



FIT-TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR: DR PHILIP MANDUCA LL.D**

**Seduta ta' nhar It-Tnejn 22 ta' April , 2002**

**Avviz Nru:976/01 PM**

**Untours Insurance Agency  
Limited ghal Qatar insurance  
Company kif surrogata fid-  
drittijiet tal-assigurata taghom  
Simonette Azzopardi u l-istess  
Simonette Azzopardi**

**Vs**

**Nicolina Muscat**

**It-Tribunal,**

Ra l-avviz li fih l-atturi talbu danni wara incident ta' traffiku;

Ra n-nota ta' eccezzjonijiet gejn gie except li l-konvenuta ma kienetx responsabbli ghall-incident;

Ra d-dokumenti ezebiti;

Semghet ix-xhieda;

Ikkunsidrat li skond il-Pulizija li nvestga l-incident il-partijiet iddikjaraw kif gej:-

L-attrici: “ kont ghaddejja minn Triq l-Mdina, Attard fid-direzzjoni lejn l-Imriehel u f'daqqa wahda rajt vettura CAH954 miexja b' lura f' direzzjoni orizzontali minn mal-Bankina. Ix-xufiera ta' vettura CAH954 wara l-habta harget mill-vettura taghha u ammettiet it-tort mieghi u stedniti li mmur insewwi ghand certu Salvu. Jiena nsistejt li jigu l-Pulizija kif fill-fatt gara”;

Il-konvenuta: Jkont ghaddejja minn Triq l-Mdina, Attard, fid-direzzjoni lejn l-Imriehel u skiddajt u dhalt gol-bankina fuq in-naha tax-xelluh tieghi u vettura KAJ li kienet warajja dahelt go fija;

L-esponent jaghmel riferenza ghal kawza Fogg limited vs Jesmond Vella, deciza mill-Qorti tal-Appell fid-19 ta' Novembru, 2001. f' din il-kawza l-Qorti tal-Appell qalet li s-sewqan ghandu, “jkun prudenti,mehtieg u suggerit fic-cirkostanzi...il-Qorti ghalhekk tikkunsidra l-elementi kollha li kkontribbew ghall-incident fid-dawl tar-regolmaneti li jiggvernaw is-sewqan tad-drivers involuti f'dak il-mument. Kellha tiddermina x' kienet il-kawza prossima u immedjata tieghu”;

Illi fill-kawza Joseph Vella vs Anthony Camillleri et. deciza mill-Prim'Awla (GV) 29/01/98 gie4 ritenut li skid wahdu la hu prova ta' nagligenza u lanaqas skriminanti. Hemm bzonn li jkun indagat jekk kienx hemm xi negligenza antecedenti jew konkomitanti. Jekk negligenza simili tirrizulta allura hemm ir-responsabilita' nonostante l-skid; jekk ma tirrizultax allura l-iskid huwa difiza ghax tkun incident inevitabli. Gie ritenut u koll li meta ssir habta minhabba wahda mill-vetturi tkun skiddjat, is-sewwieq tal-karozza jkun responsabli jekk ma jaghrafx jaghmel il-manuvra mehtiega biex jevita' u jnaqqas l-isiddjar meta kellu zmien li jaghmel dan u jkun aktar responsabli jekk jaghmel xi manuvra li taggrava l-skid;

Binjgham's Motor Calims Cases 5 th edition pag 170:

"It was decided many years ago that a skidding vehicle is not in Law an nuisance, nor is the skidding itself nay evidence of negligence on the part of the driver. There are also cases which have decided that the mounting of a car upon the pavemetn is prima facie evidence of neglgenca on the part of the driver. Here the confirmation opof these matters is considered, nad the result is that, when a car mouints the pavement by reason of skid and not due to negligence on the part of the driver, thetre is no fault for which the driver is responsible, nad no action lies in respect of such a skid";

Bingham jghid ukoll li: "the onus is on the driver to prove that the skid was not brought about by (bad driving, careless driver or over rapiod driving)...It is only when the skid occurs unavoidably that the

driver cannot be held responsible. If he is driving in such a way which is asking for a skid he is liable”;

F'din il-kawza l-konvenuta ma gabitx provi konvincenti dwar ghaliex skiddjat. Il-konvenuta tghid li kien hemm l-irxiex. Illi dan il-fatt wahdu mja jfissirx li l-skid kien “unavoidable”. Illi minn naha l-ohra l-attrici kellha tara dak li hemm quddiema b'mod lio jekk din il-karozza tieqaf hi tkun fill-posizzjoni li tevita l-incident;

Ghalhekk jirrizulta li z-zewg partijiet kellhom tort f' dan l-incident b' mod ugwali u ghalhekk il-konvenuta ghandha thallas hames mija u tnejn u ghoxrin Lira Maltin u erba' u hamsin centezmu (Lm522.54) rapprezentanti nofs id-danni sofferti mill-atturri;

Fic-cirkostanzi kull parti thallas l-ispejjes taghha.

**Dr.Philip Manduca L.L.D.**

**Gudikatur**

