1984 August 24

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

MICHAEL CHRISTOU AND ANOTHER,
Appellants-Defendants,

v.

MARIA ANGELIDOU AND ANOTHER,
Respondents-Plaintiffs.

(*Civil Appeal No.* 6632).

Reasoned judgment—Trial Judge failing to determine the issues which had arisen and give reasons for his decision—New trial ordered—Article 30.2 *of the Constitution.*

Civil Procedure—Trial Judge failing to evaluate, analyse or even refer to evidence of a material witness—And to determine the issues which had arisen and give reasons for his decision—His judgment not amounting to a sufficient judicial determination of the disputes between the parties—New trial ordered.

The appellants-defendants were found 30% to blame for an accident in the course of which a motor-lorry driven by appellant 1 collided with a car driven by respondent 1. The collision occurred whilst respondent 1 was in the process of overtaking appellant 1 and whilst the latter was about to turn to the right. The trial Judge in his judgment referred to the evidence of the two parties in the litigation but failed completely to evaluate, analyse or even refer to the evidence of a witness who supported the version of the appellant.

Upon appeal by the defendants:

Held, that the judgment does not amount to a sufficient judicial determination of the disputes between the parties; that the trial Court failed to determine the issues which had arisen and give reasons for his such decision; and that accordingly the judgment under appeal must be set aside and a new trial of the actions before a new Bench is ordered (see Article 30.2 of the Constitution).

Appeal allowed. New trial ordered.

Cases referred to:

Papaellina v. *EPCO (Cyprus) Ltd. and Lion Products Ltd.* (1967) 1 C.L.R. 338 at p. 362;

Pioneer Candy Ltd. and Another v. *Stelios Tryphon & Sons Ltd.* (1981) 1 C.L.R. 540 at p. 541;

Ioannidou v. *Dikaeos* (1969) 1 C.L.R. 235;

Chambou and Others v. *Michael and Another* (1981) 1 C.L.R. 618;

Bray and Another v. *Palmer* [1953] 2 All E.R. 1449.

Appeal.

Appeal by defendants against the judgment of the District Court of Limassol (Korfiotis, D.J.) dated the 30th September, 1983 (Actions Nos. 2211/79 and 2212/79) whereby they were found 30% to blame for an accident in which the plaintiffs sustained personal injuries and material damage to property.

J. Mavronicolas, for the appellants.

N. Pelides, for the respondents.

Cur. adv. vult.

A. LOIZOU J.: The judgment of the Court will be delivered by H.H. Judge Stylianides.

STYLIANIDES J.: This appeal is directed against a judgment of the District Court of Limassol whereby the appellants were found 30% to blame for an accident in which the respondents sustained personal injuries and material damage to property.

Appellant No. 1 at the material time was driving motor-lorry F.U. 682 carrying cement in the course of his employment with appellants No. 2. Respondent-plaintiff in Action No. 2212/79 was the owner and driver of motor-vehicle D.J. 001 having as his only passenger his wife, respondent-plaintiff in Action No. 2211/79.

The special damages were agreed and the Court assessed the general damages for personal injuries of the respondents. There is no complaint against such assessment.

The appellants' motor-lorry was being driven along the main Nicosia-Limassol road, followed by another lorry of appellants No. 2, driven by D.W.3, Thalis Katsounotos.

Both drivers involved as well as Katsounotos testified before the trial Court.

It was the version of the respondent-driver that he overtook the lorry driven by Katsounotos before negotiating a curve, then he followed the lorry driven by the appellant and when he was sure that it was safe for him to overtake appellant's lorry, he indicated his such intention, sounded the horn, started overtaking but at the time of the overtaking, due to a right turning of appellants' lorry, an impact occurred between the left side of his car with the right part of the front mudguard of the lorry. The driver of the lorry did not indicate in any way his intention to turn to the right towards a side-road leading to Vassiliko Chemical Industries Plant.

It was the version of the appellant before the trial Court that he was driving motor-lorry F.U. 682 followed by Thalis Katsounotos (D.W.3), who was driving trailer G.Q.135; when he approached the side-road, he signalled with his hand and trafficator that he was about to turn right; he noticed that Katsounotos, who was following him, had noticed his signals and actually Katsounotos himself gave a similar signal with his hand.

Katsounotos testified that he noticed the signal of the trafficator and the hand of the preceding lorry; he signalled himself with his hand; then a Rover car, maintaining a high speed, overtook him and proceeded to overtake the front car of the appellant and thus the impact, as aforesaid, occurred. Both Katsounotos and the appellant stated that no horn was hooted by the respondent-driver.

It is an undisputed fact that from the end of the curve upto the opening of the side-road the distance is 800 ft. and the visibility is unobstructed.

The trial Judge in his judgment referred to the evidence of the two parties in the litigation but failed completely to evaluate, analyse or even refer to the evidence of D.W.3, Katsounotos. He failed to reach a finding whether the appellant signalled, as he and Katsounotos testified; whether Katsounotos noticed the signal of the preceding car and he himself made a signal with his hand; whether the respondent-driver's car overtook Katsounotos's car before or long after the curve.

There is a need for the trial Judge to formulate clearly in his judgment the specific issue or issues of fact arising between the parties and to state his finding on such issue or each one of such issues. Judges trying civil disputes should unfailingly do so. (*Papaellina v. EPCO (Cyprus) Ltd. and Lion Products Ltd.*, (1967) 1 C.L.R. 338, at p. 362).

Paragraph 2 of Article 30 of our Constitution provides that the judgment of a Court in civil or criminal proceedings "shall be reasoned".

In *Pioneer Candy Ltd. & Another v. Stelios Tryphon & Sons Ltd.*, (1981) 1 C.L.R. 540, at p. 541, it was said:-

> "The authorities establish that for the requirement of due reasoning, there must be:
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> (a) An analysis of the evidence adduced in the light of the issues as arising and defined by the pleadings;
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> (b) Concrete findings as the necessary prelude to the judgment of the Court; and
>
> (c) A clear judicial pronouncement indicating the outcome of the case".

In the present case the judicial process was faulty. The judgment does not amount to a sufficient judicial determination of the disputes between the parties. The trial Court failed to determine the issues which had arisen, and give reasons for his such decision - (*Theodora Ioannidou v. Charilaos Dikaeos*, (1969) 1 C.L.R. 235; *Chambou & Others v. Michael & Another*, (1981) 1 C.L.R. 618).

In *Bray and Another v. Palmer*, [1953] 2 All E.R. 1449, a new trial was ordered when the Judge did not come to some definite conclusion on the evidence, as he was unable to decide which party was in the right.

For all the aforesaid reasons the judgment under appeal is set aside and a new trial of the actions is ordered before a new Bench.

As the present appeal refers to an accident which occurred in 1978, we trust that all necessary arrangements will be made for a speedy new trial.

The costs of the first trial to be costs in the cause in the new trial, the same with the costs before this Court, but not to be against the appellants at any rate.

Appeal allowed. Re-trial ordered.