1985 February 19

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

CHRISTAKIS TSIALIS,

Appellant-Defendant,

v.

ALECOS ARGYRIDES AND ANOTHER,

Respondents-Plaintiffs,

(Civil Appeal No. 6667).

Negligence — Road accident — Collision during overtaking — Whether there is need to hoot when overtaking a vehicle —Respondent's car taking to the right, in order to overtake a preceding car, without giving signal of his intention to do so—Apellant's car attempting to overtake respondent's car without taking notice of the attempt of the latter to overtake and without giving warning of his intention to do so himself—Apportionment of liability, one-third on respondent and two-thirds on appellant, upheld.

The appellant-defendant was driving his car on the Akaki-Kokkinotrimithia road following a pick-up vehicle driven by respondent-plaintiff No. 1 which in turn was following a van type vehicle. Respondent 1 started moving to the crown of the road for the purpose of overtaking and in fact he started overtaking the preceding van without giving a signal with his trafficator of his intention to overtake or looking in his reflecting mirror in order to make sure that no other car following him would attempt, also, to overtake. At that same time the appellant without hooting to the preceding car, started, also, to overtake, at a time when respondent 1 had taken to the crown of the road or he was almost there by a movement indicative of his intention to overtake the preceding car; and it was at that moment that the two vehicles collided at a point on the right-hand side of the road.

The trial Judge found that respondent 1 contributed

car. On the other hand the appellant was found negligent on the ground that he took no notice of the attempt of the pick-up vehicle to overtake and he gave no warning of his intention to do so himself.

No cross-appeal or appeal has been filed on behalf of the respondents against this apportionment of liability. That being so the outcome of this appeal should be taken as turning on the facts of this case and not as this Court accepting the apportionment of liability as laying down a general rule of conduct on the road. It may however, be said that there is no need to hoot when overtaking a vehicle which is going straight along the road, though it is otherwise if the overtaken vehicle makes a movement that should put the overtaking driver at enquiry. (See *Holdack* v. *Bullock* (1967) 109 S. J. 238). Reference may also be made to the case of *Challoner* v. *Williams and Groney* [1975] 1 Lloy's Rep. 124, C.A., where a preceding car moved into the centre of the road preparatory to turning right but did not see the following car that was overtaking. It was held, reversing the trial Judge who had found them equally liable that the driver of the overtaking car was wholly to blame. It has to be said, however, that that was a decision on the facts of that particular case as Lord Justice Megaw put the matter as follows at p. 126:

> "The Judge puts it, so far as Mr. Williams responsibility is concerned, in this way:
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> ...'Mr. Williams should therefore have exercised the greatest caution before driving his car onto his offside. He should have satisfied himself not only that there was no oncoming car, but also that there was no following car which might now overtake his slowmoving caravan. He should have paused longer and should have stopped before making the passage across the offside half of the road'.

I would not for one moment disagree with the view that one who is minded to turn his car across the road had got a duty, and a high duty, of care to

traffic that may be using that part of the road and may be inconvenienced or put in danger by the manoeuvre of the car turning across. That applies both to traffic coming in the other direction, with which one would normally primarily be concerned, and also with the possibility that someone may be seeking to pass the turning car, travelling in the same direction. But, in the circumstances here, I am afraid, with great respect to the learned Judge, that I am unable to see how it is suggested that it would have helped or increased safety in any degree if Mr. Williams had, as the Judge says he should have done, stopped before making the passage across the off-side half of the road. Of course he has a duty to look. Of course he has a duty to take all reasonable care to make sure that he is not inconveniencing something which may be coming outside him. But Mr. Williams, according to his own evidence, had so looked".

On the material before us and bearing in mind the principles of law governing the extent of the interference by this Court with findings of fact and with inferences drawn therefrom, we find no reason to interfere with the findings of fact made by the trial Court and the apportionment of liability, and we therefore dismiss the appeal with costs.

Appeal dismissed with costs.