

1984 November 26

[HADJIANASTASSIOU, LORIS AND STYLIANIDES, JJ.]

SOTERIS KYTHREOTIS,

*Appellant-Third Party,*

v.

MENELAOS CONSTANTINOU,

*Respondent-Defendant.*

(Civil Appeal No. 6368).

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MICHALAKIS KYTHREOTIS,

*Appellant-Plaintiff.*

v.

MENELAOS CONSTANTINOU,

*Respondent-Defendant.*

(Civil Appeal No. 6370).

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*Breach of statutory duty—Mere breach of statutory duty does not give a right of action for damages.*

*Negligence—Contributory negligence—Road accident—Collision at T-junction between car driven on side road and car driven on main road—And just after main road driver had overtaken two cars ahead of him—Duty of driver reaching a halt-sign—Side-road driver stopping at halt-sign, noticing above two cars but proceeding to emerge on the main road because he thought that they were far away—He is negligent in that he did not wait until he could see that the main road was clear and in that he should have anticipated that there might have been a vehicle behind the two vehicles—Respondent negligent because he overtook the two cars in the third lane and was driving at an excessive speed and by overtaking the two cars he deprived himself and the third party of the opportunity of seeing each other—Apportionment of liability, 80% on the third party and 20% on the respondent.*

The accident which gave rise to this litigation occurred at a T-junction. The appellant-third party was driving his car on the side road, which was controlled by a halt-line, and the respondent-defendant on the main road. The main road was divided into two moieties by a continuous white line and there were two lanes on each moiety. The third-party stopped at the halt-line of the side road. Visibility to his right was over 300 meters and he noticed two cars moving in the right moiety of the main road. He thought that they were far away and he entered the main road diagonally and proceeded to the right with the intention to take the right half of the main road. The collision occurred when he entered the second lane in the main road. Prior to the collision the respondent was keeping the third lane and overtook two other cars ahead of him. His speed before the collision was over 30 m.p.h. but the trial Court could not state the exact speed. Neither the respondent nor the third party saw each other at the time that the car of the third-party entered the main road and this was probably due to the fact that the two cars, which were on the main road, due to their position, obstructed the visibility of the two cars that were involved in the collision.

The trial Court concluded that the respondent was free from any blame for the accident and that the accident was due exclusively to the negligence of the third party.

Upon appeal by the third-party and the plaintiff, who was the owner of the car driven by the former, it was mainly contended that as the respondent overtook the two cars on the right of the continuous white line separating the main road he was in breach of the Motor Vehicles and Road Traffic Regulations and such breach created civil liability. With regard to negligence they argued that the respondent drove at an excessive speed; he failed and/or could not, from the position he placed himself in the way he overtook the two cars, see the car driven by the third-party; and that on approaching a T-junction, he drove the car under his control in such a way that a prudent driver would not do.

*Held*, (1) that it is not the law that everyone injured or suffering damage through a breach of a Regulation should have a right for damages; and that the Motor Vehicles and Road Traffic Regulations to which counsel for the appellant referred, are not,

primarily at any rate, designed to give a civil remedy to a person injured by a breach of them.

5 (2) That on the balance of probabilities in the circumstances of this case the respondent was plainly negligent as the accident would have either been avoided or the consequences substantially lessened, if he did *not* overtake into the third lane or he did not drive at an excessive speed, overtaking the two vehicles in front of him, thus depriving both himself and the appellant of the opportunity of seeing each other; that a reasonably careful driver would have not taken that course.

10 (3) That the third-party, was driving on a side road whose junction with the main road was controlled by a halt-sign; that the duty of a driver reaching a halt-sign is to bring the car under his control to a complete stop and not to enter the main road unless he makes sure that it is safe for him so to do; and that this duty is subject to no limitations or assumptions; that the appellant-driver stopped at the halt-line but on noticing that the two cars on the left of the road were at a reasonably long distance from him, he emerged diagonally on the main road; that the third party is negligent in that he did not wait until he could see that the major road was clear and in that he should have anticipated that there might have been a vehicle behind the two vehicles; and that, therefore, the collision was due to the negligence of both drivers.

(4) That having regard to the circumstances of the accident the third-party contributed by his own negligence to an extent of 80% and the respondent to an extent of 20%.

*Appeal allowed.*

30 Cases referred to:

*Phillips v. Britannia Hygienic Laundry Co.* [1923] 2 K.B. 832 at p. 842;

*Clark v. Brims* [1947] 1 All E.R. 242;

*Coote and Another v. Stone* [1971] 1 All E.R. 657;

35 *Tan Chye Choo and Others v. Chong Kew Moi* [1970] 1 All E.R. 266;

*Hussein and Another v. The Estate of the deceased Chrysostomos Christodoulou through his Heirs*, 20(1) C.L.R. 23;

*Peristeronopighi Transport Co. Ltd. v. Toumazou* (1970) 1 C.L.R. 196;

*Fardon v. Harcourt-Rivington* [1932] 146 L.T. 391 at p. 352;

*Quinn v. Scott* [1965] 1 W.L.R. 1004;

*Ioannou v. Michaelides* (1966) 1 C.L.R. 235; 5

*Alexandrou v. Gamble* (1974) 1 C.L.R. 5;

*Demou v. Constantinou and Another* (1979) 1 C.L.R. 21;

*Harding v. Hinchcliffe*, *Times* 8th April, 1964.

### Appeals.

Appeals by plaintiff and third party against the judgment of the District Court of Nicosia (Ioannides, D.J.) dated the 9th December, 1981 (Action No. 3435/79) whereby plaintiff's claim against the defendant and defendant's claim against the third party for damages as a result of a traffic accident were dismissed. 10

*Chr. Kitromilides with G. Panayi* for the appellant in Civil Appeal 6370. 15

*P. Petrakis*, for appellant-third party.

*St. Erotokritou with A. Loizou and M. Pipis*, for defendant-respondent in both appeals.

*Cur. adv. vult.* 20

HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: On 3rd January, 1979, at about 6.45 p.m., a collision occurred in St. Andrew's Street in Nicosia, between motor-car G.G.652, owned by the plaintiff-appellant in Appeal No. 6370 and driven by the appellant-third party in Appeal No. 6368, and motor-car D.S.494, driven by the defendant. 25

The collision occurred opposite the opening of Kyriacos Matsis' Avenue and St. Andrew's Street, a junction controlled by a halt-sign. St. Andrew's Street is 40 ft. wide. It is divided into two moieties by a continuous white line and there are two lanes on each moiety. 30

The plaintiff averred in his statement of claim that the accident was the result of defendant's negligence and/or breach of statu-

tory duty; he claims damages for the material damage to his car. The defendant contended that the third-party, driver of plaintiff's car, drove into St. Andrew's Avenue without stopping at the halt-sign and collided with his vehicle; that the third-party was solely to blame for this accident and/or he heavily contributed to it.

The trial Court, after evaluating and analysing the evidence adduced, reached its findings of fact to which we shall presently refer, and concluded that the defendant was free from any blame for this accident that was due exclusively to the negligence of the third-party and dismissed the action with costs and the claim of the defendant against the third-party with no costs. Against this judgment the plaintiff and the third-party took these appeals.

The findings of fact of the trial Judge were not contested by any side. They are as follows:-

- (a) The third-party stopped at Kyriacos Matsis' side road at the halt-line;
- (b) The visibility from Kyriacos Matsis to the right is over 300 meters;
- (c) The third-party saw two cars moving in the right moiety of St. Andrew's Street; the first was a van; he thought that they were far away and he entered St. Andrew's Avenue diagonally, proceeded to the right with the intention to take the right half of St. Andrew's, and when he reached the third lane, that is to say, the second left lane in St. Andrew's, the collision occurred;
- (d) St. Andrew's Street has four lanes with two lanes in each direction;
- (e) The collision took place at night-time, i.e. at about 6.45 p.m., and the area is illuminated by electric light;
- (f) The defendant prior to the collision was keeping the third lane and overtook two other cars in front of him;
- (g) He applied brakes and left 72 ft. brake-marks, starting 21'6" from the left edge of the asphalt with a slight deviation towards the left. At the end, at the point

of impact, they were 19'6" from the left edge of the asphalt;

- (h) At the time he started overtaking and upto the impact there were no cars coming from the opposite direction with the exception, certainly, of the car driven by the third-party which came from the side-road of Kyriacos Matsis; 5
- (i) The speed of the defendant's car before the collision should have been, as the independent witness, Christakis Polemitis, testified, over 30 m.p.h., having regard to the fact that the witness was maintaining 20-25 m.p.h. and the defendant overtook him and the other preceding car, though P.W.1, HjiChristodoulou, assessed the speed of the defendant at 41.5 m.p.h. The Court for the reasons already set out earlier in this judgment, cannot rely on this assessment and accept the speed of the defendant at 41.5 m.p.h. at the time of the impact. The Court accepts that the defendant was driving at over 30 m.p.h. but it is not possible to state his exact speed. 10  
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- (j) At the time of the impact the car driven by the third-party was in the third lane but the whole car was not in the third lane, as alleged by the third-party, but only the front part thereof, as alleged by the defendant, because, as it appears in the sketch, exhibit No. 1, the car of the third-party after the collision was found diagonally in St. Andrew's Street; 25
- (k) Furthermore neither the defendant nor the third-party saw each other at the time that the car of the third-party entered the main road and this is probably due to the fact that the two cars, which were on the main road, due to their position, obstructed the visibility of the two cars that were involved in the collision. The fact that the two cars that were driven on the main road probably obstructed the visibility both of the defendant and the third-party, is corroborated by the evidence of the independent witness, Polemitis, who was following the preceding van with his car. 30  
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He stated that he did not see the car of the third-party coming out of Kyriacos Matsis' Avenue".

5 Counsel for the plaintiff and the third-party submitted that the defendant was solely to blame for the accident. They based their such submission on (a) breach of statutory duty and (b) negligence.

10 They argued that as the defendant overtook the two cars on the right of the continuous white line separating St. Andrew's Street, he was in breach of the Motor Vehicles and Traffic Regulations and such breach created civil liability. With regard to negligence they argued that the defendant drove at an excessive speed; he failed and/or could not, from the position he placed himself in the way he overtook the two cars, see the car driven by the third-party; and that on approaching a T-  
15 junction, he drove the car under his control in such a way that a prudent driver would not do.

On the other hand, the third-party in obedience to the halt-sign, stopped at the halt-line before entering the major road. He rightly considered that it was safe for him to proceed into  
20 the main road as the two cars, which were keeping their proper half of the street, were far away and this is borne out from the fact that he safely crossed diagonally the one half of St. Andrew's Street and actually entered the other moiety and the collision occurred in the third lane.

25 Counsel for the respondent submitted that the fact that he was driving in the third lane at a speed of over 30 m.p.h. in a speed-limited area was not the decisive cause of the accident. There was no visibility and when he noticed the other car, he applied brakes, and that the overstepping of the continuous  
30 white line did not create either a civil liability or constitute negligence.

#### *BREACH OF STATUTORY DUTY:*

It is not the law that everyone injured or suffering damage through a breach of the Regulation should have a right of action  
35 for damages. A mere breach of statutory duty would not give rise to a claim even though the breach had in no way been responsible for the injury suffered.

In *Phillips v. Britannia Hygienic Laundry Co.*, [1923] 2 K.B. 832, Atkin, L.J., said at p. 842:—

“——the question is whether these regulations, viewed in the circumstances in which they were made and to which they relate, were intended to impose a duty which is a public duty only or whether they were intended, in addition to the public duty, to impose a duty enforceable by an individual aggrieved”.

In *Clark v. Brims*, [1947] 1 All E.R. 242, a vehicle had no rear light on it during the black-out during the last war, and in consequence of that another vehicle ran into it and suffered damage. It was sought to say that because there was a breach of the regulations which cover the lighting of motor vehicles, the person who had had the misfortune to run into this unlit vehicle and suffered injury was entitled to damages for a breach of the relevant regulation. Morris, J., had all the authorities cited to him, and there are a good many of them, on the question whether a breach of a penal provision gives rise to a civil action. At the end of it all he came to the conclusion that in that case no right of action arose from the breach of the regulation. The final words of the learned Judge in that case are these:—

“The question is not whether this defendant would be liable under the penalty section of the Road Transport Lighting Act, 1927, but, on the assumption that he was in breach of an obligation laid down by that Act, whether he becomes liable to be sued at the instance of any persons aggrieved or consequentially injured. Applying the tests which have been laid down, my view is that the Act imposes public duties only”.

(See, also, *Cootte and Another v. Stone*, [1971] 1 All E.R. 657; *Tan Chye Choo and Others v. Chong Kew Moi*, [1970] 1 All E.R. 266; *Fatma Hussein and Another v. The Estate of the Deceased Chrysostomos Christodoulou through his Heirs*, 20 (1) C.L.R. 23; *Peristeronopighi Transport Co. Ltd. v. Toumazos Th. Toumazou*, (1970) 1 C.L.R. 196).

The Motor Vehicles and Road Traffic Regulations to which counsel for the appellant referred are not, primarily at any rate, designed to give a civil remedy to a person injured by a breach of them.



**NEGLIGENCE:**

The inquiry is whether the defendant has been shown to have failed to have taken reasonable care in all the circumstances, and what is negligence, as Lord Dunedin said, in *Fardon v. Harcourt-Rivington*, [1932] 146 L.T. 391, at p. 392, depends on the facts with which the Court has to deal.

The defendant was driving at an excessive speed in a built-up area. It is correct that excessive speed per se does not establish negligence. (See *Quinn v. Scott*, [1965] 1 W.L.R. 1004; *Ioannou v. Michaelides*, (1966) 1 C.L.R. 235; *Alexandrou v. Gamble*, (1974) 1 C.L.R. 5; *Demou v. Constantinou and Another*, (1979) 1 C.L.R. 21).

The two drivers failed to see each other in time to avert the collision. This is due to the fact that the respondent overtook the two vehicles on the left two lanes of the road driving in the third lane and thus the two cars involved in the accident were masked by the cars keeping their proper lanes.

On the balance of probabilities in the circumstances of this case the respondent was plainly negligent as the accident would have either been avoided or the consequences substantially lessened, if he did not overtake into the third lane or he did not drive at an excessive speed, overtaking the two vehicles in front of him, thus depriving both himself and the appellant of the opportunity of seeing each other. A reasonably careful driver would have not taken that course.

The third-party, on the other hand, was driving on a side road. The junction with the main road was controlled by a halt-sign. The duty of a driver reaching a halt-sign is to bring the car under his control to a complete stop and not to enter the main road unless he makes sure that it is safe for him so to do. This duty is subject to no limitations or assumptions. The appellant-driver stopped at the halt-line but on noticing that the two cars on the left of the road were at a reasonably long distance from him, he emerged diagonally on the main road.

In *Harding v. Hinchcliffe*, *The Times*, April 8, 1964, the defendant, waiting in his motor-car to drive out of the minor road and seeing a bus driver signal on the major road indicating an intention to turn left, moved forward and collided with a motor-

cyclist who was in the act of overtaking the bus, their respective presences being unknown to the other. It was held that the defendant was negligent in not waiting until he could see that the major road was clear and in that he should have anticipated that there might have been a vehicle behind the bus.

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The collision was due to the negligence of both drivers. There remains to be decided what are their respective shares of the blame for the accident.

Having regard to the circumstances of the accident and what we have already said, the third-party contributed by his own negligence to an extent of 80% and the respondent to an extent of 20%.

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The damages to the car of the plaintiff were assessed by the trial Court at £800.-, a sum accepted before us.

We shall allow the appeal. The judgment of the trial Court in set aside. Judgment is given for the plaintiff against the defendant for £800.- and judgment in given in favour of the defendant against the third-party for £640.-.

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In all the circumstances of the case no order as to costs is made either before this Court or the Court below.

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*Appeal allowed. No order as to costs.*