



MALTA

**QORTI CIVILI
PRIM'AWLA**

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Illum il-21 ta' Novembru, 2017.

Rikors Numru 436/2010 SM

**Anthony Busuttil
(K.I. 0211151 M)**

vs.

**Andrew Stephen Roberts
(K.I. 45123 A)**

Il-Qorti,

- 1.0. Rat ir-rikors guramentat promotur datat id-29 t'April, 2010, li permezz tieghu r-rikorrenti sintetikament espona is-segwenti, (ara foll 1):

- 1.1. Illi waqt li fl-10 t'Ottubru, 2008, r-rikorreni kien riekeb Serkin fil-Korsa l-Antika tal-Marsa, limiti ta' Hal Qormi, safa' milqut mill-vettura tal-marka Austin Mini bin-numru HAH – 893 misjuqa minn Andrew Stephen Roberts;
- 1.2. Illi l-incident *de quo* sehh unikament minhabba n-negligenza u l-imperizja tal-imsemmi intimat;
- 1.3. Illi konsegwenza tal-istess incident ir-rikorreni sofra danni kemm ta' natura materjali u attwali, (*damnum emergens*) u kemm dawk li jirrgwardaw qligh futur, (*lucrum cessans*);
- 1.4. Illi l-intimat hu responsabbli ghall-incident *de quo* u ghad-danni sofferti mir-rikorreni;
- 1.5. Illi *nonostante* li l-intimat kien interpellat biex jersaq ghall-likwidazzjoni tad-danni sofferti mir-rikorreni dan baqa' inadempjenti;
- 1.6. Illi ghalhekk adixxa din il-qorti biex l-intimat ikollu l-opportunita` jghid ghaliex din il-qorti m'ghandiex:
 - 1.6.1. Tiddikjara lill-intimat responsabbli ghall-incident in dizamina u ghad-danni sofferti mir-rikorreni rizultat tal-istess incident;
 - 1.6.2. Tillikwida d-danni sofferti mir-rikorreni, okkorrendo bl-opera ta' periti nominandi;
 - 1.6.3. Tikkundanna lill-intimat ihallas lir-rikorreni d-danni hekk likwidati;
 - 1.6.4. Bl-ispejjez u imghaxijiet kontra l-intimat;
- 2.0. Rat id-digriet taghha diversament preseduta datat is-6 ta' Mejju, 2010, li permezz tieghu:
 - 2.1. Appuntat l-istess rikors guramentat promotur ghas-smigh ghall-udjenza hemm indikata, (ara foll 4);

- 2.2. Tat dawk l-ordnijiet xierqa ghall-ahjar prosegwiment tal-kawza, (ara foll 5);
- 3.0. Rat ir-risposta guramentata tal-intimat datata z-17 ta' Frar, 2012, li permezz taghha l-intimat sintetikament irrisponda bil-mod segwenti, (ara foll 18):
 - 3.1. Illi preliminarjament qed tigi eccepita n-nullita` tan-notifika tal-intimat *stante* li:
 - 3.1.1. L-intimat hu barrani;
 - 3.1.2. L-intimat ma jifhimx bil-Malti;
 - 3.1.3. Illi allura kellu dritt jigi notifikat ukoll bi traduzzjoni tal-atti ghall-lingwa Ingliza;
 - 3.2. Illi t-talbiet tar-rikorrenti huma infondati *stante* li l-incident *de quo*:
 - 3.2.1. Ma sehhx tort tal-intimat;
 - 3.2.2. Sehh b'tort, negligenza u nuqqas t'osservanza tar-regolamenti daparti tar-rikorrenti stess;
 - 3.3. Illi jinkombi ghar-rikorrenti li jipprova d-danni allegatament sofferti minnu;
 - 3.4. Illi kwalunkwe talba ghad-danni hi ikkontestata;
 - 3.5. Illi kwalunkwe likwidazzjoni ta' danni ghandha tiehu wkoll in konsiderazzjoni ammonti gia` ricevuti mir-rikorrenti bhala kumpens ghall-incident *de quo*;
 - 3.6. Illi ghalhekk it-talbiet tar-rikorrenti ghandhom jigu respinti;
 - 3.7. Salv risposti ulterjuri;
4. Rat in-nota datata l-5 ta' Marzu, 2012, li permezz taghha r-rikorrenti esebixxa kopja tar-rikors guramentat promotur fedelment tradott ghall-lingwa Ingliza, (ara foll 21);

5. Rat id-digriet taghha diversament preseduta datat is-6 ta' Marzu, 2012, li permezz tieghu appuntat assistent gudizzjarju ghall-finijiet hemm indikati, (ara foll 28 u 29);
6. Rat id-digriet taghha diversament preseduta datat id-9 ta' Jannar, 2013, li permezz tieghu, wara talba appozita ghall-istess, (ara foll 38), ordnat li l-inkartament tal-proceduri kriminali involuti jigu annessi mal-atti tal-procedura odjerna u jiffurmaw parti mill-provi prodotti, (ara foll 40);
7. Rat id-digriet taghha kif issa preseduta datat il-25 ta' Marzu, 2014, li permezz tieghu awtorizzat lill-assistent gudizzjarju fuq riferita biex tirritorna l-inkartament fl-atti tal-procedura odjerna, (ara foll 61);
8. Rat id-digriet taghha datat it-3 ta' Dicembru, 2015, li permezz tieghu, wara talba appozita, awtorizzat lill-partijiet biex jittrattaw il-procedura odjerna bil-modalita` u fit-termini hemm indikati, (ara foll 74);
9. Rat in-nota ta' sottomissjonijiet tar-rikorrenti datata it-28 ta' Jannar, 2016, (ara foll 75);
10. Rat id-digriet taghha datat is-27 t'April, 2016, li permezz tieghu, wara talba appozita ghall-istess mill-abbli rapprezentant legali tar-rikorrenti, hatret lill-espert mediku hemm indikat biex jezamina lir-rikorrenti (ara foll 81), u kif sussegwentement ripropost, (ara foll 102);
11. Rat in-nota ta' sottomissjonijiet sussegwenti tar-rikorrenti datata z-17 ta' Mejju, 2017, (ara foll 112);
12. Semghet lix-xhud prodott;
13. Ezaminat id-dokumenti esebiti, inkluzi x-xhieda mismugha mill-assistent gudizzjarju fuq riferita, u r-relazzjoni tal-espert mediku fuq ukoll riferit;
14. Rat il-verbal datat is-27 ta' Gunju, 2017, u tirrileva li l-abbli rapprezentanti legali tar-rikorrenti iddikjara li kien qed jistrieħ fuq in-nota ta' sottomissjonijiet ipprezentata f'isem ir-rikorrenti, (ara foll 117);

Ikkunsidrat:

- 15.0. Illi l-fatti li taw lok għall-incident in dizamina jistghu jigu sintetikament elenkati bil-mod segwenti:
 - 15.1. Illi għall-habta tas-2.30pm tal-10 t'Ottubru, 2008, kien sehh l-incident in dizamina fil-Korsa l-Antika tal-Marsa, (ara foll 11 tal-Kumpilazzjoni annessa);
 - 15.2. Illi rizzultat tal-istess ittiehdu proceduri kriminali li għaddew in gudikat bid-decizjoni tal-Qorti tal-Appelli Kriminali datata l-4 ta' Mejju, 2011, (ara foll 124 tal-Kumpilazzjoni annessa);
 - 15.3. Illi skont ir-rapport tal-Pulizija wara incident *de quo* jirrizulta li fil-mument tal-incident ir-rikorrenti kien qed isuq ziemel riekeb serkin meta intlaqat minn vettura tal-marka Austin Mini bin-numru HAH – 893 misjuqa mill-intimat, (ara foll 26 tal-Kumpilazzjoni annessa);
 - 15.4. Illi mir-relazzjoni tal-espert mediku nominat minn din il-qorti, (ara paragrafu numru ghaxra, (10.), aktar qabel), irrizulta is-segwenti:
 - 15.4.1. Illi r-rikorrenti garrab griehi ta' natura gravi rizzultat tal-incident *de quo*, (ara foll 109);
 - 15.4.2. Illi rizzultat tal-istess kellu bzonn t'operazzjonijiet, (ara foll 110);
 - 15.4.3. Illi ghalkemm il-feriti mgarrba mir-rikorrenti fiequ, l-irkoppa involuta baqghet iebsa u ma tintlewiex, (ara foll 110);
 - 15.4.4. Illi għalhekk ir-rikorrenti hu limitat hafna fejn jidhol mixi u attivitajiet ohra ta' kuljum, (ara foll 110);
 - 15.4.5. Illi din l-ebusija riskontrata hi ta' natura permanenti u ma tistax tigi ameljorata b'operazzjoni ta' sostituzzjoni tal-irkoppa, (ara foll 110);

15.4.6. Illi konsegwenza tal-istess ir-rikorrenti qed isofri minn rata ta' dizabilita` permanenti ta' ghoxrin fil-mija, (20%), (ara foll 110);

15.5. Illi di piu`, l-istess ziemel involut fl-incident in dizamina kellu jigi maqtul minn veterinarju imsejjah appozitament fuq il-post, konsegwenza tal-feriti serji riskontrati, (ara foll 26 tal-Kumpilazzjoni annessa fejn dan l-aspett hu hemm deskritt b'mod tassew kruenti);

Ikkunsidrat:

16.0. Illi fir-rigward tal-ewwel eccezzjoni preliminari sollevata mill-intimat, (ara paragrafu numru tlieta punt wiehed, (3.1.), aktar qabel u foll 18), jinghad sintetikament is-segwenzi:

16.1. Illi t-traduzzjoni tar-rikors guramentat promotur tirrizulta pprezentata *in atti*, (ara foll 22);

16.2. Illi ghalhekk l-ewwel eccezzjoni *de quo* tirrizulta sorvolata u superata;

17.0. Illi r-risoluzzjoni tal-vertenza rigwardanti r-responsabbilita` ghall-akkadut tista' tigi rizolta billi wiehed jirrikorri ghad-direzzjoni statutorja naxxenti mill-artikli 1031 sa 1033 tal-Kap 16 tal-Ligijiet ta' Malta li essenzjalment jinkludu s-segwenzi principji:

17.1. Illi l-ewwel u qabel kollox wiehed irid iwiegeb ghall-hsara li jwettaq b'ghemilu; u

17.2. Illi min jikkawza tali hsara irid jaghmel tajjeb ghalha;

Ikkunsidrat:

18. Illi tenut kont tal-fatt li ghalkemm notifikat, l-intimat ghazel li ma jipprezenzjax ruhhu ghall-procedura in dizamina, u ghalhekk hu necessarju li din il-qorti tistrieħ fuq il-provi mhux biss prodotti fil-procedura odjerna izda li tistrieħ ukoll fuq il-procedura kriminali kontigwa, f'dan il-kaz dik tal-**Qorti Magistrati (Malta) bhala Qorti ta' Gudikatura**

Kriminali fis-sentenza fl-ismijiet **Police (Inspector Malcolm Bondin) vs. Andrew Stephen Roberts)**, datata t-28 t'Ottubru, 2010;

19. Illi din l-istess Qorti riferita fil-paragrafu precedenti iddelineat is-segwenti rizultanzi:

“From the evidence submitted by both parties, it is very evident that the accident in question happened entirely due to the careless and reckless driving shown by Roberts. It is a known fact that the old race track in Marsa, a dusty, wide tract of land is very frequented by the horse riding community, especially the ones who prefer the horse-drawn sulkies like the one involved in the accident. It is also common to find people walking in the race track, as it is no longer used for racing or for competitions. It is certainly not a public road, and as such any motorized vehicle driven on that track must be so driven with extreme caution and diligence, and only after having obtained authorization from the Malta Racing Club (vide Dok JV1 at foll 27). From the dynamics of the accident itself, it appears that Roberts was driving in an anti-clockwise direction on the race course, keeping to his left, whereas Busuttil was training his horse and coming in the opposite direction”, (ara foll 94 tal-Kumpilazzjoni annessa);

20. Illi l-istess sentenza tkompli bil-mod segwenti:

“In the Court’s opinion, the speed at which the accused was driving was definitely excessive for the circumstances he was in. The dust cloud raised by his friend is no excuse. In this regard, the Court also refers to the testimony given by the victim, Anthony Busuttil, who stated that Roberts and Vella appeared to be racing against each other, even though both denied this assertion made by Busuttil. This assertion is also made by third parties in the Police report, but it was not established as a fact, although the presumption may be made that the speed at which Roberts was driving his Mini was excessive. It is certainly indicative that Roberts managed to hit a horse and cause it severe injuries, hit the sulky and

damage it considerably, and even cause grievous injuries to the sulky driver, and then glide for 19 metres across the race track and smash the car into a wall on his right, and all this by simply driving at a normal speed. It is highly unlikely that all this damage and unnecessary suffering would have occurred had Roberts exercised prudence and diligence in his driving, (ara foll 96 u 97 tal-Kumpilazzjoni annessa);

21. Illi fis-sentenza taghha fir-rigward datata l-4 ta' Mejju, 2011, il-Qorti tal-Appell Kriminali tkompli s-sostni s-segwent, (ara foll 128 tal-Kumpilazzjoni annessa):

“By driving on he”, (l-intimat odjern), “was putting himself in a self-inflicted incapacity of not being able to take any evasive action as he was unable to see clearly through the dust cloud”;

Ikkunsidrat:

22. Illi f'dan l-istadju ssir ukoll referenza ghas-sentenza tal-**Prim'Awla tal-Qorti Civili** fl-ismijiet **Albert Zammit vs. Marcel Ellul et**, datata d-9 ta' Marzu, 2017, li tghid is-segwent fir-rigward:

“... illi z-zewg regoli kardinali tas-sewqan fi kwistjonijiet ta' stharrig ta' responsabbilita` tas-sewwieq, huma: fl-ewwel lok s-sewwieq ghandu jirregola s-sewqan tieghu skont ic-cirkostanzi kollha tal-inhawi fejn ikun (maghduda magghom il-konfigurazzjoni tat-triq, il-hin u l-kondizzjonijiet atmosferici), u fit-tieni lok, sewwieq ghandu jzomm 'a proper lookout' u cioe` li jkun attent ghal dak li jkun qieghed isehh madwaru jew mistenni li jsehh minnufih. Sewwieq ikun ikkontribwixxa ghall-incident jekk ma jkunx zamm 'a proper outlook', liema dmir igib mieghu li s-sewwieq jara dak li jkun ragonevolment vizibbli”;

Ikkunsidrat:

- 23.0. Illi jigi sottolineat li l-grad tal-prova fil-kamp Kriminali mhux l-istess bhal dak fil-kamp Civili li hawnhekk qed jigi ezaminat, u in effetti:
 - 23.1. Dak Kriminali hu ta' prova li tigi accettata minghajr ma jkun hemm dubju ragonevoli fir-rigward; u
 - 23.2. Dak Civili hu ta' prova ibbazata fuq bilanc ta' probabbilita`;
24. Illi r-referenzi ghas-sentenzi moghtija kemm mill-Qorti tal-Magistrati u mill-Qorti tal-Appelli Kriminali fuq riferiti jikkonfermaw ir-responsabbilita` tal-intimat u jikkostitwixxu wkoll prova soda bizzejjed ghall-fini tal-proceduri civili odjerni fejn il-livell tal-grad tal-prova hu anqas rigoruz minn dak tal-proceduri kriminali *de quo*;

Ikkunsidrat:

25. Illi ghandu jirrizulta pacifiku li minn ezami tal-kumpless kollu tal-provi prodotti l-intimat verament kien qieghed isuq b'mod negligenti u imprudenti meta la zamm il-"proper lookout" rikjest u lanqas saq b'mod li dejjem ikollu kontroll tal-vettura minnu misjuqa biex b'hekk ma jkunx ta' periklu ghal terzi u ghalih stess;
26. Illi ghalhekk, in vista tal-premess, din il-qorti hi sodisfatta li l-intimat kien il-kawza prossima tal-incident in dizamina;
27. Illi konsegwentement hi sodisfatta li l-intimat hu unikament responsabbli ghall-incident *de quo*;

Ikkunsidrat:

28. Illi stabbilit is-suespost, l-attenzjoni issa tiffoka fuq il-likwidazzjoni tad-danni kif rikjest mir-rikorrenti, senjatament kemm dawk materjali u attwali, u dawk rigwardanti l-qligh futur;

Ikkunsidrat:

A. Damnum Emergens:

29.0. Illi f'dan ir-rigward issir referenza ghall-istima prodotta fl-atti tal-Kumpilazzjoni annessa, (ara foll 48 tal-istess) fejn jirrizultaw is-segwenti:

29.1. Serkin tat-tigrija: **€1,700.00**

29.2. Xedd tat-tigrija : **€ 350.00**

29.3. Ziemel tat-trott : **€1,300.00**

Total: €3,350.00

B. Lucrum Cessans:

30. Illi dan il-kap hu ibbazat fuq l-artiklu 1045 tal-Kap 16 tal-Ligijiet ta' Malta;

31. Illi skont in-numru tal-karta tal-identita` tar-rikorrenti jirrizulta li ghandu 57 sena;

32. Illi in linea mas-sentenza tal-**Qorti tal-Appell** fl-ismijiet **James Spiteri vs. Joseph Magro et** datata l-**5 ta' Dicembru, 2014**, ser jigi adottat **multiplier ta' 5**;

33.0. Illi fir-rigward tal-introjtu tar-rikorrenti jinghad sintetikament is-segwenti:

33.1. Illi fin-nota ta' sottomissjonijiet tar-rikorrenti jirrizulta li r-rikorrenti isosstni li l-introjtu tieghu kien ta' medja ta' €19,000.00, (ara foll 116);

33.2. Illi minn ezami tax-xhieda a foll 54 u tad-dokumenti annessi maghha a foll 51 sa 53 jirrizulta minflok li l-introjtu medju mensili tar-rikorrenti kien jammonta ghal €5,782.00, ekwivalenti ghal medja ta' €14,883.00 fis-sena;

34. Illi tenut kont tal-gholi tal-hajja, qed jigi hawn stabbilit li l-*lucrum cessans* ser jigi komputat fuq medja ta' introjtu annwali ta' **€17,000.00**;

Ikkunsidrat:

- 35.0. Illi fir-rigward tar-rata ta' dizabilita` tar-rikorrenti riskontrata jinghad sintetikament is-segwent:
- 35.1. Illi r-relazzjoni tal-espert mediku nominat minn din il-qorti hi sintetikament esposta aktar qabel, (ara paragrafu numru hmistax punt erbgha, (15.4.), u foll 106);
- 35.2. Id-dizabilita` permanenti riskontrata fuq ir-rikorrenti mill-istess espert mediku hi ta' **20%**;
- 35.3. Illi din il-qorti m'ghandha xejn x'ticcensura fl-operat tal-istess espert mediku, *molto piu` stante* li lanqas intalbet il-hatra t'esperti addizzjonali fir-rigward;
- 35.4. Illi konsegwentement tadotta u taghmel taghha l-istess relazzjoni tal-espert *de quo*;

Ikkunsidrat:

- 36.0. Illi fir-rigward tal-***lump sum payment*** jinghad sintetikament is-segwent:
- 36.1. Illi ssir referenza ghas-sentenza tal-***Qorti tal-Appell*** fl-ismijiet ***Annunziata sive Nancy Caruana vs. Odette Camilleri*** datata s-***27 ta' Frar, 2004***, li rribadiet is-segwent:

“... ghall-finijiet tat-tnaqqis minhabba lump sum payment id-dekors taz-zmien ghandu jibda jigi kalkolat minn meta tigi intavolata l-kawza relattiva u mhux minn meta javvera ruhhu l-incident ukoll relattiv”;

- 36.2. Illi ssir ukoll referenza ghas-sentenza tal-**Prim'Awla tal-Qorti Civili** fl-ismijiet **Joseph Agius et vs. All Services Limited** datata t-2 ta' **Gunju, 2005**, li rriteniet is-segwenti:

“F’kazijiet kongruwi, soltu li jsir tnaqqis iehor t’20% għall-fatt li jkun ser ikun hemm hlas f’daqqa (“lump sum payment”) lill-beneficjarji. Jekk id-decizjoni, pero`, tkun se tinghata wara tul ta’ certu zmien, li l-prattika li l-persentagg ta’ tnaqqis jonqos, u hi konswetudni tal-Qrati, li jekk kawza ddum aktar minn sentejn, il-persentagg jonqos b’zewg punti għal kull sena ohra li l-kawza ddum biex tigi deciza”;

- 36.3. Illi f’dan ir-rigward jirrizulta li l-procedura odjerna giet intavolata fid-29 t’April, 2010, (ara foll 1), u din is-sentenza qed tinghata ftit aktar minn seba’ (7) snin wara, (ara foll 117);

- 36.4. Illi konsegwenza tal-istess għandu jsir tnaqqis ta’ **14%**;

Ikkunsidrat:

- 37.0. Illi in konsegwenza tal-premess jinghad li d-danni għandhom jigu likwidati bil-mod segwenti:

- 37.1. **Damnum Emergens: €3,350.00**, (ara paragrafu numru disgha u ghoxrin, (29.) aktar qabel;

- 37.2. **Lucrum Cessans:**

$$5 \times €17,000.00 \times 20\% - 14\% = \mathbf{€14,620.00}$$

- 37.3. **Total: €17,970.00**

Ikkunsidrat:

- 38.0. Illi in vista tal-premess din il-qorti hi sodisfatta li r-rikorrenti pprova t-talbiet tieghu skont il-ligi, u konsegwentement:

DECIDE:

- 38.1. Takkolji t-talbiet kollha tar-rikorrenti;
- 38.2. Tirrespingi r-risposti tal-intimat;
- 38.3. Tiddikjara lill-intimat Andrew Stephen Roberts responsabbli għall-incident in dizamina u għad-danni sofferti mir-rikorrenti Anthony Busuttil rizultat tal-istess;
- 38.4. Tillikwida d-danni sofferti mir-rikorrenti fuq indikat fl-ammont ta' sbatax- il elf disa' mija u sebghin euro, (€17,970.00);
- 38.5. Tikkundanna lill-imsemmi intimat biex ihallas l-ammont hekk likwidat lir-rikorrenti Anthony Busuttil;
- 38.6. Bl-ispejjez ta' din il-procedura u bl-imghaxijiet skont il-ligi mid-data tal-presentata tar-rikors guramentat promotur sad-data tal-effettiv pagament.

Onor. Imhalledf Silvio Meli

DECIZJONI FINALI