

Litigation - Cyprus

Principle that drivers are subject to greater duty of care than pedestrians reaffirmed

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Introduction

A recent Nicosia District Court decision reaffirmed the well-established principle that the driver of a motor vehicle is subject to a greater duty of care than a pedestrian.⁽¹⁾ The case arose from a collision between the plaintiff (a teenage boy who was crossing the road on foot) and a car driven by the defendant. The seriousness of the injuries that the plaintiff suffered was reflected in the quantum of damages, which was agreed upon during the trial at €1,350,000 on a full liability basis. What remained to be determined was the apportionment of liability for the collision.

Facts

Following the court's review of the evidence and testimony, it concluded that on the night of the accident the plaintiff – who was wearing highly visible clothing, including red tracksuit trousers and a silver-coloured top – was crossing a busy road near a roadside kiosk in a residential area and intended to make his way to the other side of the road. Having travelled 6.3 metres across the road and reached the middle of both lanes, the plaintiff attempted to cross the right-hand lane at a fast pace where the defendant's car was travelling at a high, but not precisely determined speed with its lights on. The defendant did not notice the plaintiff on the road and his vehicle collided with him approximately 8.8 metres from the side of the road from which the plaintiff had set out.

The court reiterated the duty of care that a person driving on a road owes to others. He or she objectively must exert care and must concentrate on his or her direction of travel. Further, in a residential area the driver must be alert to the possibility of pedestrians crossing the road. There is a large volume of case law to the effect that the consequences or causative potency of a driver's negligence are far greater than those of a pedestrian's, because the driver is driving a vehicle that is capable of inflicting serious damage and injury.

Decision

The court held that the driver was negligent and had acted without the proper lookout and due care required. Although the accident occurred late at night, visibility was adequate as the road was well-lit and the pedestrian was wearing brightly coloured clothing. Further, the avenue was a busy road, located in a residential area and the plaintiff had not just stepped off the pavement into the path of the car, but had already travelled a large distance across the road.

The court contrasted the case with others in which the defendant was acquitted of any liability in circumstances where the pedestrian had stepped off the pavement without warning and could not be seen because the road was unlit and he or she was wearing dark-coloured clothing.

Taking the circumstances of the accident into account and not overlooking the plaintiff's young age, the court also held that he was liable for contributory negligence, as he did not exercise the due care expected of a reasonable person. Further, two witnesses had noticed the vehicle coming and had warned the plaintiff of its approach.

Liability was therefore apportioned accordingly:

- 75% to the defendant; and
- 25% to the plaintiff.

The plaintiff was awarded damages of €1,012,500, with interest from the date of judgment.

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Endnote

⁽¹⁾ *Michailides v Kyriakou*, Action Number 6980/06.

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