1988 May 27

(A. LOIZOU, P., SAVVIDES, KOURRIS, JJ.)

1. PHAEDON CHRISTODOULOU,
2. «KARYDAS» TAXI OFFICE,

Appellants-Defendants,

v.

ANTONAKIS PEPPIS, MINOR, THROUGH HIS FATHER PEPPIS ANTONIOU,

Respondent-Plaintiff.

(Civil Appeal No. 7032).

Negligence—Road traffic accident—Pedestrian—Duty of—A passage from Halsbury's Laws of England, 4th Ed., Vol. 34, para. 49 adopted.

Negligence—Road traffic accident—In assessing liability, two elements must be taken into consideration, causation and blameworthiness.

Negligence—Pedestrian crossing road starting from left side of lorry parked on berm, proceeding in front of lorry and putting his leg on the asphalted part of the road, without first stopping, hit by left rear wheel of car, travelling at the edge of the asphalt—Thick traffic from opposite direction of the car—Driver not to blame.

Negligence—Road traffic accident—Driver on main road intending to turn left to enter a side road—No duty on his part to take, before turning, the middle of the road.

Appeal—Apportionment of liability—Interference with, on appeal—Principles applicable.

Appellant 1 was driving a taxi, the property of appellant 2, along Strovolos Avenue in Nicosia. He intended to turn left, in order to enter a side road. The berm on his left side at Strovolos Avenue was 13 feet wide, but was occupied by a lorry, leaving a space of only 3 feet between the bus and the asphalted part of the road. The traffic from the opposite direction of the appellant was thick.

At that time the respondent began crossing Strovolos Avenue, starting from the edge of the berm to the left of the stationary lorry.

When he reached the edge of the asphalt and stretched his leg to move forward he was hit on the leg by the rear left hand side wheel of the taxi the front part of which had already passed him.

The trial Judge found that appellant 1 had a duty to move towards the centre of the road so that he might turn, as was his intention, to the left and enter the side road. He, also, found that appellant' s speed of 20-25 mph was excessive.

In the light of such findings he apportioned liability equally between the appellant and the pedestrian. Hence this appeal.

Held, *allowing the appeal*: (1) This Court does not interfere on appeal to disturb the apportionment of liability as found by a trial Court unless a strong case is made out justifying such review of apportionment and provided it is satisfied that the trial Court has erred in principle or has made an apportionment of liability which is clearly erroneous.

(2) There are two elements which the Court should always take into consideration in assessing liability. The one is the causation and the other one is blameworthiness.

(3) As to the duty of a pedestrian when making use of the highway useful reference may be made to Halsbury' s Laws of England, 4th edition, vol. 34, paragraph 49.

(4) Bearing in mind the fact that the appellant took the extreme left-hand side in view of the fact that there was a thick flow of traffic coming from the opposite direction and also that his intention was to turn to his left a short distance ahead of him and also the fact that at no moment he had gone off the asphalt onto the berm and that his speed, at 15-20 m.p.h., was not unreasonable in the circumstances, the way he drove was not in any way negligent.

(5) According to the rule of the road it is only where a driver intends to turn to the right that he should proceed and stop in the centre of the road opposite the junction and then after making sure that there is no traffic coming either from the opposite direction or the side road to turn into the side road at angle of 90 degrees.

The inference that the same duty exists, when a driver intends to turn to the left, is wrong.

Appeal allowed with costs in favour of appellants.

Cases referred to:

Papadopoullos v. Pericleous (1980) 1 C.L.R. 576;

Municipality of Nicosia v. Kythreotis (1983) 1 C.L.R. 154;

G.I.P. Constructions Ltd. v. Neophytou and Another (1983) 1 C.L.R. 669;

Tavelis v. Evangelou (1984) 1 C.L.R. 460;

Nicolaou v. Louka (1985) 1 C.L.R. 91;

Ekrem v. McLean (1971) 1 C.L.R. 391;

Brown and Another v. Thompson [1968] 2 All E.R. 708,

Baker v. Willoughby [1968] 2 All E.R. 708;

Soteriou v. Kyprianidou and Another (1981) 1 C.L.R. 61.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Artemides, P.D.C.) dated the 9th July, 1985 (Action No. 5435/83) whereby the liability of the parties in an action for damages for personal injuries as a result of a road traffic accident was apportioned equally between them.

G. J. Pelaghias, for the appellants.

M. Christodoulou, for the respondent.

Cur. adv. vult.

A. LOIZOU, P.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES, J.: This is an appeal against the judgment of the District Court of Nicosia whereby the liability of the parties in an action for damages for personal injuries as a result of a road traffic accident, was apportioned equally between the parties.

The quantum of special and general damages had been agreed, with the approval of the Court, in view of the fact that the plaintiff was a minor at the material time, at £1,900.-

The facts of the case are as found by the trial Judge, briefly as follows:

The accident occurred in the morning of the 22nd July, 1982, at Strovolos Avenue in Nicosia. Defendant 1 was driving taxi No. TJB485 the property of defendant 2 in the course of his employment with defendant 2 and was proceeding from the direction of Nicosia towards Strovolos and was in the process of turning into Pericleous Street which was on his left-hand side.

Whilst so doing he hit the plaintiff who was attempting to cross Strovolos Avenue from left to right intending to proceed to the opposite direction. The width of the road was 19 feet and on the left-hand side of defendant 1, near the junction, there was a berm 13 feet wide on which, at the material time, there was parked a lorry facing in the direction of Strovolos at such position on the berm that its right-hand side wheels were three feet away from the edge of the asphalt. At the material time also there was a thick flow of traffic from both directions.

The plaintiff who was about to ascent on the lorry and sit next to the driver, was asked by its driver to cross the road and buy for him a cake. The plaintiff proceeded from the left-hand side front door of the lorry, walked in front of it, and moved towards the edge of the asphalt. When he reached the edge of the asphalt and stretched his leg to move forward he was hit on the leg by the rear left-hand side wheel of the taxi the front part of which had already passed him. According to defendant 1 he drove the car at the edge of the asphalt due to the fact that there was thick traffic coming from the opposite direction. The speed of his car was 15-20 miles per hour as the condition of the road especially at the edge was not very good due to groves on the asphalt.

The learned trial Judge found that the plaintiff proceeded to cross the road in a normal pace and that he did not run to cross the road and we find no reason to disturb this finding of the trial Court. In the circumstances he found that the plaintiff was negligent in that he fail to stop at the berm before entering the road and keep a proper look out in either direction to see whether a car was coming. The learned trial Judge concluded that had the plaintiff stopped and looked he could see the car driven by the defendant coming from his right which was very near to him especially bearing in mind the fact that the visibility was very good for a distance of 200 meters. On the other hand he found that though defendant 1, as alleged by him, was driving at a speed of 15-20 miles per hour he drove his car very close to the berm and in fact his left-hand side wheels travelled over the groves at the edge of the asphalt and went on as follows:

> «It is obvious that the intention of the defendant was to turn and enter into the side road diagonally from the open space at the junction of Strovolos Avenue instead of proceeding to the centre of the Avenue and taking an angle of 90 degrees. It is,

also, common ground that the traffic at the time of the accident was thick and I do not think that the speed of the defendant was safe in the circumstances. He, himself assessed his speed at 15-20 miles an hour. It should, however, be taken into consideration that the defendant was about to turn to the side road and, therefore, he should have reduced his speed.»

In the light of his finding he found that both parties are equally to blame.

By this appeal counsel for the appellant-defendant disputes the said apportionment on the ground that in the light of the evidence before the trial Court the apportionment of liability was manifestly wrong and not warranted by the evidence before it and that in the circumstances the respondent-plaintiff is solely to blame.

It is well settled that this Court does not interfere on appeal to disturb the apportionment of liability as found by a trial Court unless a strong case is made out justifying such review of apportionment and provided it is satisfied that the trial Court has erred in principle or has made an apportionment of liability which is clearly erroneous. (See, in this respect, inter alia, *Papadopoulos v. Pericleous* (1980) 1 C.L.R. 576 at p. 579; *The Municipality of Nicosia v. Kythreotis* (1983) 1 C.L.R. 154 at p. 175; *G.I.P. Constructions Ltd. v. Neophytou and Another* (1983) 1 C.L.R. 669; *Tavellis v. Evangelou* (1984) 1 C.L.R. 460 and *Nicolaou v. Louka* (1985) 1 C.L.R. 91 at p.100. Also *Ekrem v. McLean* (1971) 1 C.L.R. 391 in which reference is made to the case of *Brown and Another v. Thompson* [1968] 2 All E.R. 708).

As stated by Lord Reid in *Baker v. Willoughby* [1969] 3 All E.R. 1528 at 1530 (H.L.) a ground for interfering with the assessment of the trial Court is when «some error in the judge' s approach is clearly discernible».

On the totality of the evidence and the material before the trial Court and the findings of the trial Court as to the sequence of events which led to the accident we find ourselves unable to agree with the trial Court that the apportionment of liability in the present case is the proper one. It is an undisputed fact that the respondent moved from the left-hand side of the lorry and proceeded in front of it intending to cross the asphalt from left to right to go to the opposite side of the road. Notwithstanding the fact that there was considerable traffic on the road the respondent attempted to cross the road without having sufficient regard to his own safety before

entering the asphalt. He failed to stop on the berm before attempting to step on the asphalt and keep a look out in both directions to see if any car was coming especially from the direction the appellant was coming, particularly having regard to the fact that whilst walking in front of the lorry his visibility towards the direction of Nicosia was obstructed by the lorry and also the fact that he chose to proceed in front of the lorry instead of its back. Had he proceeded to cross the berm from the back side of the lorry he could see and be seen by a car travelling towards the direction of Strovolos and this accident would have been avoided. As to the duty of a pedestrian when making use of the highway useful reference may be made to Halsbury's Laws of England, 4th edition, vol. 34, paragraph 49 which reads as follows:

> «49. Pedestrians. Persons on foot have a right to be on the highway and are entitled to the exercise of reasonable care on the part of persons driving vehicles on it, but they must take reasonable care of themselves, and may be answerable if they occasion accidents to vehicles. The amount of care reasonably to be required of them depends on the usual and actual state of the traffic, and on the question whether or not the foot passenger is at an approved and indicated pedestrian crossing. A driver owes no special duty to infirm persons on the highway unless he knows or should have known of their infirmity.

In *Tavellis v. Evangelou* (supra) Triantafyllides, P., had this to say in delivering the judgment of the Court of Appeal, at p. 462:

> «It would not, of course, be correct to state that whenever a pedestrian is hit by a car the driver of such car is solely to blame and the pedestrian cannot be found guilty of any contributory negligence. They are both of them users of a road at the material time and they owe a duty of care to each other and to other road users; and if they fail to discharge such duty then, depending on the circumstances of the particular case, either or both of them could be found guilty of negligence which has led to the accident. (see, for example, Omer v. Pavlides (1971) 1 C.L.R. 404).»

Concerning whether there was any negligence on the part of the appellant, bearing in mind the fact that he took the extreme left-hand side in view of the fact that there was a thick flow of traffic coming from the opposite direction and also that his intention was

to turn to his left a short distance ahead of him and also the fact that at no moment he had gone off the asphalt onto the berm and that his speed, at 15-20 m.p.h., was not unreasonable in the circumstances we do not find that the way he drove was in any way negligent. The fact that there was a stationary lorry three feet from the edge of the asphalt was not, in the circumstances, such as to operate as a warning to him that it was likely that any passenger from the lorry or any other pedestrian would suddenly proceed in front of the lorry in an attempt to cross the road without stopping first on the three feet free part of the berm between the lorry and the asphalt and keep a proper look out to make sure if it was safe for him to proceed on the asphalt. In fact in this case the car had already passed clearly the respondent before he stepped on the asphalt and the respondent was hit by the rear wheel of the car when he stretched his leg to step onto the asphalt. As to the inference of the learned trial Judge that a speed of 15-20 miles per hour was not safe in the circumstances we find ourselves unable to agree with him in the absence of any evidence supporting such inference. As to the inference of the trial Court that the failure of the appellant to proceed to the centre of the road and take an angle of 90 degrees before turning to the left amounted to negligence on his part we find such inference as wrong. According to the rule of the road it is only where a driver intends to turn to the right that he should proceed and stop in the centre of the road opposite the junction and then after making sure that there is no traffic coming either from the opposite direction or the side road to turn into the side road at an angle of 90 degrees (useful reference may be made to rule 59 of the Road Traffic Code). In the present case the appellant was intending to turn to his left and, therefore, he had to take the extreme left-hand side of the road.

In *Soteriou v. Kyprianidou and Another* (1981) 1 C.L.R. 61 in which a pedestrian whilst walking on the pavement stepped on to the road while the motor-vehicle was passing him, the Court found as follows (A. Loizou, J., as he then was, at pp. 63,64):

> «Furthermore, on these facts as found by the trial Court there was nothing negligent in the conduct of the respondent to render her liable for damages to the plaintiff. She could not reasonably foresee, in the circumstances, that the appellant whilst walking on the pavement to her left and when overtaking him with sufficient room between her car and the pavement, he would have moved in such a way as to

hit himself on the rear of her car. In fact, she had already passed him clearly before he stepped down suddenly from the pavement without himself making sure that it was safe for him to move to the direction he did. The respondent was driving at such a safe distance from the edge of the pavement that it could not be said that she was negligent in any way. It was the appellant's negligence that was the cause of the accident and very rightly the trial Judge dismissed his claim.»

There are two elements which the Court should always take into consideration in assessing liability. The one is the causation and the other one is blameworthiness. Having examined carefully all the material before us respecting the part which respondent and appellant had played in the accident we have reached the conclusion that the apportionment of liability by the trial Court is clearly erroneous and that the conduct of the respondent in connection with the causation of the accident and the blame to be attributed to him was entirely on him.

In consequence we find no contributory negligence on defendant 1 and the appeal is, therefore, allowed and the judgment of the trial Court is set aside.

In the result this appeal is allowed with costs in favour of the appellants.

Appeal allowed with costs.