1986 July 11

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

ANDREAS STYLIANOU,

Appellant-Plaintiff,

v.

ANDREAS TSOULLOFTAS,

Respondent-Defendant.

(Civil Appeal No. 6841).

Road traffic collision—Negligence—Contributory negligence—Collision on a cross-road formed by a main and a secondary street—Secondary street controlled by halt sign—Driver of cesspit tanker entering slowly the main road and proceeding by 18 feet, leaving a space of only one foot to cover the whole width of main road—Motor-cyclist on the main road failing to take avoiding action—Trial Court found that the motor-cyclist contributed to the occurrence of the collision by 50%—Apportionment wrong in law—Motor-cyclist contributed by 20%.

The appellant was riding his motor-cycle along Valaoritis street, a main road in Limassol, whilst the respondent was driving a cesspit-tanker along Agapinoros Street, a secondary road, controlled by a halt sign and forming a cross-road with Valaoritis Street. The tanker entered the cross-road by 18 feet, leaving a space of only one foot to cover completely the whole width of the main road. The two vehicles collided and the appellant brought an action for general and special damages for negligence against the appellant.

The trial Judge accepted that the appellant stopped at the halt line and then drove off very slowly into the cross-road and, after covering a distance of 18 ft., he collided with the plaintiff. He further found that the tanker, hit the motorcycle. The Judge also accepted that the plaintiff saw the tanker for the first time when he

entered the cross-road, and that he proceeded without taking any avoiding action

In the light of the said findings the trial Judge concluded that the plaintiff contributed to the occurrence of the said accident by 50% The plaintiff appealed

Held, allowing the appeal: (1) The legal principles governing situations such as the present one are clearly discernible from the decided cases of this Court, namely *Varnakides* v. *Papamichael, Panayiotou* v *Mavrou, Pissourios* v *Moustafa, Charalambides* v *Michaelides, Karaolis and Another* v *Charalambous, HadjiGeorghiou* v. *Rodinis, Karikatou* v *Soteriou, Antoniou* v *Iordanou and Another, Siakos* v *Nicolaou, Polykarpou* v *Shioukiouroglou,* and *Tranta* v *Boyiadji**

(2) Having considered the totality of the circumstances and the principles governing the exercise of the powers of this Court to interfere with decisions of trial Courts and in particular with apportionment of liability, the Court reached the conclusion that the apportionment of liability made in this case by the trial Judge was erroneous in Law and in the light of the evidence. Indeed the respondent had no right to enter the main road, unless he was satisfied that it was safe for him to do so and once he had entered he had no right to proceed without exercising the utmost care to ensure that the safety of users of the main road was not put at risk

(3) In the circumstances the respondent was negligent to a degree of 80% and the appellant contributed to the occurrence of the accident by 20%

Appeal allowed to the above extent Respondent to pay the costs of the appeal and in the Court below

Cases referred to:

Varrakides v *Papamichael* (1970) 1 C L R 367;

Panayiotou v *Mavrou* (1970) 1 C L R 215,

* For a short analysis of each of the above cases see the Judgment of the Court and for the exact reference of each one of them see the list of «cases referred to» at pp 331-332.

Pissourios v. *Moustafa* (1971) 1 C.L.R. 420;

Lang v. *London Transport Executive and Another* [1959] 1 All E.R. 609;

Charalambides v. *Michaelides* (1973) 1 C.L.R. 66;

Karaolis and Another v. *Charalambous* (1976) 1 C.L.R. 310;

Hadji Georghiou v. *Rodinis* (1978) 1 C.L.R. 175;

Antoniou v. *Iordanou and Another* (1976) 1 C.L.R. 341;

Karikatou v. *Soteriou* (1979) 1 C.L.R. 150;

Siakos v. *Nicolaou* (1980) 1 C.L.R. 337;

Polykarpou v. *Shioukiouroglou* (1983) 1 C.L.R. 559;

Tranta v. *Boyiadji* (1984) 1 C.L.R. 213;

Watson v. *Emerall and Tebbett, Bingham's Motor Claim Cases*, 3rd Ed., page 122.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Chrysostomis, P.D.C.) dated the 30th October, 1984 (Action No. 3009/81) whereby the defendant was adjudged to pay to the plaintiff the amount of £1992.50 cents as special and general damages in respect of a traffic accident.

Y. Agapiou with *Ch. Hadjistyllis*, for the appellant.

A.S. Myrianthis, for the respondent.

Cur. adv. vult.

A. Loizou J. read the following judgment of the Court: The appellant a young national guardsman, was late in the afternoon of the 21st June, 1981, riding his motor-cycle under Reg. No. LG 314 along Aristotelis Valaoritis street, a main road in Limassol, asphalted and 19 ft. wide, proceeding in a westward direction. At the same time the respondent was driving a southward direction a *cesspit-tanker*—referred to in the judgment of the trial Court for the sake of brevity as the "tanker"—under foreign Reg. No. VNE 634 S, along Agapinoros street, a secondary

street, asphalted and 18 feet wide which forms a cross-road with Valaoritis street and which is controlled by a halt line.

The tanker which is 20 feet long and 7 feet wide entered by 18 feet the cross-road leaving a space of only one foot to cover completely the whole width of the main road. The two vehicles came into collision. They were left in their resultant position until the investigating officer arrived at the scene. The point of impact which was indicated to him by the respondent was not in dispute. This point of impact was on the side the motor-cyclist was proceeding and a long way from the halt-line.

According to the investigating officer a cyclist who is about 5 - 10 feet away from the imaginary line of the junction along Valaoritis street could see a vehicle proceeding along the northern section of Agapinoros street at a distance of about ten feet before the junction, but if the traffic is by the junction then same could be seen from a longer distance.

The learned President after dealing with the respective versions of the parties made the following findings:-

> "Having seen and heard the two versions and having examined the evidence in its totality, I accept the evidence of the investigating officer. As regards the evidence of the defendant I accept, and, I so find, that initially he proceeded along Agapinoros street and that he stopped at the halt line. That he then drove off very slowly into the cross-road, and after having covered a distance of 18 ft. within the cross-road, he collided with the motor-cycle of the plaintiff at point "X". I do not accept, though, that the defendant stopped for a few seconds when he heard the noise of the approaching motor-cycle of the plaintiff, and then the collision occurred. The investigating officer on giving evidence stated that the defendant indicated to him the part of his tanker which collided with the motor-cycle as being front left side. Furthermore, from the description of the damage of the two vehicles, as stated by the said investigating officer as well as from the totality of

the evidence adduced before me, it is evident, in spite of the denial of the defendant that the tanker hit the motor-cycle by its front left. It is, therefore, my finding that the tanker hit the motor-cycle whilst the tanker was in motion, proceeding at a very slow speed. The plaintiff, on the other hand, contradicted himself on many material particulars, and some of his allegations were definitely an afterthought, in particular, those as to the circumstances in which the collision occurred. However, I feel that I can rely on his initial version which he put forward before the criminal Court, and, which version, he admitted to be correct. That version is to the effect that he saw the tanker for the first time when he entered the cross-road. I also accept that the Plaintiff was travelling along Valaoritis Street at a speed of 25-30 m.p.h. keeping his power side of the road and that when he saw the tanker, he proceeded on without taking any avoiding action because he was not bound to stop, as he put it."

He then referred to the case of *Ioannis Vakanas* v. *Michael Thomas and Another* (1982) 1 C.L.R. 530, and *Christos Charalambides* v. *Polyvios Michaelides* (1973) 1 C.L.R. 66, and went on to draw the following conclusion:-

"In the light of the evidence as I have accepted it, of my findings and of the authorities cited, I have arrived at the conclusion that the defendant was negligent in that he failed to keep a proper look-out and having entered the cross-road he did not take the utmost care so as to make sure that no-one was on the road. His admission, that on entering the cross-road he did not see the plaintiff along the road, proves his negligent driving as the plaintiff was there and the defendant should have seen him had he kept a proper look-out. Even if the speed of the plaintiff was high, again the defendant should have seen the plaintiff driving his motor-cycle along Valaoritis Street and coming towards him as his visibility was not obscured. Furthermore, one would expect him first to look to the direction from where the noise was coming and not leave that last. Had he done the

proper thing, probably he could have avoided the accident by stopping earlier, and in such a case there would have been some space for the plaintiff to pass."

On the issue of contributory negligence by the plaintiff, the learned President after referring to the case of *Jones* v. *Livox Quarries Ltd.*, [1952] 2 Q.B. 108 from which a passage on contributory negligence is quoted by Hadji-Anastassiou, J., in *Charalambides* case (supra) *Andreas Tranta* v. *Michael Evangelou Boyiadji* (1984) 1 C.L.R. 312 and *Worsfold* v. *Howe* [1980] 1 All E.R. 1025 which is referred to in *Trantas* case drew the following conclusions:-

"In the light of my findings and of the authorities cited which offer a useful guidance, I have arrived at the conclusion that the plaintiff substantially contributed to the occurrence of this accident as he has failed to keep a proper look-out. having failed to see the tanker of the defendant in time, which was proceeding slowly into the cross-road. The tanker should have been visible to him from a distance and it was due to his negligent driving that he saw it for the first time on entering into the cross-road. He also failed to take sufficient or any avoiding action as it was his duty to do so and he was not entitled under the circumstances to think that he ought not, as he was on the main road. In the circumstances it is my view, and I so find, that the plaintiff contributed to the occurrence of this accident by 50%."

There have been numerous decisions of this Court dealing with collisions between vehicles meeting at cross-roads or at "T" junctions between minor and major roads. We shall start with the case of *Varnakides* v. *Papamichael* (1970) 1 C.L.R. 367. In that case the Court of appeal allowed the appeal partly and apportioned liability at 90% to the respondent/defendant and 10% only to the appellant/plaintiff so changing a 75% to 25% apportionment by the trial Court. The appellant/plaintiff was found to blame because on seeing the reckless driver coming from the side-road, he did not take sufficient care so as to appreciate correctly the recklessness of that driver and also perhaps that he did not take into account

the possibility that coming at that speed the driver of the Jaguar might disregard the white line on the road which was put there to make him slow down and stop, if necessary in order to give priority to the traffic crossing his path.

In *Panayiotou* v. *Mavrou* (1970) 1 C.L.R. 215. the principle expounded was that if the possibility of the danger emerging is reasonably apparent then to take no precautions is negligence, but if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extra precautions. It must follow that a prudent man will guard against the possible negligence of others when experience shows such negligence to be common.

In *Michael Pissourios* v *Arif Usuf Moustafa* (1971) 1 C.L.R. 420 again a case of a vehicle entering a junction with the intention to cross an avenue and enter into a street, it was held that although there was no halt sign, the possibility of traffic and therefore of danger emerging from the square should have been reasonably apparent to anybody driving along the avenue at about midday in the centre of the town. Consequently the failure of the respondent to keep a proper look out with the result that he did not see in time the appellant coming from the square, amounted to negligence on his part which constituted one of the causes of the collision. Had the respondent seen the appellant in time he, undoubtedly, could have taken avoiding action which might have averted the collision, especially as respondent's car hit the motorcycle after it had crossed nearly the whole width of the avenue whilst proceeding towards the street, on the opposite side of the avenue. In that case the Court found that the respondent/defendant was partly responsible for the accident and that he contributed to it by his negligence to an extent of 20%. The appellant/plaintiff having been found to have contributed by 80%. Reference in that respect is made to the case of *Lang* v. *London Transport Executive and Another* [1959] 3 All E.R. 609. In *Charalambides* v. *Michaelides* (1973) 1 C.L.R. 66 a collision at cross-roads, the defendant/appellant entering a main road without halting at a side-road and without giving

warning and without having a proper look out was found wholly to blame. The plaintiff/respondent was found not guilty of contributory negligence. It was held that the appellant had no right to enter the main road at all unless he was satisfied that it was safe for him and for other users of the road to do so. And once he had entered it he had no right to proceed further and cross the road without any warning at all and without taking the utmost care to make sure that there was no one on the road and that entering the main road without any warning at all was an act in a high degree potently causative of the collision and of the resulting injury sustained by the plaintiff.

In *Karaolis and Another* v. *Charalambous* (1976) 1 C.L.R. 310 a collision on a main road after one of the drivers emerged from a side-road in which case, however, the other queue jumped and drove on the wrong side of the road. It was held that a prudent driver could not reasonably anticipate that he would find that man's car at that part of the road and one cannot be considered negligent if he does not take extraordinary precautions in driving in the way he did. The overtaking driver was doing something dangerous in the circumstances. It was held that on the facts he would properly be found solely to blame for the accident.

In *HadjiGeorghiou* v. *Rodinis* (1978) 1 C.L.R. 175 again reference is made to the case of *Antoniou* v. *Iordanou and Another* (1976) 1 C.L.R. 341 as regards what constitutes contributory negligence. Reference is made to the possibility of danger emerging being reasonably apparent.

In *Karikatou* v. *Soteriou* (1979) 1 C.L.R. 150 the issue was whether the trial Judge wrongly found that the defendant was not guilty of contributory negligence once he knew that drivers fail to stop at the junction on Clementos and Cleomenous street. The appeal was dismissed.

In *Siakos* v. *Nicolaou* (1980) 1 C.L.R. 337 the apportionment of liability made by the trial Judge was that the side road driver crossing the road at a high speed without stopping at the halt sign was to blame only by 85%

and that the main road driver was to blame by 15% was reversed on appeal as the driver on the main road was found not to blame at all as he could expect traffic coming out from the side road to conform with the requirements of the halt sign and give way to the traffic on the main road.

In *Polykarpou* v. *Shioukiouroglou* (1983) 1 C.L.R. 559 a car on the main road collided whilst overtaking an omnibus with a car which emerged in the main road from a side road. The apportionment of liability which was 65% on the side road driver and 35% on the main road driver was set aside. The liability of the side road driver apportioned at 80%. In *Tranta* v. *Boyiadji* (1984) 1 C.L.R. 213 the trial Court found the evidence to prove negligence by both drivers. The defendant came out into the main road when it was dangerous or unsafe to do so. The trial Court found that the defendant came into the main road when it was dangerous or unsafe to do so and he either failed to keep a proper look out or was indifferent to the consequences of his action. His faulty driving being on the evidence a contributory cause of the accident. As for the plaintiff he was overtaking in the second lane the cars that were stopping actually at the time and in relation to the car coming out of the side road when same was moving slowly into the junction without exercising that high degree of care which his dangerous manoeuvre involved. They were held equally to blame for the accident. This Court found no reason to interfere with this apportionment.

We have dealt at some length with the authorities as this kind of motor-car accidents are a very frequent occurrence in view in particular of the evident lack of discipline on drivers to observe the halt signs on side roads. We do not intend to sum up the legal principles governing such situations as they are clearly discernible from the decided cases hereinabove set out.

We turn now to the issue of apportionment of liability. The Court of Appeal is in as good a position to draw its

own inferences as to apportionment as the trial Court and should form its own independent opinion though it should give weight to the opinion of the trial Judge (see *Siakos* v. *Nicolaou* (supra)). In that case an extensive analysis is also made regarding the duties of drivers entering main roads from side roads controlled by halt lines.

As pointed out therein by reference to the case of *Watson* v. *Emerall and Tebbett* reported in Bingham's Motor Claims cases, Third Edition at p. 122, where there is a halt sign wholly different considerations apply. If a vehicle on a major road is to approach such cross road in such a way that it can stop dead if a vehicle on a minor road fails to observe the halt-sign it would mean that it would have to slow down to little more than a walking pace and for practical purposes bring traffic on the major road to a stand-still.

Having considered the totality of the circumstances and bearing in mind the principles which govern the exercise of our powers to interfere with the decisions of trial Courts and in particular the apportionment of liability, we have reached the conclusion that the conclusion of the learned President that the appellant and the respondent were equally to blame is erroneous in Law and in the light of the evidence. Indeed the respondent had no right to enter the main road unless he was satisfied that it was safe for him to do so and once he had entered he had no right to proceed without exercising the utmost care to ensure that the safety of users of the main road was not put to risk.

In the circumstances therefore, we find him negligent to a degree of 80% and the appellant who was found by the learned President on the evidence adduced, not to have had a proper look out, a finding not questioned by him on appeal as having contributed to the accident by 20%. As the assessment of general and special damages will not be interfered with in this appeal, same is allowed and the judgment entered in favour of the plaintiff against the defendant and that on the counterclaim in favour of the defendant and against the plaintiff be and are hereby

adjusted accordingly. Respondent to pay the cost of the appellant here and in the Court below, on the amount recovered. There will be no order as to costs on the counterclaim.

In conclusion we feel duty bound to express our consternation about two aspects of the case we regard as highly unsatisfactory and something to be avoided. That is, the long time it took for the case to be tried involving in all seventeen appearances through successive adjournments for which the parties bear the expense, and, secondly the unduly short time devoted on each occasion for the reception of evidence.

Appeal allowed.