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# Can a driver be responsible for the death of a passenger with heart problems?



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Litigation, Cyprus

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## Introduction

A recent Supreme Court decision examined the issue of causality arising from a road traffic accident. **(1)** According to the appellant, he had become dizzy unexpectedly and lost control of his vehicle causing it to hit a ditch. This resulted in his passenger, who suffered from heart problems, sustaining injuries. The passenger was admitted to hospital as a precaution. His condition deteriorated and he died 30 days after the accident. The report by the forensic practitioner who carried out the post-mortem examination recorded "longitudinal cardiomyopathy, resulting from an old road traffic accident" as one of the causes of death.

## Facts

The first-instance court found the defendant guilty and convicted him of causing death by want of precaution or carelessness, **(2)** and of driving a motor vehicle under the influence of fatigue in a way that impaired his ability to drive safely. **(3)**

On the basis of *Attorney General v Kyriakou Antoniou*, **(4)** which also concerned Article 210 of the Criminal Code, the first-instance court concluded that:

- the passenger had been transferred to the hospital due to the accident;
- his state of health had immediately deteriorated; and
- because of this deterioration, coupled with the fact that he was stationary for several days in his bed, he had passed away.

The judge added as follows:

*Undoubtedly, the cause of the accident was the loss of control of the vehicle of the accused, precisely because of the fatigue and dizziness he suffered. The act of the*

*accused, to drive his vehicle, despite his fatigue and without taking care of the safety of his passenger, posed a risk to his safety, which the driver, that is, the accused, ignored or disregarded or recklessly defied... Further, it was noted that in the light of all the above considerations and the analysis... the victim's own health problems could not have caused his death, if the victim was in his home or even if he went to Troodos to get mushrooms. I therefore consider that the causal link between the dangerous act and the conduct of the accused with the cause of the accident resulting in the death of the passenger, has been proved. I also consider that the prosecution has proved beyond reasonable doubt the second charge against the defendant, as the reason which caused the dizziness and which ultimately led him to lose control of his vehicle, was nothing but fatigue.*

Following the conviction, an appeal was lodged on three grounds, all related to the first-instance court's finding of a causal link between the unlawful act and accused's conduct on the one hand, and the deceased's death on the other.

### **Decision**

At the appeal, the Supreme Court noted that since the prosecution's evidence regarding the defendant's behaviour and the medical testimony of the medical examiner had not been disputed, the first-instance court had rightly decided that the only question which it had to answer was whether the victim's pre-existing health problems alone, possibly exacerbated by the fact that he had remained immobile for extended periods, could have caused his death.

In reaching its decision, the Supreme Court considered Article 211 of the Criminal Code, which codifies the relevant common law principles and defines the cases in which a person is deemed to have caused the death of another even though their act is not the immediate or sole cause of death.

The court clarified that:

- the burden of proof for conviction lies solely on the prosecution; and
- the courts must judge solely on the basis of the evidence and cannot assume the role of an expert or make assumptions to bridge any breaks in the chain of causality. **(5)**

Any such gaps in the events leading up to a death leave accusations unproven and will lead to rejection.

In *Kannas v The Police* (1968) 2 CLR 29, where the defendant argued that the victim had been responsible for the accident which had resulted in his death, the Supreme Court upheld the initial conviction, stating as follows:

*Even if [the appellant's] act or omission would not have caused the death unless it had been accompanied by an act or omission of the person killed or of other persons, on the basis of the facts in this case it cannot be seriously argued that the deaths of the two people in the vehicle in question were not "caused", in the sense of section 211, through the careless driving of the appellant.*

In his judgment, the trial judge referred, in this respect, to the test set out in *R v Gould* (1964) 1 WLR 145, and stated that: "even if we were to apply such a test in the case before us, we would unhesitatingly say that the careless driving of the appellant was a substantial

cause of the fatal accident in question".

The Supreme Court went on to say that it was clear from case law that the interconnection between the accused's unlawful act or omission and the detrimental event was a necessary condition for a finding of guilt. A causal relationship is deemed to exist when the act or omission was, according to the lessons of common experience and common sense, capable and objectively capable of bringing about, in the normal course of events, the detrimental effect. Complications arise, as in the case in question, when there are several possible causes and it must be determined which was the decisive one. It is an undisputed principle of law that the perpetrator takes the victim to the situation in which they are in.(6)

Considering these factors, the Supreme Court concluded as follows:

*From the testimony in the present case, we consider that the conditions of Article 211 (d) are fulfilled. The testimony showed that the offender's act caused injury to the deceased, which, though not the direct or sole cause... remained as a substantial and active cause, accelerating his death.*

The Supreme Court rejected the appeal and confirmed that, despite having taken a simplistic approach, the first-instance court had reached the correct conclusion by applying common sense and experience.

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## Endnotes

(1) *Voicu v Police*, Criminal Appeal 78/2016 dated 10 September 2018.

(2) Article 210 of the Criminal Code, Cap 154.

(3) Articles 2, 10 and 19 of the Motor Vehicles and Traffic Licences Laws 86/1972 and 166/1987.

(4) Criminal Appeal 241/2012 dated 16 December 2014.

(5) *Re Spyros Christodoulou* (1996) 1 AA 193, 196.

(6) *Smith v Leech Brain & Co Ltd* (1962) 2 QB 405, 414, *Symeonidou v Michaelides* (1969) 1 CLR 394 and *Rolandos Kyriakos v Svanas* (2012) 1 AAD 1810.

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