

1984 December 13

[A. LOIZOU, DEMETRIADES, LORIS, JJ.]

MICHALAKIS CHRISTOFI CONSTANTINOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 4573*).

Road traffic—Careless driving—Collision near a bend between vehicles moving in opposite directions—Duty of driver, in negotiating a bend to keep as close as possible to his left or near side of the road—And such duty becomes more imperative when negotiating a blind bend.

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Findings of fact—Based on credibility of witnesses—Principles on which Court of Appeal acts.

Criminal Procedure—Trial in criminal case—Judgment—Court of appeal is not judging the style in which judgments are written but their substance.

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This was an appeal against the conviction of the appellant of the offence of driving a motor vehicle without due care and attention. The offence arose out of a collision near a bend between a car driven by the appellant and a car driven by the complainant from the opposite direction. The trial Judge after accepting the evidence adduced by the prosecution found that the appellant was negligent because while negotiating a blind bend with limited visibility he failed to reduce his speed to a safe limit and to keep as near as possible to his left of the road.

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Upon appeal against conviction:

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Held, that every driver in negotiating a bend has a duty to observe the principle of keeping as close as possible to his left or near side of the road in order to give a free passage to on-coming vehicles and so to avoid a collision with such vehicles

that keep their side of the road; and that this duty becomes more imperative when one is negotiating a blind bend; that bearing in mind that the evaluation of the credibility of witnesses is primarily the duty of trial Judges and this Court does not interfere on appeal with findings of fact based on credibility when it is satisfied that such findings were reasonably open to them obviously on account of the advantage that trial Judges have in watching the demeanour of witnesses and having the whole feeling of the trial and the testimony that is given before them, this appeal should fail as no sufficient reasons have been given for this Court to interfere with the findings made by the trial Court after evaluating the evidence of the witnesses and the conclusion aimed at by him on the strength of such findings; and that, therefore, the appeal must be dismissed.

15 *Appeal dismissed.*

Per curiam: We are not here to judge the style in which judgments are written but their substance, and it is enough if they present the issues of the case and give reasons for the conclusions arrived at by them.

20 Cases referred to:

Christou and Another v. Angelidou (1984) 1 C.L.R. 492.

Appeal against conviction and sentence.

25 Appeal against conviction and sentence by Michalakis Christofi Constantinou who was convicted on the 20th September, 1984 at the District Court of Limassol (Criminal Case No. 2200/84) on one count of the offence of driving without due care and attention contrary to sections 8 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86/1972) and was sentenced by Korfiotis, D.J. to pay £15.- fine.

30 *A. Papacharalambous*, for the appellant.

A.M. Angelides, Senior Counsel of the Republic, for the respondents.

35 *A. Loizou J.* gave the following judgment of the Court. The appellant appealed against his conviction by a Judge of the District Court of Limassol, for the offence of driving a motor vehicle without due care and attention contrary to ss.

8 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86 of 1972).

The facts of the case as they appear in the judgment of the learned trial Judge as emanating from the evidence adduced at the trial and to the extent that he accepted the testimony of the witnesses are as follows:— 5

On the 9th October, 1983, at about 3:30 p.m. the complainant, an Acting Police Sergeant, was driving his saloon car under Registration No. FH 348 along the Monagri-Sylikou Road to the direction of Ayios Georghios village when at a particular point of the road he saw at a distance whilst he himself was going downhill, a car, which ultimately proved to be that of the appellant coming from the opposite direction. It was being driven at a great speed. He apprehended the likelihood of an impact and he took to the extreme left of the road and stopped before a bend at a distance of about 20 meters. Whilst so stationary, the car coming from the opposite direction driven by the appellant swerved and hit his car on the front right wheel which suffered extensive damage on its front mudguard, headlamp, bumper, windscreen which was smashed at its front right wheel axis. On account of this latter damage to the wheel the car dropped to the ground and it could not be moved by the Police, so it had ultimately to be towed by means of a tow-truck. The other car which was going uphill moved as a result of the impact backwards and stopped across the road. 10
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The scene of the accident was visited by P.S. Neophytos Kakanthimis who took measurements and prepared a sketch not to scale giving on it the lay-out of the road, the distances and the position of the two vehicles at their resultant position. He marked on it the alleged point of impact near which he found dry mud and broken glass that fell from the car of the complainant. The learned trial Judge had before him also a plan to scale prepared by Georghios Tzirkalli, the expert called by the defence. 30

We must say that, making the necessary allowances on account of their nature, the sketch of the prosecution was as accurate as it could be and depicted clearly the scene of the accident. 35

The main issue in this case which had to be determined at the trial and upon the findings made thereon its outcome would

depend, was the position of the two vehicles at the time of the impact, and this the learned trial Judge did and dealt with in his judgment. Consequently the case of *Christou and Another v. Maria Angelides* (1984) 1 C.L.R. p. 492, cited by Counsel
5 for the appellant and in particular the passage in that judgment, where the Court said that "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 findings of such issues" does not help his client's case because, as we said, the
10 learned trial Judge did in fact pose the question and answered it, and we are not here to judge the style in which judgments are written but their substance, and it is enough if they present the issues of the case and give reasons for the conclusions arrived at by them. In fact, a finding was made to the effect that the
15 appellant was negligent because whilst negotiating a blind bend with limited visibility he failed to reduce speed to a safe limit and to keep as near as possible to his left of the road. Indeed, every driver in negotiating a bend has a duty to observe the principle of keeping as close as possible to his left or near
20 side of the road in order to give a free passage to oncoming vehicles and so to avoid a collision with such vehicles that keep their side of the road. This duty becomes more imperative when one is negotiating a blind bend.

The learned trial Judge in arriving at the conclusion to which
25 we have just referred and after dealing with the evidence adduced, said that he examined the whole of the evidence and the exhibits and found that the prosecution proved the case against the accused, accepting the evidence of the witnesses of the prosecution, it concluded that the point of impact is
30 that marked "X" on the exhibits, the plans produced, and that the witness for the prosecution, Kakanthymis stated that that was the point of impact as he found near it dried mud and broken glass from the headlamp of the Volkswagen in the car of the complainant, which, however, he did not mark on the plan
35 he prepared.

Learned counsel for the appellant has attempted to make a point out of this statement of the trial Judge by indicating that there could not be a safe conclusion in as much as there were discrepancies between the evidence of the various witnesses
40 for the prosecution in material respects. We do not accept

this contention because the discrepancies, if they are discrepancies, do not relate to the finding which the learned trial Judge makes at this point which is his finding regarding the point of impact in respect of which the testimony of the witnesses referred to by counsel did not relate as they made no reference to the point of impact. 5

On the totality of the circumstances before us, and bearing in mind that the evaluation of the credibility of witnesses is primarily the duty of trial Judges and this Court does not interfere on appeal with findings of fact based on credibility when it is satisfied that such findings were reasonably open to them obviously on account of the advantage that trial Judges have in watching the demeanour of witnesses and having the whole feeling of the trial and the testimony that is given before them, we feel that this appeal should fail as no sufficient reasons have been given for us to interfere with the findings made by the trial Court after evaluating the evidence of the witnesses and the conclusion aimed at by him on the strength of such findings. 15
The appeal is, therefore dismissed.

Appeal dismissed. 20