1985 January 24

[SAVVIDES, STYLIANIDES, PIKIS JJ.]

CHRISTAKIS PANTELIDES,

Appellant-Plaintiff,

v.

ANNA MURPHY AND ANOTHER,

Respondents-Defendants.

(Civil Appeal No. 6657).

Negligence—Road accident—Apportionment of liability—Appeal—Principles on which Court of Appeal acts—Collision at T-junction—Side road—Major road—Side road driver inching into major road and immobilizing her car at a time when major road driver was engaged in overtaking a lorry which was found about 100 metres from the junction—Major road driver continued occupying the right hand side of the road after the overtaking and collided with the side road car whilst immobilized as above—Apportionment of liability, 85% on the major road driver and 15% on the side road driver, sustained.

Damages—Special damages—Motor vehicle damaged in a collision—Depreciation—Damages for—Evidence — Motor car dealer with long experience—Rightly considered as capable of giving evidence even though he was not an expert.

The accident which gave rise to this appeal occurred on a "T" junction formed by a side road and a major road. Appellant defendant 1 ("the defendant") was driving his car along the side road intending to turn to the right in the major road and the appellant-plaintiff ("the plaintiff") was driving his car on the major road. The trial Judge found that the corner of the side road was a blind corner in the sense that there were buildings on both sides restricting the visibility into the major road; that inching her way into the major road the defendant

immobilized her car therein and its front nearside part and its front offside part were 6 feet and 4 feet, respectively, inside the major road in relation to the immaginary line of the junction; that the visibility of the defendant whilst at this position on either side was ample and her visibility towards the north was about 200 metres; that at the same time the plaintiff was driving his car along the major road towards the south and was engaged in overtaking a motor lorry when such lorry was found about 100 metres away in relation to the junction; that in so doing the plaintiff occupied the offside of the road and continued driving his car along the same side of the road even after the overtaking; that whilst the plaintiff was so driving, his car keeping always the right hand side of the road and the car of the defendant was always at a stationary position, a collision occurred. On these findings the trial Judge held that the plaintiff's conduct in occupying the offsite of the road with intent to overtake the unkown motor lorry and the overtaking of such lorry at a time when the defendants' car was found at a stationary position, occupying part of the major road which position was visible at the time of the overtaking, and his failure to have a proper look out or reoccupy the proper side of the road immediately after the overtaking, was the main cause of the accident. At the same time the defendant ought to have taken into account the possibility of others being careless and thus she should have inched her way out as she did but she should have stopped with only the tip of her car's bonnet showing as an indication to any traffic using the major road of her presence. On the basis of these conclusions the plaintiff was held liable for the accident to the extent of 85% and the defendant to the extent of 15%.

Upon appeal by the plaintiff it was mainly contended:

(a) That the findings of the trial Judge that the appellant was negligent and that he was to blame to the extent of 85 per cent were erroneous and not warranted by the evidence before it.

(b) That the amount of £100.— which was awarded for depreciation of the car, was unwarranted by the evidence in view of the fact that the trial Judge

mentioned in his judgment that the witness who testified in this respect was not an expert assessor.

Held, (1) that the findings of the trial Judge as to how the accident occurred were warranted by the evidence accepted by the trial Judge; that it is primarily the task of the trial Judge to assess and apportion liability between the parties and this Court will only interfere if such apportionment is wrong in principle or unwarranted by the evidence before the trial Judge; that in the circumstances of the present case, this Court has not been persuaded that there is room for interfering with the apportionment of liability as found by the trial Judge; and that, accordingly, contention (a) must fail.

(2) That though the trial Judge did not consider the witness who testified on the question of depreciation as an expert he considered him as capable of giving evidence due to his long experience as a motor-car dealer; that the damages awarded in this respect were reasonable and it was open to the trial Judge to find as he did; accordingly contention (b) must, also, fail.

Appeal dismissed.

Cases referred to:

Sofocleous and Another v. *Georghiou and Another* (1978) 1 C.L.R. 149 at p. 161;

Dieti v. *Loizides* (1978) 1 C.L.R. 233 at p. 242;

Papadopoulos v. *Pericleous* (1980) 1 C.L.R. 576 at p. 579;

Municipality of Nicosia v. *Kythreotis* (1983) 1 C.L.R. 669;

Tavellis v. *Evangelou* (1984) 1 C.L.R. 460.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Eleftheriou, D.J.) dated the 11th November, 1983 (Action No. 4136/82) whereby he was adjudged to pay to defendants No. 2 the sum of £216.07

as damages caused to their car as a result of a road traffic accident.

Chr. Pavlou, for the appellant.

G. Erotokritou,. for the respondents.

SAVVIDES J. gave the following judgment of the Court. The appellant who was the plaintiff in Action No. 4136/82 in the District Court of Limassol, appeals against the amount of damages adjudged in favour of respondents 2, defendants 2 in the action (hereinafter to be referred as "defendants 2"), on the latter's counterclaim in respect of damage caused to their car as a result of a road traffic accident. The appeal is also directed against the apportionment of liability between the parties.

The trial Court found both the appellant and defendant 1 who, at the material time was driving a car belonging to defendants 2, to blame and apportioned their respective liability as 85 per cent on the appellant and 15 per cent on defendant 1. On the basis of such apportionment the trial Court gave judgment in favour of the appellant on his claim against both defendants in the sum of £61.91 with costs and in favour of defendants 2 on their counterclaim, in the sum of £216.07.

It is the contention of the appellant that the apportionment of liability was wrong and that he should not be found liable at all. He further contests the finding of the trial Court in respect of the following items of special damages to the car of defendants 2:

(a) A sum of £100.— for depreciation in the market value of the car.

(b) A sum of £40.— for loss of use of the car.

The defendants, on the other hand, filed a cross-appeal against the apportionment of negligence, contending that the appellant is wholly to blame.

The salient facts of the case are briefly as follows:

The accident which gave cause to this action occurred in Limassol in the afternoon of 30.4.82 on a "T" junction

formed by Menearchou Street, a side road, which adjoins First of April Street, a major road. The corner of Menearchou Street is described by the learned trial Judge, as a blind corner, in the sense that there are buildings on both sides restricting the visibility into First of April Street. Defendant 1 was driving motor-car MT 429 along Menearchou Street, in the course of his employment with defendants 2, intending to turn to the right in First of April Street, where as the appellant was driving his car XPE 238 S along First of April Street and was in the process of overtaking a motor lorry which was travelling in the same direction. The collision occurred whilst the car driven by defendant 1 was in such a position within First of April Street, that its front nearside part and its front offside part were 6 feet and 4 feet respectively inside the road and in relation to the imaginary line of the said junction.

The learned trial Judge after hearing the parties and their witnesses in support of their respective versions as to the cause of the accident, accepted the version of defendant 1 as the true one, and rejected that of the appellant, and found as follows:

> "Therefore, the true facts of the present case as I find them are the following:
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> The defendant No 1, had some time prior the occurence of the collision, inched her way into the First of April street and stopped her car at the position particularly exhibited and lettered 'E' on the sketch, exhibit No. 1, in order to turn right into the First of April street and follow the direction towards Limassol. She immobilized her car at that position in view of the existence of traffic along the said street, amongst which the plaintiff's car was included. The visibility of the defendant whilst at this position on either side was ample and her visibility towards north was about 200 metres, extending thus upto the nearby corner. At the same time the plaintiff was driving his said car along the First of April street with direction towards south and was engaged in overtaking an unknown motor lorry when such lorry was found

about 100 metres away in relation to the junction. The plaintiff in so doing occupied the offside of the road and continued driving his car along the same side of the road even after the overtaking. From this position of the plaintiff at the material time, he could have noticed the existence of the defendant's car had he had a proper look out. Whilst the plaintiff was so driving his car keeping always the right hand side of the road and the car of the defendants was always at a stationary position as mentioned hereinabove, a collision involving the front nearside of the defendants car and the front offside of the plaintiff's car took place at point 'X' of exhibit No. 1, and both vehicles sustained damages.

Having regard to the circumstances of the instant case and not ignoring the fact that the defendants' car was always found at a stationary position some time before the plaintiff was in the process of overtaking the unknown motor lorry that the plaintiff started overtaking the said motor lorry from a distance of about 100 metres in relation to the junction, that from such a point he was in position to notice the existence of the defendants' car on the road had he had a proper look out, that the plaintiff had ample visibility all along the way extending further than the junction, that the defendants' motor car was protruding into the First of April Street to the extent particularly referred to hereinabove, in the first instance the plaintiff should have never overtaken the unknown motor lorry and in the second after he had done so he should have kept the proper side of the road. Bearing always in mind the facts mentioned hereinabove, the plaintiff ignored the presence of the defendants' car on the road and started overtaking a motor lorry, thus occupying the offside of the road and after he had done so, continued occupying the same side of the road. In so doing he was executing a potentially extremely dangerous manoeuvre. To

embark on such a perilous operation calls for a very high degree of precaution indeed.

I hold the view that the plaintiff's conduct in occupying the offside of the road with intend to overtake the unknown motor lorry and the overtaking of such lorry at a time when the defendants' car was found at a stationary position, occupying part of the First of April Street, which position was visible at the time of the overtaking, and his failure to have a proper look out or reoccupy the proper side of the road immediately after the overtaking, was the main cause of the accident. At the same time the defendant No. 1, ought to have taken into account the possibility of others being careless and thus she should have inched her way out as she did but she should have stopped with only the tip of her car's bonnet showing as an indication to any traffic using the First of April Street, of her presence. I do not find myself, therefore, able to exonerate the defendant No. 1 from all responsibility for this accident and I have decided, to apportion the liability between the plaintiff and the defendants as follows:

(a) Plaintiff is 85 per cent to blame for this accident.

(b) Defendants are 15 per cent to blame for this accident".

It was the contention of counsel for the appellant that the findings of the trial Court that the appellant was negligent and that he was to blame to the extent of 85 per cent were erroneous and not warranted by the evidence before it. He submitted that the appellant was not to blame in view of the fact that defendant 1 had suddenly emerged in front of him whilst appellant was in the process of overtaking a lorry. Counsel went on to argue that assuming that the facts were as found by the trial Court, appellant's negligence was minimal.

Having fully considered the submission made by counsel for the appellant that the findings of the learned trial Judge as to how the accident occurred are erroneous, we

are of the view that such findings are warranted by the evidence accepted by the learned trial Judge and we reject his submission.

As to the apportionment of liability, the principles as to when this Court will interfere with the apportionment as found by a trial Court, are well settled and have been expounded in a series of case law of this Court, such as, inter alia, *Sophocleous & Another* v. *Georghiou and Another* (1978) 1 C.L.R. 149, 161, *Dieti* v. *Loizides* (1978) 1 C.L.R. 233, 242, *Papadopoullos* v. *Pericleous* (1980) 1 C.L.R. 576, 579, *The Municipality of Nicosia* v. *Kythreotis* (1983) 1 C.L.R. 669, *Tavellas* v. *Evangelou*, Civil Appeal 5702 (not yet reported). * It is primarily the task of the trial Court to assess and apportion liability between the parties and this Court will only interfere if such apportionment is wrong in principle or unwarranted by the evidence before the trial Court. In the circumstances of the present case, we have not been persuaded that there is room for interfering with the apportionment of liability as found by the learned trial Judge and bearing in mind the fact that in the course of the hearing of this appeal, counsel for respondents has abandoned his cross-appeal, we have not called upon him to address us.

As to the complaint of counsel for the appellant that the amount of £100.— which was awarded for depreciation of the car, is unwarranted by the evidence in view of the fact that the learned trial Judge mentioned in his judgment that the witness who testified in this respect was not an expert assessor, we find ourselves unable to agree with him. We have carefully considered the evidence before the learned trial Judge and his judgment, which in this respect is not happily worded, but in the light of his ruling whilst such witness was giving evidence, we find that though the learned trial Judge did not consider him as an expert assessor, nevertheless, on the question of depreciation, he considered him as capable of giving evidence due to his long experience as a motor-car dealer. We find that the

* Now reported in (1984) 1 C.L.R. 460

damages awarded in this respect were reasonable and that it was open to the learned trial Judge so to find.

Counsel for the respondents conceded that in the light of the evidence accepted by the trial Court, the special damages for loss of use of the defendants' 2 car ought to be reduced to five days at £5.— per day and, therefore, the award of the Court should be reduced accordingly to £25.— instead of £30.—. On the basis of the apportionment of liability this amount has to be reduced by 15 per cent. Therefore, the award in favour of the respondents should be reduced by £12.75 (£25.— less 15 per cent, instead of £40.— less 15 per cent awarded).

In the result the appeal is dismissed, subject to the above deduction from the judgment on the counterclaim. The cross appeal is also dismissed as abandoned.

As to costs, in the circumstances of the present case and bearing in mind the outcome of the appeal and cross-appeal, we allow one-third of the costs, in favour of the respondents.

Appeal and cross-appeal dismissed.
Order as to costs as above.