1988 January 7

[TRIANTAFYLLIDES, P., DEMETRIADES, PIKIS, JJ.]

CHRYSOSTOMOS CHARALAMBOUS AND ANOTHER,

Appellants-Defendants,

v.

MICHAEL KASSAPIS AND ANOTHER,

Respondents.

(Civil Appeals Nos. 6828 & 7499).

Contributory negligence — Test — Principal difference between the concept of negligence and that of contributory negligence.

Negligence — Contributory negligence — Road collision — Apportionment of liability — Depends on blameworthiness of the drivers and the causative potency of their acts — Such potency depends on the damage that the vehicle in question is likely to cause — The bigger the vehicle the more damage is likely to cause.

Negligence — Road collision — Duty of care — Analysis of — It rises in proportion to the magnitude of the risk.

Negligence — Road collision — Duty to keep as close to the left as possible.

Negligence — Contributory negligence — Road collision between vehicles travelling in opposite directions in a built up area at a double bend of the road — Limited visibility — Driver of lorry failed to keep as close as possible to the left whereas driver of van travelled at excessive speed (25 m.p.h.) — Lorry driver 60% to blame — Van driver 40% to blame — Apportionment sustained.

The lorry driven by the appellant and the van driven by the respondent collided as they were travelling in opposite directions in a built up area and at a dangerous part of the road described as a «double bend». The visibility of the drivers was limited.

The trial Court found that the lorry occupied 13 feet of the tarmac leaving only 9 feet for oncoming vehicles. Moreover there was a 4 feet usable berm on the left hand side from the direction of the lorry.

The trial Court found that the driver of the van was guilty of negligence in that he was driving at a speed excessive in the circumstances i e 25 miles per hour

In the light of the aforesaid findings the trial Court apportioned liability as follows Driver of lorry (appellant) 60%, driver of van (*respondent*) 40%

Held, dismissing the appeal (1) The duty of a prudent driver in the circumstances was to keep as close to the left as possible, a course that would have enabled him to ensure the unobstructed passage of vehicles foreseeably likely to emerge from the opposite side of the road

(2) The finding that it was not impossible for the appellant to keep closer to the edge of the road was not challenged on appeal The appellant merely challenged the impracticability of such a course, a factor mitigating his blameworthiness This submission cannot be sustained

(3) Negligence is determined by objective standards referable to one's duty to other users of the road The duty of care rises in proportion to the magnitude of the risk inherent in the use of the road and is coextensive thereto Unless the risk is one that can in reason and good sense be safely ignored, a driver is under a duty to heed risks incidental to the hazards of driving and take precautions commensurate thereto

(4) The test of contributory negligence is broadly similar to that of negligence The principal difference is that in the former case it is dependent on failure, if any, to discharge one's duties to others, whereas in the latter liability is dependent on failure to take foreseeable precautions for one's own safety and that of his property

(5) The apportionment of liability turns firstly on the assessment of the respective blameworthiness of the two drivers and, secondly on the causative potency of their acts

The causative potency of one s negligent acts depends on the damage that the vehicle under his control is likely to occasion The bigger the vehicle the more damage it is likely to cause

(6) In this case there is no room for interfering with the finding of negligence or the apportionment of liability.

Appeal dismissed with costs.

Cases referred to:

Stavrou v Papadopoulos (1969) 1 C.L.R. 172.

Appeals.

Appeals by defendants against the judgment of the District Court of Nicosia (S. Demetriou, Ag. P.D.C.) dated the 29th September, 1984 (Action Nos. 6282/81 - 6283/81) whereby they were adjudged to pay to plaintiff No. 1 the sum of £1,050 and to plaintiff No. 2 the sum of £350.- as damages caused by a traffic accident.

A. Dikigoropoulos, for the appellants.

St. Erotocritou (Mrs.) for the respondent.

TRIANTAFYLLIDES P.: We consider it unnecessary to call upon counsel for the respondent to reply. Pikis, J. will give the judgment of the Court.

PIKIS J.: On the 19th October, 1981, early in the morning, the lorry of appellants and the van of respondent collided as they travelled in opposite directions through the village of Ayia Varvara. The accident occurred at a dangerous part of the road, described by the trial Court as a «double bend». The visibility of drivers travelling in either direction, beyond the bend, was very limited, a fact that made negotiation of it especially hazardous. In proceedings before the District Court by the respondent (the driver of the van) the lorry driver was found guilty of negligence but damages were reduced in proportion to his contributory negligence estimated by the trial Court at 40%. Liability was apportioned between the two drivers at the ratio of: appellant 60% (lorry driver), respondent 40% (van driver).

The present appeals are directed against the finding of negligence and the apportionment of liability. In the submission of counsel for the appellants, the lorry driver was not guilty of negligence; if at all negligent, his negligence was minimal and its causative effect insignificant.

The trial Court had received testimony from both sides illuminating the circumstances of the accident. After ponderation of the evidence, aided, no doubt, by the visit of the Court to the scene of the accident, it concluded that the lorry driver was liable in negligence for failure to approach the scene and negotiate the bend with the care expected of a prudent driver in the circumstances. In negotiating the bend the lorry driver had unreasonably occupied an unduly large part of the road blocking in part the passage that respondent could anticipate to be free for use as he negotiated the bend. As a matter of fact, the lorry occupied approximately 13 ft. of the tarmac leaving only 9 ft. for use by on-coming vehicles. The folly of appellant was compounded by the fact that on his side there existed a berm of about 4 ft., use of which would reduce the risks inherent in driving along that part of the road. No such amenity existed on the side of the van driver.

The Court dismissed the contention of appellant that it was impossible for him to drive closer to the left side of the road. By failing to steer closer to his nearside, he induced a greater element of risk, and increased the hazards associated with negotiation of the part of the road. Furthermore, the trial Court dismissed faint allegations made by both drivers that their vehicles were at a standstill at the time of the collision.

The narrowness of the road, coupled with the presence of buildings on either side of it, limited visibility considerably. Drivers using the road came under a correspondingly high duty of care and ought to take precautions proportionate thereto in order to reduce the risk of accident. The finding of the trial Court that the lorry driver failed to discharge that duty of care was perfectly warranted by the findings of the Court. The duty of a prudent driver in the circumstances was to keep as close to the left as possible, a course that would have enabled him to ensure the unobstructed passage of vehicles foreseeably likely to emerge from the opposite side of the road.

Equally justified was the finding that the respondent was guilty of contributory negligence. His speed, about 25 m.p.h., prevented him from exercising the control over his vehicle necessary to enable him to cope with the vicissitudes of that dangerous part of the road. Had he exercised a better control over his car the collision could have been averted considering that the width of the road available for passage is 9 ft.

Counsel for the appellant took a number of points in support of his submission that the lorry driver was free of blame in which case he should be exonerated of negligence. More emphasis was laid on the submission that the apportionment of liability was erroneous in that it did attribute to the appellant a degree of responsibility disproportionate to his blame-worthiness. The contention that the trial Court misconceived the evidence relevant to the visibility that the two drivers enjoyed as they approached the scene, has not been substantiated. Far from agreeing that the trial Court misapprehended any part or any aspect of the evidence, we find that the analysis made of the testimony of witnesses was thorough and free from any element of misdirection.

The trial Court rejected the contention of the lorry driver that it was impossible to keep closer to the edge of the road. This finding was not challenged on appeal; what counsel pressed before us was the impracticability of such a course, a factor mitigating the liability of the appellant. We cannot sustain the submission. Negligence is determined by objective standards referable to one's duty to other users of the road. The duty of care rises in proportion to the magnitude of the risk inherent in the use of the road and is coextensive thereto. Unless the risk is one that can, in reason and good sense, be safely ignored, a driver is under a duty to heed risks incidental to the hazards of driving and take precautions commensurate thereto. The restricted visibility, the narrowness of the road and the fact that the area was inhabited, imposed a duty on a driver (lorry driver) following the path of the appellant to keep as close to the left as physically possible. The appellant failed in the discharge of this duty and exposed thereby the respondent to foreseeable risks for the materialization of which he was rightly found to be accountable in negligence.

In his address counsel made extensive reference to the principles of negligence and contributory negligence, as they emerge from the caselaw, in support of his submission that an inordinately high responsibility was attached to the appellant. The gravamen of his submission is that appellant was far less to blame for the accident in comparison to the respondent.

The test of contributory negligence is broadly similar to that of negligence in that foreseeability and failure to take precautions against foreseeable risks is the key to a finding of contributory negligence. The principal difference between a finding of negligence and one of contributory negligence is that in the former

case it is dependent on failure, if any, to discharge one's duties to others, whereas in the latter liability is dependent on failure to take foreseeable precautions for one's safety and that of his property.

The apportionment of liability, as it has often been said, turns, on the assessment of the respective blame-worthiness of the two drivers and, secondly, on the causative protency of their acts. The question is resolved from a broad perspective guided by logic and common sense.

Counsel relied on the decision of the Supreme Court in Stelios *Stavrou v. Georghios Papadopoulos** in aid of his submission that excessive speed is a far more consequential factor for the causation of an accident compared to the partial obstruction of passage occasioned by the fault of the driver of an oncoming vehicle. The Supreme Court in that case upset the even apportionment of liability between the two drivers and attributed 80% liability to the driver guilty of excessive speed. Apportionment of liability can never be divorced from the facts of a particular case, the dominant factor for the apportionment of liability in every case. And the facts of the present case bear little comparison to those in *Stavrou* (supra). In that case a principal reason for upsetting the apportionment of liability made by the trial Court was the erroneous finding that the driver of the bus partly blocking the passage of the on-coming vehicle was under duty to sound his horn. The finding was wholly unwarranted as a matter of reality and irrelevant in the absence of an averment to that effect. As the Court pointed out in the case of *Stavrou*, in addition to fault the causative potency of the acts of the two drivers is a crucial factor for the apportionment of liability. The causative potency of one's negligent acts depends on the damage that the vehicle under his control is likely to occasion. The bigger the vehicle the more damage it is likely to cause.

We are wholy unpersuaded that there is any room for interfering either with the finding of negligence or the apportionment of liability.

The appeals are dismissed with costs to be assessed by the Registrar.

Appeals dismissed with costs.

* *(1969) 1 C.L.R 172.*