

1985 March 5

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

ELENI ELIA,

*Appellant-Plaintiff,*

v.

KYRIACOS NICOLA,

*Respondent-Defendant.*

*(Civil Appeal No. 6675).*

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*Findings of fact made by trial Court—Appeal—Approach of Court of Appeal.*

This appeal turned on the findings of fact based on the credibility of witnesses.

*Held*, that this Court is at a disadvantage vis a vis a trial Judge, as what it gets here is the record and the address of Counsel who invites its attention to the particular parts that may in the view of Counsel help his case or destroy that of the opponent; that it does not have the advantage of observing the demeanour of witnesses and making not only an evaluation of each separate testimony, but also an overall one of the testimony of all witnesses and a comparison of their respective demeanours; that having listened to the address of learned Counsel for the appellant, it has not been persuaded that there are reasons justifying any interference with the findings of fact based on the credibility of the witnesses; and that, accordingly, the appeal must fail.

*Appeal dismissed.*

**Appeal.**

Appeal by plaintiff against the judgment of the District Court of Limassol (Chrysostomis, P. D. C.) dated the 21st December, 1983 (Action No. 3029/80) whereby her action for damages for the personal injuries she suf-

ferred as a result of the alleged negligence of the defendant was dismissed.

*P. Pavlou*, for the appellant.

*D. Michaelidou (Miss)*, for the respondent.

5 A. LOIZOU J. gave the following judgment of the Court. This is an appeal against the dismissal of the appellant's claim by which she was seeking to recover damages for the personal injuries she suffered as a result of the alleged negligence of the respondent.

10 The appellant, a 63 year old unskilled labourer, was a passenger in the bus of the respondent, under Reg. No. TEZ 235 which, in the afternoon of the 4th August, 1975, stopped along Monemvasias street at Ayios Athanassios Housing Estate in Limassol for the purpose of passengers  
15 alighting therefrom.

It was the case for the appellant that when the bus stopped so as to enable her and other passengers to alight, the respondent started off and the appellant, who was in the process of alighting, lost her balance and fell off onto  
20 the ground and was injured.

No doubt, a driver—and at that a bus driver—is duly bound, as a prudent and reasonable person, to make sure that the passengers duly alighted and have cleared safely from his vehicle before he starts off. This was the very  
25 issue before the learned President which had to be resolved on the evidence adduced and on the basis of which he concluded that the respondent could not be held liable in the circumstances.

In fact, the learned President, after dealing at some  
30 length with the evidence adduced and after giving his reasons as to why the testimony of this or that witness was or was not accepted by him, made the following findings:

35 “(a) The bus driven by the defendant stopped as indicated on exh. 2, so that the plaintiff, Andri Christodoulides, Chrysoulla and other passengers would get off.

- (b) Andri Christodoulides and Chrysoulla got off before the plaintiff and proceeded to cross the road in order to go home in front of the bus and very close to it. The bus was idle and remained idle even at the time when the plaintiff started alighting backwards. 5
- (c) The plaintiff whilst alighting lost her balance and fell off the bus onto the pavement at point "X" which was indicated by the plaintiff and to which the defendant later on agreed. That point "X" was the point where the plaintiff fell, is also supported from the evidence of Andri Christodoulides and Katerina Michael who soon after her fall saw her lying there. 10
- (d) The plaintiff did not fall off the bus because the bus moved in any way at the time; on the contrary the bus was idle at all material times. 15

In the light of my findings, I have arrived at the conclusion that the plaintiff has failed to prove negligence on the part of the defendant. On the contrary her fall was solely due to the fact that she lost her balance whilst alighting from the bus. For these reasons this action must be dismissed." 20

It would be superfluous to repeat the general principles of Law governing the extent of this Court's interference with findings of fact based on the credibility of witnesses. Indeed we are at a disadvantage vis a vis a trial Judge, as what we get here is the record and the address of counsel who invites our attention to the particular parts that may in the view of counsel help his case or destroy that of the opponent. We do not have the advantage of observing the demeanour of witnesses and making not only an evaluation of each separate testimony, but also an overall one of the testimony of all witnesses and a comparison of their respective demeanours. 25  
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Having listened carefully to the address of learned

counsel for the appellant, we have not been persuaded that there are reasons justifying any interference with the findings of fact based on the credibility of the witnesses.

5 For all these reasons, the appeal is dismissed with costs.

*Appeal dismissed  
with costs.*