1985 December, 16

[A. LOIZOU, SAVVIDES, PIKIS, JJ.]

STELIOS P. PARMAXI AND ANOTHER,

Appellants-Defendants,

v.

GEORGHIOS KATSIOLA,

Respondent-Plaintiff.

(Civil Appeal No. 6774).

Negligence—Contributory negligence—Apportionment of liability—Road accident—Lorry turning right to enter a side street, while a motorcyclist attempted to overtake it—Driver of lorry indicated with his trafficator his intention to turn to the right, but failed to look before doing so—Driver of lorry did not see the motorcyclist—The trial Court held that the driver of the lorry was to blame for the accident to the extent of one third and the motorcyclist to an extent of two thirds—Appeal and cross-appeal dismissed.

Personal injuries—General damages—Award of £2,500—Fracture of left wrist involving the wrist joint, depressed fracture of 3rd and 4th dorsal vertebrae, contusion of right chest, abrasions, permanent operative scar over the left wrist 7 cm long, mild stiffness over the left wrist in extension and flexion, occasional aching in cold weather or after prolonged heavy lifting by the use of left hand and future development of post-traumatic osteoarthritis of the left wrist and dorsal spine—Said award on the low side but not so manifestly low as to justify interference by this Court.

Credibility of witnesses—Findings of facts based on credibility of witnesses—An Appellate Court is disinclined to interfere—Unless the findings are arbitrary or arrived at in disregard of evidence and without proper evaluation of same.

Primary facts—An Appellate Court is in an equally good position to draw the proper conclusions therefrom.

A motor lorry and a motorcycle collided on a 4-lane road as the driver of the former, i.e. the appellant-defendant, was in the process of turning right in order to enter a side street, while the motorcyclist, i e the respondent-plaintiff, attempted to overtake the lorry.

There was considerable conflict between the versions given by the two drivers. The trial Judge did not say which of the two versions he had accepted as the true one, apparently because he approached the matter from the angle that neither version as regards the issue of liability and to a certain extent the issue of general damages could be accepted completely. It appears that the trial Judge, after stripping the evidence of the two sides of their trimmings and exaggerations, he accepted so much of the testimony of each side as it emerges from the findings of fact made by him and the inferences drawn therefrom.

The trial Judge accepted as a fact that the appellant indicated with his trafficator that he would turn to the right, but he did not accept that the appellant had looked before turning to the right.

The trial Judge held that the appellant was liable to the extent of one third for the said collision and the respondent to the extent of two thirds.

The trial Judge found also that by reason of the said collision the respondent sustained the following injuries, namely fracture of the left wrist involving the wrist joint. contusion of right chest, abrasion over · the dorsum of both hands and left knee, depressed fracture of 3rd and 4th dorsal vertebrae. The trial Judge further found that the respondent will be left with a 7 cm long operative scar over the left wrist, mild stiffness over the left wrist in extension and flexion, occasional aching in cold weather or after prolonged heavy lifting by the use of the left hand and that in the future he will develop post-traumatic osteoarthritis of the left wrist joint and dorsal spine.

The trial Judge assessed the general damages on a full liability basis at £2,500.

Defendant 1 appealed against the whole judgment and the plaintiff cross-appealed both against the above apportionment of liability and against the award of general damages.

Held, dismissing the appeal and cross-appeal, Pikis, J. dissenting:

(1) An appellate Court is disinclined to interfere with the findings of fact based on the evàluation of the credibility of witnesses, unless they are arbitrary or arrived at in disregard of the evidence and without proper evaluation of the same. The position, however, is different respecting inferences from primary facts, as they are matters of logic, common sense and experience of life and an Appellate Court is in an equally good position to draw the proper conclusions therefrom.

(2) The aproach of the trial Judge was correct. An Appellate Court does not judge the style but the substance of judgments and it is enough if they present the issues and give reasons for the conclusions arrived at. The trial Judge made clear findings as to the facts that led to the collision and stated the inferences he drew therefrom. He also properly directed himself as to the principles of law pertaining the issues.

(3) Though the amount awarded by way of general damages is rather on the low side, it is not so manifestly low that this Court should interfere to increase the amount.

Appeal dismissed with costs. Cross-appeal dismised with no order as to costs.

Cases referred to:

Nance v. *British Columbia Electric Railway Co. Ltd.* [1951] 2 All E.R. 448;

Constantinou v. *Stavros Katsouris and Another* (1975) 1 C.L.R. 188;

Xenophontos and Another v. *Anastassiou* (1981) 1 C.L.R. 521;

Jones v. *Livox Quarries Ltd.* [1952] 2 Q.B. 608;

Papadopullos v. *Stavrou* (1982) 1 C.L.R. 321;

Constantinou v. *Police* (1984) 2 C.L.R. 458;

Pioneer Candy Ltd. v. *Tryphon & Sons* (1971) 1 C.L.R. 440;

Neophytou v. *Police* (1981) 2 C.L.R. 195.

Appeal.

Appeal by defendants against the judgment of the District Court of Limassol (Korfiotis, D.J.) dated the 29th May, 1984 (Action No. 3686/81) whereby they were adjudged to pay the plaintiff the sum of £1,126.55 cent as general and special damages for injuries sustained by him as a result of a traffic accident.

A. Haviaras with *C. Demetriades*, for the appellants.

P. Schizas with *P. Charalambides*, for the respondent.

Cur. adv. vult.

The following judgments were read:

A. LOIZOU J.: By the present appeal the whole of the judgment given by a Judge of the District Court of Limassol (Korfiotis D.J.) in a collision case between a motorcycle and a motor-lorry, is challenged on the following grounds:

"1. The decision of the trial Court was erroneous in that the decision is not warranted by the evidence adduced.

2. The apportionment of liability of the trial Court was erroneous in that it was against the weight of evidence.

3. The trial Court erred in apportioning liability as it did as on the evidence adduced and on the legal principles governing liability and contributory negligence the plaintiff was totally to be blamed.

4. The trial Court was wrong in not holding that the sole cause of the accident was the plaintiff's un-

lawful use of the wrong side of the road at a time that, the plaintiff himself admitted, the defendant was indicating that he was about to turn right and/or the learned Judge failed sufficiently to weigh these and other factors when considering the apportionment of blame.

5. The trial Court drew wrong and arbitrary inferences from the evidence and/or relied and/or gave wrong and unsatisfactory reasons for its inferences or conclusions."

On the other hand the respondent-plaintiff gave Notice under the Civil Procedure Rules, Order 35 rule 10, that the decision of the trial Court be varied. In effect that much of the said judgment as adjudged that the plaintiff was responsible in part for the accident to the extent of two thirds of the blame should be varied to such lesser proportion as may be just and that the general damages should be varied to such a higher figure as may be just inasmuch as the learned trial Judge failed to consider that the plaintiff as a result of the accident is a hunchback.

As it has become apparent already from the grounds of appeal hereinabove referred to, in apportioning liability, the learned trial Judge found that the respondent-plaintiff was to blame by 2/3 and that the appellant-defendant No. 1, by 1/3. He then assessed the general damages at £2,500 on a full liability basis, added thereto the agreed special damages, and judgment was entered against the appellant-defendant 1, for the amount of £1,126.55 cents, interest 6% per annum as from the 29th May, 1984, to payment and £368.48 cents costs.

The circumstances of the collision in question that gave rise to the claim of the respondent-plaintiff for general and special damages were related in evidence at the trial by the two drivers in the version of which there was considerable conflict on crucial issues and by the Police Constable who visited the scene of the accident and after taking the necessary measurements prepared a sketch marking thereon the alleged point of impact.

The learned trial Judge in his extensive judgment gave

first the respective versions of the two drivers, which are these:

The respondent-plaintiff said that at 6:30 a.m. of the 7th April 1981, he was proceeding on his motor-cycle under Registration No. KY 615 along Omonia Avenue, a four lane road in Limassol, that is the direction to the sea, and that motor-lorry under Registration No. LZ 374 driven by the appellant-defendant No. 1, was proceeding to the same direction ahead of the motor-cycle. The respondent-plaintiff on seeing it, noticed that its trafficator was signalling that it would turn right but it went on for a long distance without doing so, keeping on the left lane instead of the right one, since he would turn right. The motor-cyclist then started overtaking the motor-lorry but all of a sudden as he claimed the lorry driver turned sharply to the right and hit the motor-cycle throwing him off it and causing to him personal injuries and damage.

On the other hand the appellant-defendant 1, said that at the material time he was proceeding in the direction already mentioned approaching the junction of Omonia Avenue with Elioupolis street and having indicated with his trafficator that he intended to turn right in the side street, he took to the centre of the road and started in a regular manner to turn right. When he had almost completed his effort to turn right the motor-cyclist who was following him tried to overtake him negligently and without consideration of the consequences and as a result thereof he hit violently on his motor-lorry.

The learned trial Judge then referred to the much quoted in judgments on traffic collisions case of *Nance* v. *British Columbia Electric Railway Co. Ltd.*, [1951] 2 All E.R. 448 and said that the principle stated therein, that people on highways moving in relation to one another as to involve risk of an accident each owes a duty to the other to move with due care, was sound and applied to all road avenues motor-ways etc. He referred then to the case of *Constantinou* v. *Stavros Katsouris and Another* (1975) 1 C.L.R. 188, which was in respect of a collision between vehicles moving in the same direction and quoted from the judgment of Triantafyllides P., from p. 192, the following passage:-

"Having that in mind, we cannot resist the practically inevitable inference that had the respondent driver of car No. CB 109 been keeping at all material times—(and not only when he looked momentarily, at some stage, in his rear view mirror)—a proper lookout as regards other traffic approaching from behind, when he was to turn sharply across the road to his right, he ought to have noticed, in time, before he turned right, the car of the appellant which was following him; it is correct that the respondent driver signalled with his hand and with a trafficator that he was about to turn right, but this cannot, in our view, exonerate him completely from blame. The duty to keep a proper lookout is one that is cast on all drivers at all times and in all circumstances".

The learned trial Judge then stated the facts of the case in respect of which there was no disagreement between the parties and then made his finding as follows:

"From the totality of the evidence and the sketch I find that the plaintiff proved that defendant 1, was negligent for the following reasons:

Defendant 1, alleged that before he turned into Elioupolis street indicating with his trafficator that he intended to turn right into Elioupolis street, he took to the centre of the road and turned regularly having, before turning, looked and not seen the motor-cyclist. When he almost completed the turn the motor-cyclist tried to overtake him and fell on his motor-lorry. If the allegation of defendant No. 1 was true that he took in time to the centre of the road and was indicating that he would turn right taking into consideration the dimensions of Omonia Avenue, the motor-cyclist had sufficient space to overtake from the left whilst the defendant was turning right. Also if he looked as he alleged before turning he would have seen the motor-cyclist.

Taking into consideration the aforesaid and the totality of the evidence, the sketch, the fact that defendant 1 was indicating with his trafficator that he

would turn right as he said, as stated also in the case of *Constantinou* v. *Katsouris* (supra) this cannot exonerate him completely from blame in my view.

In the case of *Xenophontos and Another* v. *Anastassiou* (1981) 1 C.L.R. 521 at p. 523, *HadjiAnastassiou J., said:*

'Time and again it has been said in a number of cases that where the defendant is negligent and the plaintiff is alleged to have been guilty of contributory negligence, the test to be applied is whether the defendant's negligence was, nevertheless a direct and effective cause of the misfortune. The existence of contributory negligence does not depend on any duty owed by the injured party to the parties sued, and all that is necessary to establish a plea of contributory negligence is to prove that that injured party did not in his own interest take reasonable care of himself and contributed by his want of care to his own injury.

The principle involved is that, where a man is part author of his own wrong, he cannot call on the other party to compensate him in full. The standard of care depends upon foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that if he did not act as a reasonably prudent man he might hurt himself. The plaintiff is not usually bound to foresee that another person may be negligent, unless experience shows a particular form of negligence to be common in the circumstances.'

In Jones v. *Livox Quarries Ltd.*, [1952] 2 Q.B. 608, Denning, L.J. as he then was, dealing with this very same point, said at p. 615:-

'Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable prudent man, he might be hurt himself;

and in his reckoning he must take into account the possibility of others being careless'.

In the circumstances and taking into consideration all the facts of the case, I find that the liability of the plaintiff for contributory negligence comes to a percentage of 2/3."

The learned trial Judge dealt then at length with the issue of general damages, both from the point of view of the evidence adduced, which was mainly that of the two orthopaedic surgeons, Dr. Andreou and Dr. Georghiou, called by the respective sides, whose findings and opinions were set out in full in the judgment and with a number of comparable awards to be found in decided cases. He then made the following findings:

"From a consideration of the evidence of Doctors K. Andreou and E. Georghiou there appears to exist a difference as regards certain findings relevant to the injuries suffered by the plaintiff, namely Dr. Georghiou said that the possibility of plaintiff becoming a hunchback is remote. Another difference is for the future consequences. Dr. Andreou mentioned that the fractures were intrarticular and he will develop post-traumatic osteoarthritis of the left wrist joint and his dorsal spine in the future. Dr. Georghiou says nothing about this probability. The Court having studied carefully the whole of the evidence, finds that the plaintiff suffered:-

a) Fracture of the Lt. wrist involving the wrist joint.

b) Contusion of Right chest.

c) Abrassions over the dorsum of both hands and Lt. Knee.

d) Depressed fracture of 3rd and 4th dorsal vertebrae. Treatment manipulation of broken wrist plaster, immobilization, bed rest, analgesics, physiotherapy. Sick leave 7.4.81 to the 7.7.81.

On 19.11.82 his condition was as follows:

7 cm operative scar anteriorly of left wrist.

Mild restriction of flexion and extension movements of Left wrist, not more than 20 of the normal range. There is no deformity over the wrist joint.

Movements of the fingers as well as grip. power appear satisfactory.

Spinal movements full and painless.

Prominence over the Right chest wall.

X-Rays confirmed the above described fractures, completely healed, in satisfactory anatomical position. Presence of a metal screw over the lower end of radius.

The patient's accident resulted to injuries. the worse being the fracture left wrist and to a lesser degree the spinal injury as described above.

The fractures have completely healed by now, leaving mild stiffness to Left wrist in extension-flexion movements. As a result of the accident the patient will be left with:

a) 7 cm long operative scar over the Left wrist.

b) Mild stiffness over the Left wrist in extension and flexion.

c) Occasional aching in cold weather or after prolonged heavy lifting by the use of the Left hand.

d) In the future he will develop postraumatic osteoarthritis of the Lt. wrist joint and his dorsal spine."

He then assessed the general damages at £2,500.

On the totality of the evidence adduced and having listened to the able arguments advanced on both sides, I have come to the conclusion that the findings of the learned trial Judge and the inferences drawn therefrom regarding the issue of liability and its apportionment between the parties was duly warranted by the evidence adduced. Indeed I have not been persuaded that there are sufficient grounds justifying my interference on appeal with either the findings based on the credibility of witnesses or the inferences drawn therefrom.

It is indeed well settled that findings of fact based on the evaluation of the credibility of witnesses is the province of trial Courts and that an Appellate Court is disinclined to interfere with them unless it appears that they are arbitrary or arrived at in disregard of the evidence and without proper evaluation of same. (Inter alia, see *Papadopoullos* v. *Stavrou* (1982) 1 C.L.R. p. 321 and *Constantinou* v. *Police* (1984) 2 C.L.R. p. 458).

The position, however, is different respecting inferences drawn from primary facts, as they are matters of logic, common sense and experience of life and an Appellate Court is in an equally good position to form an independent opinion, and draw the proper conclusions from a finding of primary facts.

In the present case the learned trial Judge clearly approached the matter that the version of neither side, as regards the evidence of the issue of liability and to a certain extent as to general damages, could be accepted completely. From the tenor of his judgment it appears that after stripping the evidence of the two sides and in particular that of the two drivers, of their trimmings and exaggerations which were added by them in order to serve their respective interests and he reduced them to the real situation, he accepted so much of the testimony of each side as it emerges from the findings of fact made by him and the inferences drawn therefrom. It is apparently for this reason that he could not say which of the two versions he had accepted as the true one.

This is a correct approach and it is unnecessary for me to say more than that. We are here on appeal not to judge the style but the substance of judgments and it is enough if they present the issues of the case and give reasons for the conclusions arrived at. (See *Constantinou* v. *The Police* (1984) 2 C.L.R. 458.)

The learned trial Judge made in my view, clear findings as to the facts that led to the accident and he stated precisely the inferences he drew therefrom. He properly directed himself as to the principles of law pertaining to the issues raised by referring to decided cases from which he

quoted the relevant passages and with which principles I fully agree.

Regarding the assessment of general damages, although one might possibly say that the amount is on the low side, I do not think that it is such as to justify interference by this Court on appeal in the light of the factual aspect of the case and the findings made.

For all the above reasons the appeal should be dismissed with costs against the appellant, as the Notice to vary the judgment which as seen should also fail and should be dismissed accordingly, has in no way added to the costs of this appeal.

SAVVIDES J.: This is an appeal from the judgment of a District Judge of Limassol, on a claim arising out of a collision between a motor cycle and a motor lorry, whereby both drivers were found to blame. Appellant-defendant 1, the lorry driver, to the extent of one-third and respondent-plaintiff, the motor cyclist, to the extent of two-thirds.

On the question of damages and in the light of the medical evidence before him, the learned trial Judge assessed the general damages suffered by respondent-plaintiff, on a full liability basis, at £2,500.- and awarded one-third of such amount to the respondent-plaintiff, in addition to the one-third of the special damages.

The findings of the trial Court for negligence are challenged by the appellant on the grounds that they are unwarranted by the evidence, that the apportionment of negligence was wrong and that in the circumstances the respondent was solely to blame for the accident.

The respondent-plaintiff, on the other hand, by a notice of cross-appeal, contends that the percentage of negligence apportioned against them is excessive and that the amount of general damages awarded to him is manifestly low.

I find it unnecessary to go into detail to the facts of the case on the findings of the trial Judge, as having been explicity narrated by my brother Judge A. Loizou, in his judgment and a repetition of same would be superfluous.

I am of the opinion that from the whole tenor of the

judgment of the learned trial Judge, there is a full narration of the circumstances surrounding the accident and a sufficient analysis of the evidence before him as well as a statement of the facts accepted and relied upon by him in making his finding as to liability and apportionment of blame. There is no doubt that there cannot be a uniform style or similar technique in the drafting of judgments by Judges. I am not going to express an opinion or make any comments as to the style of his judgment, once from its contents and the way the learned trial Judge expressed himself, I find that there is sufficient material to enable me, as an appellate Judge, to test the correctness of his findings.

I am in full agreement with my brother Judge A. Loizou that the findings of the learned trial Judge on inferences drawn therefrom regarding the issue of liability and its apportionment between the parties, was duly warranted by the evidence adduced. I have not been persuaded that either the findings of the trial Court, or the inferences drawn therefrom, are either wrong or arbitrary or unwarranted by the evidence accepted by him so that this Court should interfere to disturb it.

In the result, I agree that this appeal fails and should be dismissed. This disposes also of the notice of cross-appeal on the issue of the apportionment of blame between the two drivers.

As to the quantum of general damages though I feel that the amount awarded is rather on the low side of the scale, I have not been persuaded that such assessment is so manifestly low that this Court should interfere to increase the amount. Therefore, the cross-appeal fails.

PIKIS J.: A motor-lorry and a motor-cycle collided on a 4-lane road as the driver of the former was in the process of turning right crossing the opposite side of the road in order to enter a side street, while the motor-cyclist attempted to overtake the lorry. The plan sketching the scene and recording the marks of the accident indicates the collision occurred beyond the middle of the road on the third lane as one counts from left to right along the direction followed by the parties involved in the collision. The rival versions advanced by the parties before the Court as to the events

that preceded the collision were not resolved except indirectly by the verdict of the Court finding both to blame, apportioning liability between them at the ratio of 2/3 to 1/3 respectively. Evidently the Judge took the view that the main fault for the accident lied with the motor-cyclist who attempted to overtake the lorry at a time when it was unsafe to do so considering the position of the lorry on the road and the manifestation of the intention of the lorry driver to turn right by signalling with his trafficator. This, I repeat, we can infer from the verdict of the Court. Less easy to discern is that part of his verdict attributing liability to the lorry driver. The motorcyclist alleged in evidence that the trafficator of the lorry was on for some time, a fact that misled him as to the intention of the lorry driver respecting the route he would follow; this coupled with the uncertain position of the lorry on the road, led him to mistake his intentions. Because of this mistake he assumed it was safe to overtake the lorry and attempted to do so at a time when it proved a dangerous exercise. The lorry driver, on the other hand, maintained the position of his car on the road and the making of a signal that he would turn right could have left no one in doubt as to his intentions.

The conflict of evidence was not resolved by findings of fact indicating what preceded the collision except indirectly by the verdict of the Court. It is obvious from the tenor of the judgment of the Court that the case of *Constantinou* v. *Katsouris*(1) influenced the decision to attribute liability to the lorry driver. However, the above case did not introduce or established any new rule for the determination of liability in road accidents. All it decided was that signification of a driver's intention to turn right does not exhaust a driver's duty to other users of the road. Depending on the surrounding circumstances, he may be found liable in negligence for an accident that occurs in the process of turning in the direction signified. Obviously much depends on the notice given of the intention to turn in any particular direction, the proximity of a vehicle following and the opportunity that the driver intending to turn right has to alter his course in view of the position of other

(1) (1975) 1 C.L.R. 188.

users of the road. If the case of *Constantinou* decided anything it is this: No single fact surrounding a road accident can be viewed in isolation. The sum total of the facts must be examined in order to determine the respective duties of the drivers involved and the failure, if any, to discharge them. Consequently, reference to the decision of *Constantinou* did not fill the gap left by the failure of the Court to find the facts that preceded the accident.

Article 30.2 of the Constitution requires that the judgment of a Court of law be duly reasoned. Due reasoning of judicial pronouncements is, under the Constitution, a fundamental attribute of the judicial process. The reasoning of a judicial decision is the process whereby the verdict of the Court is justified by reference to the findings of fact and the law applicable to those facts. The requirement of due reasoning is not satisfied by recounting the conflicting versions advanced before the Court or by merely commenting on the rival versions. What amounts to due reasoning was succinctly defined in the case of *Pioneer Candy Ltd.* v. *Tryphon & Sons*(1). For a judgment to be duly reasoned it must contain:

"(a) An analysis of the evidence adduced in the light of the issues as arising and defined by the pleadings;

(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 a subsequent decision, namely, *Neophytou* v. *Police*(2) we adverted to the requirements of due reasoning in a road accident collision. It is, we stated, of the first importance that there should be clear findings as to the events that preceded and led to the collision. In the absence of such findings it is impossible to determine whether one's driving was careless. That in *Neophytou* we were dealing with a criminal charge of negligent driving makes no difference, the principles referred to in that case are equally re-

(1) (1981) 1 C.L.R. 440.
(2) (1981) 2 C.L.R. 195.

levant and applicable to the determination of liability in a civil action for negligent driving.

The failure of the Judge to make findings as to the events that preceded and led, as a matter of causation, to the collision makes the verdict of the Court as to liability and apportionment of it unsafe as well as unsatisfactory. For that reason it must be set aside. A new trial must be ordered to illuminate the background to the collision as a necessary prerequisite for the determination of liability. This being my conclusion, I consider it unnecessary to examine the cross-appeal against the quantum of damages, an issue interwoven with the findings of the Court on liability. That issue too must be resolved at the new trial.

For the above reasons I am disposed to allow the appeal and order a new trial.

A. Loizou J.: In the result, the appeal is dismissed with costs. The cross-appeal is also dismissed with no order as to costs.

Appeal dismissed with costs. Cross-appeal dismissed with no order as to costs.