pp. 324, 325;

Epifaniou v. HjiGeorghiou (1982) 1 C.L.R.609 at pp. 613, 614;

Kyriacou v. Mata (1982) 1 C.L.R.932 at pp. 934, 935;

Kyriacou v. A. Kortas & Sons (1981) 1 C.L.R.551 at p. 553;

Athanassiou v. The Attorney-General of the Republic (1969) 1 C.L.R.160 at p.165;

Hurlock v. Inglis, The Times, Nov. 29, 1963;

Tribe v. Jones [1961] 105 S.J.931; Crim. L.R.321;

Bracegirdle v. Oxley [1947] 1 All E.R.126.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Pitsillides, S. D.J.) dated the 13th November, 1981 (Action No. 390/79) whereby his claim for damages caused to his car as a result of the alleged negligence of defendant 1 who was driving the bus of defendant 2 was dismissed.

K. Kyriakides, for the appellant.

P. Pavlou, for the respondents.

L. Loizou J.: The judgment of the Court will be delivered by Mr. Justice Savvides.

Savvides J.: This is an appeal against the judgment of the District Court of Limassol whereby the appellant's action for damages caused to his car as a result of the alleged negligence of defendant 1 who was driving the bus of defendant 2, was dismissed.

By the present appeal the appellant contests the findings of the trial Court that the accident was the result of the negligence of the appellant and contends that from the evidence accepted by the trial Court, the only inference that could be drawn is that the only person to blame for the accident was respondent 1 and not appellant.

The facts of the case are briefly as follows: Respondent 2 is the owner of an urban motor-bus under registration No. TEK 938, which, at the material time, was driven by respondent 1 in the course of his employment with respondent 2. At about

6.20 a.m. of 20.1.79, the said bus was being driven along Makarios III Avenue from a westward direction, approaching Ioannis Tsiros Street, a side road to the right of the bus, leading southwards and into which it was the intention of respondent 1 to turn. The plaintiff was at the time driving his car DL 774 from the opposite direction.

Makarios III Avenue is 33 feet wide and on the lefthand side of the bus, opposite Ioannis Tsiros Street, there was a further space 10 feet wide beyond the road for the use of buses as a bus-stop. The speed limit in the area is restricted to 30 miles per hour. Ioannis Tsiros Street forms a 'Y' junction with Makarios Avenue. When the bus reached the junction, it turned right towards Ioannis Tsiros Street. The appellant upon noticing the bus turning, applied the brakes of his car and with the brakes so applied, proceeded in a slightly oblique direction, passed by the front right corner of the bus, got onto the pavement and collided with an electric pole which was on the south pavement of the avenue, in the side of the appellant, after leaving 95 feet brake marks, and resulted in a position that the whole car, with the exception of the right front corner, rested on the pavement.

The trial Court was faced with two versions coming from the parties and their witnesses as to how the accident occurred and also had before it the evidence of a Police Constable (P.W.1), who arrived at the scene of the accident a few minutes later and whose real findings at the spot were recorded on a plan prepared by him and produced to the Court as exhibit 1. When such witness arrived at the scene of the accident, he found only the appellant and his car there as the bus after having stopped for a few minutes within Ioannis Tsiros Street, was driven away.

The condition of the road at the time of the accident was described by witness 1 as very good and its surface dry. The visibility in either direction from the point of the accident was at least 100 meters. At the material time there was no other traffic on the road. The brake marks of the left wheels of the car DL 774 start at a point about 5 feet from its left side of the road and they proceed in a slightly oblique line, as indicated on exhibit 1, so that at a point opposite Ioannis Tsiros Street, they are 3 ft. from the nearside of the car. The brake marks of the right wheels run in a parallel line 4' 6" from the line of the left wheels.

The appellant's version is summed up by the trial Judge, as follows:

> "According to the plaintiff, he was driving at a speed of about 30 to 35 m.p.h. and he first saw the bus coming from the opposite direction about 500 ft. from him driven at about the same speed as his own speed. Then, when the bus reached the middle of Ioannis Tsiros Street and his car reached the corner of this Street, the bus without any signal turned right and he applied brakes in order to avoid collision expecting the bus to stop; but, because the bus continued its way, he released the brakes so as not to delay passing in front of the bus otherwise his car would collide on the bus; his car then entered Ioannis Tsiros Street and passed in front of the bus about 1 to 1 1/2 ft. from its front part, which front part of the bus was about 1 ft. in this Street, and he applied brakes again when the front wheels of his car got on the pavement on which was the electric pole on which his car collided."

The version of respondent 1 is described by the trial Court as follows:

> "According to defendant 1, on the other hand, the speed of his bus was 15 to 20 m.p.h. as he was approaching Ioannis Tsiros Street, and, when he was about to turn right, he signalled with the trafficator and reduced speed up to about 5 m.p.h., and when the front right corner of his bus passed by about 1 1/2 ft. the middle of the Avenue and its front left corner was still on the left side of the Avenue, he stopped the bus in order to allow the car of the plaintiff to pass, leaving 6 to 7 ft. for car to pass, and the car passed about 2 to 3 ft. from the bus. Also according to defendant when his bus was about to stop, the plaintiff started braking about 60 ft. away from his bus and the braking of the car continued up to the position where it stopped after it collided on the electric pole. Further, according to defendant 1, the speed of the plaintiff's car before it started braking was at least 40 or 45 m.p.h. and the impact on the electric pole was violent."

The trial Judge after considering the two versions, came to the conclusion that the appellant was not telling the truth, as his

evidence was contradicted by the real evidence and also by the evidence of P.W.3, an eye-witness on the spot, which he appears to have accepted as correct. The trial Judge, after having accepted the evidence of respondent 1 as true, concluded as follows:

"In view of the above, I find that, before defendant 1 turned right, he was driving the bus at a reduced speed and signalled with the trafficator that he would turn and after it turned it stopped almost in the middle of the Avenue, as he should, so as to allow traffic proceeding in either direction to pass. Further, I find that the plaintiff who was driving the car at an excessive speed, on seeing the trafficator signal before the bus turned, decided to apply brakes from fear that the bus in turning might block his way, passed in front of the bus with applied brakes after the bus had already stopped and, being unable to control his car, he went off the road onto the pavement and collided on the electric pole.

I therefore find that the accident was wholly due to the negligent driving of the plaintiff and that defendant 1 was not negligent and did not contribute in any way to the accident."

The trial Judge then, following the established practice, went on to assess the damages to which the plaintiff would have been entitled, if successful, and found them at £1041.-.

Counsel for the appellant in arguing his case before us submitted that even if the evidence of plaintiff had been rejected, the findings of the trial Court based on the evidence accepted by him were wrong and against the weight of such evidence. In particular, he drew our attention to the findings that respondent 1 "stopped almost in the middle of the avenue, as he should, so as to allow traffic proceeding in either direction to pass" which he submitted is arbitrary and contrary to the evidence accepted by him. According to the evidence of respondent 1, counsel for appellant submitted, and in particular his cross-examination, respondent 1 started turning to the right, passed the middle of the road leaving only 6 - 7 feet for the car of the appellant to pass and that such car passed about 1 - 1 1/2 feet from the bus. The plaintiff started braking when the bus was still moving and about to stop. Counsel for the appellant

further contended that though the trial Judge in his judgment, has mentioned the fact that plaintiff admitted that he had pleaded guilty to a charge for driving at excessive speed, he paid no attention to the fact that respondent 1 also admitted in his evidence that he had pleaded guilty to a charge of driving without due care and attention, a fact which prejudiced him in finding that appellant was solely to blame for the accident.

It is a well established practice that an appellate Court will normally not interfere with findings of fact of a trial Court unless such findings are manifestly wrong or not warranted by the evidence before it. (See, inter alia, *Polycarpou* v. *Polycarpou* (1982) 1 C.L.R. 182 at p. 194, *Kkaffa* v. *Kalorkotis* (1982) 1 C.L.R. 372 at p. 378, *Papadopoulos* v. *Stavrou* (1982) 1 C.L.R. 321 at pp. 324, 325, *Epifaniou* v. *Hadjigeorghiou* (1982) 1 C.L.R. 609 at pp. 613, 614 and *Kyriacou* v. *Mata* (1982) 1 C.L.R. 932 at pp. 934, 935).

In expounding the principles on the strength of which an appellate Court may interfere, Loris J. said the following in *Kyriacou* v. *A. Kortas & Sons* (1981) 1 C.L.R. 551 at p. 553:

> "It must be shown that the trial Judge was wrong in evaluating the evidence and the onus is on the appellant to persuade the Court that that is so. Matters relating to credibility of witnesses fall within the province of the trial Judge who has the opportunity to see and hear the witnesses. If on the evidence before him it was reasonably open to him to make the findings to which he arrived at, then this Court will not interfere unless the inferences drawn therefrom are not warranted by the findings whereupon this Court can draw its own conclusions."

We wish also to refer to the opinion expressed by this Court in *Athanassiou* v. *The Attorney-General of the Republic* (1969) 1 C.L.R. 160 at p. 165.

> "Though we are an appellate tribunal, we not only have the power, but it is our duty, to substitute our own inferences for those drawn by the learned trial Judges, once we are satisfied that their inferences were wrong (see, too, in this respect, the views of Parker L.J. in the *Hicks* case, supra, at p. 50)."

Having considered the evidence which the trial Judge accepted

and on which he made his findings, we find ourselves unable to agree with him that respondent 1 stopped in the middle of the avenue after his bus proceeded only about 1 1/2 feet from the middle of the road. Such finding is contrary to the totality of the evidence of respondent himself, P.W.3 and the real evidence. Had the bus stopped at such point, then taking into consideration the fact that Makarios III Avenue is 33 feet wide, respondent 1 should have allowed a space of 15 feet on the side of the appellant to drive through. Respondent 1 was emphatic in his evidence that he stopped the bus at such point as to allow a space of 6 - 7 feet for the appellant's car to pass. In his evidence in cross-examination he said that the car of appellant passed about 1 - 1 1/2 feet from the front part of his bus and this is in line with the evidence of P.W.3. In fact, the judge himself in summing up the version of respondent 1 mentioned that "he stopped the bus in order to allow the car of plaintiff to pass leaving 6 - 7 feet for the car to pass, and the car passed about 2 - 3 feet from the bus." Furthermore from the real evidence the position of the car when passing in front of the bus is clearly shown from the lines of brake marks left on the asphalt. The position of the left wheels were 3 feet from the lefthand side of the car and that of the right wheels about 7 feet 6 inches from the same side. If we add to that the distance of 1 - 1 1/2 feet which was the distance between the car and the bus at the time that the car was passing in front of the bus we find that the bus stopped at a point about 9 feet from the edge of the road on the nearside of the car, after it had proceeded at least 7 feet from the middle of the road towards the side of the pavement. The finding of the trial Judge that the bus stopped "almost in the middle of the road as he did" is manifestly wrong and contrary to the evidence accepted and summed up in his judgment as being the version of respondent 1. If the trial Judge had directed his mind to the real evidence and considered such evidence with the rest of the evidence before him, he could not reasonably have reached the conclusion that the bus stopped in the middle of the avenue. There is one more point to observe about the findings of the trial Judge. Whereas when stating the facts in his judgment he said: "Also, according to the defendant *when his bus was about to stop*, plaintiff started braking", in his final finding he concludes that the bus *stopped almost in the middle of the road* to allow traffic proceeding in either direction to pass.

(The underlining is ours). There is obvious inconsistency between the finding and the evidence accepted by him.

Having regard to the evidence before him, the conclusion of the trial Judge that the appellant was wholly to blame and respondent 1 was not negligent, is wrong. The visibility was clear for a distance of more than 100 meters in either direction. If respondent 1 kept a proper look-out ahead of him, he should have seen the on-coming car from a distance of at least 400 feet taking into consideration the fact that the two vehicles were moving towards each other and the visibility was unobstructed, and avoid turning to the right in front of the other car. Respondent 1 said in his evidence that he saw the other car for the first time when it was at a distance of 100-120 feet. Nevertheless, he did not stop to give time to the other car to pass before turning to the right but slowed down and proceeded to the right. He only stopped when the other car applied its brakes at a distance of 60 feet ahead of him. In the light of such evidence, the only reasonable inference that could be drawn is that there was negligence on the part of respondent 1. Furthermore, the trial Judge by taking into consideration the admission of the appellant that in connection with this accident he was convicted on his plea for over-speeding, without at the same time taking into consideration the fact that respondent 1 also admitted that he was convicted on his plea for driving without due care and attention, he misdirected himself and arrived at the wrong conclusion that the appellant was wholly to blame.

In the light of the above, we are of the view that the findings of the trial Judge and the conclusions reached are vulnerable and cannot be relied upon. Bearing in mind the legal principles enunciated earlier in this judgment, in the circumstances of this case, as already explained, we have arrived at the conclusion that respondent 1 cannot go scott-free of any blame but that in the circumstances he was guilty of negligence.

Having concluded as above, we are coming next to consider whether appellant has also contributed by his negligence to the cause of this accident. Appellant, in the same way as respondent 1, could see the bus coming from the opposite direction and in fact, according to his version, he saw it from a

distance of 500 feet He could and should have seen the trafficator of the bus which was indicating that the bus was intending to turn to the right and that in fact it started turning to the right. To turn to the right for a big bus it must have lowered its speed and according to the trial Judge, it did so. It was, therefore, appellant's duty in the circumstances, not to drive at a speed beyond the speed limits, as admitted by him, but to reduce the speed of his car within reasonable limits, as to allow him to stop his car if the bus driver proceeded to execute his intention to proceed to the side road which he manifested by the operation of the trafficator.

It is the duty of a driver to travel at a speed which is reasonable under the circumstances. Exceeding speed limits, however, in itself is not proof of negligence, (*Hurlock* v. *Inglis* [1963] The Times, November 29, C.L.Y. 2349) or cannot automatically be deemed as dangerous (*Tribe* v. *Jones* [1961] 105 S.J. 931, Crim. L.R. 321 C.A.) but each case must depend on its own circumstances and it is only when all circumstances of the case are taken into consideration that speed alone can be a decisive factor (*Bracegirdle* v. *Oxley* [1947] 1 All E.R. 126). In this appeal bearing in mind all circumstances of the case, as already explained, the excessive speed of the appellant was one of the causes that contributed to the accident and in consequence we find the appellant guilty of negligence as well.

In having to apportion negligence between the parties, we have reached the conclusion that they are equally to blame. Therefore, we allow the appeal and we award in favour of the appellant the sum of £520.– which is half of the damages assessed by the trial Court and the amount of which has not been contested, plus costs, both before the trial Court and on appeal on the scale applicable to the amount recovered.

Appeal allowed with costs.