1986 June 30

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

PANAYIOTIS CHARALAMBOUS AND ANOTHER,

Appellants-Defendants,

v.

STELIOS KAIFAS,

Respondent-Plaintiff.

(Civil Appeal No. 6713).

Evidence—Road traffic collision—Real evidence—Significance of.

Conflicting versions were advanced about the facts preceding and surrounding the collision in question in this case. The two vehicles were moving in opposite directions on the old Nicosia-Limassol road. Respondent maintained that appellant 1 drove the van, he was driving, into respondent's lane, whereas the version of the appellants was that respondent's lorry blocked the passage of the van.

The trial Judge made extensive reference to the conflicting testimony and tested its reliability by reference to the real evidence found at the scene and recorded on the plan made by the Police. He reached the conclusion that the point of impact was on the side of the lorry.

Counsel for the appellants complained that the trial Judge went too far in the use he made of the real evidence in that he did not confine his deliberations to inferences that can be drawn by a layman, but he assumed the role of an expert. He also complained that marks noted on the plan were taken at their face value, despite the absence of proper foundation for their connection with the collision. Finally, he was critical of the inferences drawn from the real evidence.

Held, dismissing the appeal: (1) The fact that the marks on the plan derived from the accident was not

disputed. This view is reinforced by the absence of any cross-examination on the subject. The trial Judge was right in holding that the marks were caused as a result of the collision.

(2) The significance of real evidence cannot be doubted. It may provide wholly objective evidence as to the direction of the vehicles, the point of impact and its repercussions. It does not of itself tell how an accident happened, but it provides excellent material for testing the credibility and accuracy of conflicting testimony with regard to the circumstances of an accident. The Court must confine the inferences drawn therefrom to those warranted by logic and common sense. In this case the trial Judge used such evidence as a yardstick for testing the credibility and reliability of the conflicting contensions of witnesses.

(3) In the absence of a plan to scale the Court must, no doubt, view markings of real evidence on the plan with caution lest inaccuracy in the placement of the points misleads the Court in its perception of the scene and the implications of the real evidence. In this case, however, the trial Judge did not derive his inferences *from the visual implications of marks of real evidence*, as sketched on the plan, but from their true position on the road, discernible from the measurements taken by the investigating officer.

(4) In the light of the evidence adduced it was open for the trial Judge to accept the version of the respondent.

Appeal dismissed with costs.

Cases referred to:

Meshiou v. *Eleftheriou* (1982) 1 C.L.R. 486;

Haloumias v. *The Police* (1970) 2 C.L.R. 154.

Appeal.

Appeal by defendants against the judgment of the District Court of Larnaca (Constantinides, S.D.J.) dated the 25th February, 1984 (Action No. 400/82) whereby they

were adjudged to pay to plaintiff the sum of £1650.- damage to his lorry as a result of a traffic collision.

P. Pavlou, for the appellants.

P. Kakopieros, for the respondent.

Cur. adv. vult.

A. LOIZOU J.: The judgment of the Court will be given by Pikis, J.

PIKIS J.: The issue in this appeal is the finding whereby appellants were found at fault for the collision between a van driven by appellant 1, for whose acts appellants 2 were held vicariously liable, and a lorry driven by the respondent. The collision occurred on the main Nicosia-Limassol road (the old road), between the 20th and 21st milestone. At the scene of the accident the paved part of the road had a width of 19 ft. Also there was a usable berm on either side of a width of 7 and 8 ft. respectively. The collision was by all accounts a violent one and the two vehicles were badly damaged, whereas appellant 1 and the passenger in his car were seriously injured.

The action before the District Court was raised by the respondent (plaintiff) for the recovery of damage to his lorry. Appellants contested the claim; and raised a counterclaim for the recovery of the damage to the van. A separate action was raised by appellant 1 for personal injuries that still awaits trial; as we were informed, it was left in abeyance pending the outcome of the present proceedings.

As it is often the case, conflicting versions were advanced about the facts preceding and surrounding the collision. The two vehicles were moving in opposite directions, the lorry heading towards Nicosia and the van towards Limassol. Respondent maintained the accident was precipitated by the negligent driving of appellant 1 who drove the van into his lane making it impossible for him to avoid the collision, notwithstanding the leftward swerve he gave to the lorry. The van strayed into his path, when only a short distance separated the two vehicles; sensing an imminent collision he swerved to the left in

a last minute effort to avoid it, albeit without success. The van continued on its stray course, colliding first with the front offside mudguard, then with the driver's outside view-mirror and lastly with the rear offside wheel of the lorry, scratching in the process the side of the lorry. Signs of friction were evident on the side of both vehicles. Damage on the lorry tended to confirm the impression of the lorry driver that there was violent collision with the front as well as the rear part of the lorry.

The case for the appellants respecting the circumstances of the accident was the opposite of that of the respondent. Their version as elicited in evidence was that the lorry blocked the passage of the van making the collision that followed unavoidable in view of the short distance between them. According to the evidence for the appellants, when the van got to the top of the uphill road and was the driver able to gain a view of the road ahead, he was confronted with the lorry blocking his way while simultaneously being streered leftwards, apparently in an effort on the part of the respondent to correct his course. In an attempt to avoid the collision he swerved leftwards but it was of no avail as he collided in the process with the rear offside wheel of the lorry. Appellant 1 lost control of the van that collided a second time with the front part of the lorry before it overturned.

The Police were notified of the collision and two members of the force were despatched to investigate the accident: A police sergeant who made a plan of the scene and collected material relevant to the investigation of the accident and a police photographer. On the arrival of the investigating officer, only the respondent was at the scene. Appellant 1 and his passenger were removed at the Hospital. Considerable effort had to be exerted to free them from the wreck of the van. They visited the scene a long time afterwards when their condition made it possible and indicated to the investigating officer the point where in their opinion the collision occurred.

The parties agreed about the damage to the respective vehicles confining the issue before the trial Court to that of liability. The learned trial Judge made extensive re-

ference to the conflicting testimony and tested its reliability and accuracy by reference to the real evidence found at the scene and recorded on the plan. Counsel for the appellant commented favourably on the course followed by the Court, particularly the juxta-position of the rival versions with the real evidence, but he complained that the Judge went too far in the use made of the real evidence. In the process the Judge exceeded his arbitral functions and did not confine his deliberations to inferences that could be drawn by a layman, assuming the role of an expert in analysing the real evidence. Further, marks noted on the plan were taken on their face value despite the absence of proper foundation for their connection with the accident. Lastly, counsel was critical of the inferences drawn by the Court from such real evidence as the Court relied upon and argued that on proper analysis it led to inferences other than those drawn by the Court.

Counsel for the respondent supported the findings of the Court and the inferences drawn therefrom, virtually inescapable in the light of the real evidence before the Court. He disputed the suggestion that the trial Judge went beyond his adjudicative mission or that he relied on real evidence for the existence of which no proper foundation had been laid.

Although objection was taken to aspects of the evidence of the investigating officer relevant to his findings at the scene of the accident noted on the index to his plan. it was confined to two matters: (a) hearsay evidence, and (b) opinion evidence purporting to interpret real evidence. In response to the objection, the trial Judge clearly indicated that incorporation in the index of hearsay evidence and opinion expressed as to the interpretation of the evidence, would be disregarded. Subject to these reservations, the findings of the investigating officer at the scene were admitted in evidence. That such marks derive from the accident, was not disputed as the learned trial Judge pointed out to counsel at the stage of final addresses; a view reinforced by the absence of any cross-examination on the subject. Had the matter been raised in cross-exa-

mination, the investigating officer would have had an opportunity to explain why he attributed the marks noted on the plan to the accident. The marks were proximate to the resultant position of the vehicles, coincided to whatever extent this could be ascertained with damage on the vehicles and were evidently fresh enough to be noticed by the investigating officer and attributed to the accident.

In our judgment the trial Court was right to hold the evidence established that marks found at the scene were caused as a result of the collision of the two vehicles and events subsequent thereto and that no issue had been raised by appellants as to their connection with the accident. Nor is there an appeal directed against their admissibility in evidence. What inferences could be judicially drawn from such evidence is another matter to which we shall refer in due course.

The significance of real evidence as a pointer to the circumstances of an accident cannot be overstated. Depending on its nature, it may provide wholly objective evidence about the direction of the vehicles, the point of impact and its repercussions. Counsel for the respondents drew our attention to *Meshiou* v. *Eleftheriou* (1) where the trial Court was criticised for failure to direct attention to real evidence. As explained in that case, real evidence ".... is not dependent on the impressions of the parties, and in appropriate circumstances it may offer reliable evidence as to what happened. After all, we are dwelling on the theme of negligence where a momentary inattention or distraction may be the agent of a collision. Real evidence may guide us to the ascertainment of the facts surrounding a collision" (p. 490). Real evidence does not of itself tell how an accident happened, but provides excellent material for testing the credibility and accuracy of conflicting testimony with regard to the circumstances of an accident. The value of real evidence as a measure of the truth of a situation was stressed in *Georghios Prodromou Haloumias* v. *The Police* (2). Though *Haloumias* was a criminal case, the pronouncements made therein apply afortiori to civil cases as well.

(1) (1982) 1 C.L.R. 486.
(2) (1970) 2 C.L.R. 154.

Now the use made of the real evidence by the trial Court: It is true enough that the Court cannot theorize by reference to real evidence and must confine the inferences drawn therefrom to those warranted by logic and common sense. For example, a Court cannot arrive at conclusions about the speed of a car by reference to the length of brake-marks. This is not a matter of ordinary knowledge. On the other hand, no extraordinary knowledge is required to infer the direction of a car from the marks left by its wheels, especially when the width of the car is known. Attribution of the causation of a mark to one of two vehicles involved in a collision, may become a matter of logic if we know the direction of one of the two vehicles.

Far from agreeing with the submission that the trial Judge in this case assumed the role of an expert in interpreting the real evidence, we are of the view he used such evidence solely as a yardstick for testing the credibility and reliability of the conflicting contentions of witnesses. In that way he was able to reduce and conceivably eliminate the possibility of error creeping into his findings. It was perfectly proper on his part to discern the direction of the lorry by reference to marks of friction of its tyres on the road. These marks coupled with the big dent caused on the asphalt by the detachment of the axis of the lorry, tended to establish the point of impact. It was reasonable to infer. as the trial Court did, that the axis was detached as a result of the impact and coincidentally with it. The trial Judge was equally right in inferring that the van first collided with the front mudguard of the lorry and not with the rear wheel as appellant 1 claimed. The nature of the damage on the two vehicles, the continuous scratching on the side of the lorry, examined in conjunction with the length of the van, tended to support the version of the respondent in this area. That there were two major collisions also emerged, as the trial Court noted, as a necessary inference from the evidence of witness Vassiliades.

The ascertainment of the point of impact to the left of the centre of the road on the side of the respondent, coupled with the direction of the lorry, lent support to

the case of the respondent and contradicted that of the appellants; a view strengthened by the van first colliding with the front and not the rear of the lorry. The absence of any sign of collision by the point indicated by the respondent and his passenger as the point of impact, was another fact telling against appellants' case, though, as the trial Court observed, not too much should be made of the fallibility of the witnesses in this area; considering the time that elapsed and the ease with which a witness may be deceived as to the precise point of impact. The real evidence provided material support for the reliability of the evidence of the respondent and the accuracy of his testimony, while it made the case of the appellants extremely improbable.

Counsel for the appellants specifically contested the finding that the light scratches on the asphalt noted on the plan with letters "B" and "Γ" were caused by the van overturning. Detailed reasons are given in the judgment of the trial Court for this finding. The Court ruled out the possibility of these scratches having been caused by the lorry for reasons we are unable to fault. The marks left by the offside rear wheel of the lorry after the collision, resulting from friction with the asphalt, ruled out the possibility of these two points having been caused by the lorry, a view strengthened by our knowledge of the point of impact of the detached axis with the asphalt-point "E". The inference drawn by the trial Court that they were caused by the other of the two vehicles that was involved in the collision was perfectly warranted; whereas the nature of the marks was compatible with their causation by the overturning of the van.

Lastly we shall deal with the objections taken to inferences drawn by the trial Court revolving to a large extent on the inconclusiveness of the evidence respecting the point of impact and the vulnerability of the real evidence, particularly the accuracy of the measurements taken in the absence of a "basic line". Counsel argued in the absence of such line it is difficult to correlate the different marks of real evidence and perceive and appreciate them in a proper perspective. So far as we were able to deduce from the submissions of counsel for appellants, the

gap in the investigation of the case was not bridged by the use of "fixed points", a contention disputed by the respondent. The absence of a plan to scale added to the uncertainties of the real evidence and was apt to give a false impression of the implications of marks of real evidence. Certainly a plan to scale makes it easier for the Court to visualize the scene and appreciate oral and real evidence in its true perspective. In the absence of a plan to scale the Court must, no doubt, view markings of real evidence on the plan with caution lest inaccuracy in the placement of the points misleads the Court in its perception of the scene and the implications of real evidence. In this case, however, the trial Judge did not derive his inferences from the visual implications of marks of real evidence, as sketched on the plan, but from their true position on the road, discernible from the measurements taken by the investigating officer. The accuracy of these measurements was not, as indicated by the trial Court, questioned in cross-examination.

The point pressed most in this part of the appeal is that the finding of the Court that point "E" was in all probability the point of impact, was erroneous. Though he did not doubt that point "E" was the point of impact of the axis with the surface of the asphalt, he argued it was wrong to infer that its occurrence coincided with the collision between the two vehicles. In his submission the collision between the two cars preceded the detachment of the axis. If that is accepted, the lorry was in all probability beyond the centre of the road, on the lane of the on-coming van and consequently we should infer that the collision occurred on appellants' part of the road. Having given due consideration to every aspect of this submission, we remain unpersuaded that we should interfere with the finding of the Court as to the point of impact and the position of the two vehicles at the material time. We agree with the trial Judge that it was more probable than not, given the violence of the collision, that the axis was detached coincidentally with the collision. The marks left by the wheels of the lorry and their direction reinforce this view, while the real evidence, viewed in its totality as thoroughly analysed by the Court, perfectly warranted the

finding that the collision occurred on the side of the lorry.

The crucial question before us is whether it was, in the light of the evidence, open to the Court to accept the version of the respondent. Our answer is in the affirmative. The Court subjected the rival versions to minute scrutiny testing their reliability and accuracy by reference to marks of real evidence, the best guide in the circumstances to the credibility of witnesses and accuracy of their testimony.

Having given careful consideration to every aspect of this appeal, we find no ground whatever justifying interference with the finding of the Court and judgment founded thereon.

The appeal is dismissed with costs.

Appeal dismissed.