



**In the Court of Magistrates (Malta)**

**as a Court of Court of Criminal Judicature**

**Magistrate Dr Nadine Lia**

**B.A., LL.M(Kent); LL.D; Barrister-at-Law (England & Wales)**

**Comp No: 60/2020**

**Today, the 9<sup>th</sup> of November 2023**

**The Police**

**(Inspector Paula Ciantar)**

**vs**

**Ligita Imbrasiene**

The Court after having seen the charges proffered against:

Ligita IMBRASIENE of 49 years, daughter of Romualdas MALESKA-MALESKEVICIUS and Birute MALESKIENE-MALESKEVICIENE nee STAKISAITYTE born in Lithuania on the 4th June 1970, resident at Silvia Flats, Apt

6, Triq I-Imhar, San Pawl il-Bahar, Republic of Lithuania passport number 22806073 and holder of Maltese residence permit number 0159758A.

Whereby you are hereby being accused of having:

1. on the 1st February 2020 in Triq il-Mistra, San Pawl il-Bahar and on these Islands, through imprudence, carelessness, unskilfulness in your art or profession, or non-observance of regulations, caused the death of Mark Camilleri; *Art. 225(1) of Cap. 9 of the Laws of Malta*

2. Moreover, on the same date, time, place and circumstances, driven a motor vehicle or other vehicle without a licence or an unlicensed motor vehicle or other vehicle, or in a reckless, negligent or dangerous manner; *Art. 15(1)(a) of Cap. 65 of the Laws of Malta*

3. Moreover, on the same date, time, place and circumstances, whilst driving motor vehicle bearing registration number ECE261, having crossed the continuous white line (centre line); *Schedule, Part IV, A(i) of S. L. 65.05 of the Laws of Malta*

The Court was requested that in pronouncing judgment or in any subsequent order, in addition to the punishment prescribed by law, to disqualify the offender from holding or obtaining a driving licence or a licence in respect of the motor vehicle driven by her at the time of the offence.

The Court was also requested in pronouncing judgment or in any subsequent order, sentence the aforementioned Ligita Imbrasiene to the payment, wholly or in part, of the costs incurred in connection with the employment in the proceedings of any expert or referee in accordance with Article 533 of Chapter 9 of the Laws of Malta.

Having seen that during the sitting of the 26th August 2021, the accused declared that she is not guilty of the charges proffered against her<sup>1</sup>.

Having seen that the Attorney General consented to these proceedings being dealt with summarily<sup>2</sup>.

Having seen that in the sitting of the 12th March 2020 the Court ordered that proceedings continue in the English language since the accused did not understand or speak Maltese<sup>3</sup>.

Having seen that the Prosecution concluded its evidence during the sitting of the 26<sup>th</sup> May 2022<sup>4</sup>.

Having seen that the Defence concluded its evidence during the sitting of the 21<sup>st</sup> March 2023<sup>5</sup>.

Having seen the notes of submissions filed by the Prosecution and the Defence.

Having heard the submissions made by the Prosecution and the Defence.

## **Having Considered**

### **Summary of facts of the case**

This case concerns a traffic accident which occurred on the 1st February 2020 in Triq il-Mistra, San Pawl il-Bahar between vehicle ECE-261 driven by the accused

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<sup>1</sup> Folio 9 of the acts of the proceedings

<sup>2</sup> Fol. 19 of the acts of the proceedings

<sup>3</sup> Fol. 20 of the acts of the proceedings

<sup>4</sup> Fol. 244 of the acts of proceedings

<sup>5</sup> Fol. 315 of the acts of proceedings

and a motorcycle KBL-796 driven by Mark Camilleri. As a result of such accident, Mark Camilleri lost his life on impact.

### **Having Considered**

That reference will be made to the most salient testimonies heard and documents exhibited during these proceedings

**Inspector Paula Ciantar**, stationed at Mosta Police Station, testified during the sitting of the 12<sup>th</sup> March 2020<sup>6</sup>. She explained that on the 1<sup>st</sup> February 2020 she was informed by WPS 223 Charlene Calleja that a fatal road accident had occurred just past Xemxija roundabout between a car of make Toyota Passo bearing registration number ECE-261 and a motorcycle of make KTM 1190 RC 8 bearing registration number KBL-796. The witness immediately reported on site where it resulted the victim, a certain Mark Camilleri, has been certified as deceased on the spot. The point of impact between the two vehicles occurred near the first exit from the main road, that is, the secondary road leading to Mistra Bay. The witness explained that from the preliminary observations made, it appeared that the victim was driving his motorcycle from Xemxija towards Mellieha and the accused emerged from the Mistra Bay exit and tried to cross over to the other side of the road towards Xemxija. The line separating the two lanes on the main road is continuous, so therefore, it should not have been crossed. An inquiry relating to the *in genere* was ordered by duty Magistrate, now Mr Justice, Dr Neville Camilleri and various experts were appointed. The accused was contacted by the witness on the 2<sup>nd</sup> February 2020 and she gave a statement after having been given her rights, whereby she consulted

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<sup>6</sup> Fol. 22-26 acts of the proceedings

with Dr Martha Mifsud. The statement was taken at the witness's office in the presence of WPC 31 Susan Muscat.

**Dr Mario Buttigieg**<sup>7</sup>, court appointed expert, testified during the sitting of the 31<sup>st</sup> July 2020. He presented his report and confirmed same on oath. He explained that succinctly, he has concluded that vehicle ECE-261, driven by the accused was in fact stationary though oriented in the direction towards Xemxija. The victim, on the other hand, was driving his motorcycle at a speed of circa 195km/h downhill when he activated the rear brake of the motorcycle alone with the consequence at destabilizing the motorcycle and causing it to swerve uncontrollably sideways into the stationary vehicle.

**Dr Mario Buttigieg** was re-produced for cross-examination during the sitting of the 10<sup>th</sup> June 2022<sup>8</sup>. The witness agreed with the defence's suggestion that the accused's visual of the right hand side whilst exiting from the Mistra sideroad was obstructed by a rubble wall. The witness also agreed that the above fact required the accused to inch out slowly in order to obtain a better visual. Unfortunately, in the witness's own words, the construction of the road at that time was such that that the angle required the driver to cross slightly into the opposite carriage way when exiting from the sideroads. The witness was not aware whether any modifications to the construction of the road were made as a result of this incident. Although confirming that a continuous white line did in fact separate the carriageways, the witness did agree that this continuous white line is not easily seen by a driver exiting from a sideroad. The witness confirmed that from his calculations, the probable speed at which the victim was travelling was circa

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<sup>7</sup> Fol. 29-33 acts of the proceedings

<sup>8</sup> Fol. 267-272 acts of the proceedings

195km/h and that it is bad practice for a motorcycle driver to apply solely the rear brake when driving at such a high speed as this will cause the motorcycle to spin and lose control. In fact, he confirmed that in this case, the injuries sustained by the victim indicate that the motorcycle had rotated and kept travelling for circa 234 meters. The speed limit for that stretch of road is 60km/h.

Having examined the final report of the witness<sup>9</sup> it transpires that at the end of the road in question there is a Stop Sign which indicates to drivers that they should stop when they come out of the main road. The road in question is a straight road and therefore the road visibility is not restricted from any obstacles except for the rocks that there are.

At the scene of the incident it could be observed that the vehicle did not leave any brake marks whilst the motor bike ended up on the other side of the carriageway, left brake marks the length of 20.64 meters and got dragged a length of 259.13 metres.

From the experts findings it resulted that following road testing the condition of the road surface was not a good one.

In his conclusions the expert declares that for the defendant to have entered the main road she had to stop at the Stop Sign that there was in the road and it is at this point that the accident took place.

From the evidence he collated, it resulted that the victim had his hand raised whilst he was driving and therefore it results that he could have never had his hand on

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<sup>9</sup> Dok MB1, Folio 34-87 acts of the proceedings

the front brake and therefore the braking carried out by the victim was on the back breaks.

The way the road is set out, the defendant couldn't easily see the victim Camilleri coming and owing to the fact that he was driving at a fast speed the victim didn't have time to reduce his speed and avoid the collision.

In his conclusions the expert concluded that the defendant had the obligation to keep a *proper look out* before exiting from the Stop sign. The reason why she did not keep a proper look out is because before she exited from the Stop sign she took certain risks and she did not take the necessary precautions required.

The expert explained that when the defendant approached the Stop sign, she was required to stop at the sign **even if** there are no other oncoming vehicles approaching. The driver had to wait before entering the main road and no part of the vehicle has to step over the Stop signage before examining the road area thoroughly. A driver in a main road always has priority over a driver coming out of a secondary road and should not carry out any maneuvers that disrupt the driver on the main road.

The expert concludes that the defendant's claim that at no point did she is the victim is simply a self incriminating statement proving that she did not keep a proper lookout even though the victim was driving at 195 kilometers an hour instead of 60 kilometers an hour as required in the area.

**Abigail Grech**<sup>10</sup>, scene of crime officer, testified during the same sitting. She confirmed that on the 1<sup>st</sup> February 2020 she was appointed by the Inquiring

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<sup>10</sup> Fol. 88-90 acts of the proceedings

Magistrate to act as a scene of the crime officer and assist in the taking of photographs of the scene of the accident. She reported on site at 16:00hrs and proceeded to capture 150 images, of which she confirmed the authenticity and presented the report.<sup>11</sup>

**Dr. Mario Scerri**<sup>12</sup> testified during the sitting of the 9<sup>th</sup> December 2020 and exhibited his report.<sup>13</sup> From his report he results that he attended for the victims autopsy and he confirmed that he died on impact when his motor bike landed on him as a result of a collision with another car.

**Prof. Marie Therese Camilleri Podesta** and **Dr Ali Sarfraz**<sup>14</sup>, court appointed pathologists, testified during the sitting of the 26<sup>th</sup> May 2022. They explained that on the 3<sup>rd</sup> February 2020 they carried out the post-mortem examination on the corpse of Mark Camilleri. They presented their reports and confirmed its correctness on oath.

**Lorianne Spiteri**<sup>15</sup>, deputy registrar of this Court, testified during the same sitting whereby she presented the process verbal bearing number 145/2020 which concerns the incident under examination<sup>16</sup>.

**PC 2031 Susan Muscat**<sup>17</sup>, stationed at Mosta Police Station testified during the same sitting. She confirmed that she was present together with Inspector Paula Ciantar during the taking of the accused's statement.

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<sup>11</sup> Dok AG1, Folio 92-187 acts of the proceedings

<sup>12</sup> Folio 190-191 acts of the proceedings

<sup>13</sup> Dok MS1, Folio 192-234 acts of the proceedings

<sup>14</sup> Fol. 245 acts of the proceedings

<sup>15</sup> Fol. 250 acts of the proceedings

<sup>16</sup> Dok LS1, Folio 254-264 acts of proceedings

<sup>17</sup> Fol. 265 acts of the proceedings



The accused **Ligita Imbrasiene** voluntarily opted to testify during the sitting of the 25<sup>th</sup> October 2022<sup>18</sup>. She explained that she has been living and working in Malta since 2018 and that on the 1<sup>st</sup> February 2020, she was in the company of Ralph Christie and after having lunch at Mistra Bay, she proceeded to drive her car, of make Toyota Passo, away from Mistra. It was her first time visiting Mistra Bay. To drive away from Mistra, she used the same road which she had used to go there as it was the “only one road I knew”. When she proceeded to exit from the side-road which she described as “angled” and “narrow”, she stopped as there was oncoming traffic but had to inch slightly forward in order to be able to have a better viewpoint. When she considered that it was safe to do so, she emerged onto the right - towards the direction of Xemxija. The accused explained that it was practically impossible to turn onto the left without crossing on both lanes owing to the angle of the junction. As she was emerging, a motorcycle approached in a “very fast” manner and suddenly an impact occurred with the right-hand side of her car. She then realized that the motorcycle had kept moving forward without its driver and that the impact with her car had actually been caused by the body of the driver. The accused proceeded to present a series of photographs of the scene of the accident which she had taken herself some days after. In cross-examination, she explained that although the lanes in the road in question are separated by a continuous white line, this was not visible from her point of exit. The accused testified again on the 31<sup>st</sup> January 2023<sup>19</sup> whereby she presented a series of photographs taken by herself on the on the 3<sup>rd</sup> December 2022 indicating certain

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<sup>18</sup> Fol. 277-293 acts of the proceedings

<sup>19</sup> Fol. 304-306 acts of the proceedings

changes in the road infrastructure which have been implemented since the accident.

**Kedar Karki** testified during the same sitting<sup>20</sup>. He explained that he works as a bus driver with Malta Public Transport. Whilst confirming that at the time of the accident he was driving a bus from Xemxija to Mellieha, he does not recall seeing the impact occur but did note that he was overtaken by a motorcycle from the right-hand side. The witness was unable to identify the motorcycle which had overtaken him from photographs exhibited in the acts of these proceedings.

**Architect David Vassallo**, Head of the Maintenance Unit at Infrastructure Malta Agency testified during the sittings of the 27<sup>th</sup> February 2023<sup>21</sup> and the 21<sup>st</sup> March 2023<sup>22</sup>. The witness was requested by the defence to provide any information relative to road works, resurfacing, installation of traffic signs, road markings, etc. which were made in the area in question after the 1<sup>st</sup> February 2020 and in fact confirmed that in April 2020, road works were executed on the stretch of road starting at Mistra Bay and ending at the arterial road where the accident occurred. No changes to the road markings in the arterial road were made.

## Considerations

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<sup>20</sup> Fol. 294-298 acts of the proceedings

<sup>21</sup> Fol. 311-314 acts of the proceedings

<sup>22</sup> Fol. 316-319 acts of the proceedings

## **The Statement released by the Defendant**

The defendant had her statement<sup>23</sup> taken by the Police as part of their investigation by Inspector Paula Ciantar on the 2nd February 2020 in the presence of WPC 31 Susan Muscat. On the statement exhibited as evidence in these proceedings it results that the accused was given the due caution in terms of law and had opted to consult with lawyer Dr Martha Mifsud.

In the statement, with reference to the charges under examination, the defendant explained that when she was exiting the side road leading to Mistra Bay, she could only turn towards the right (direction to Xemxija) owing to the very sharp angle of the junction. She explained that her visibility was limited but when she saw that there was a safe gap, she emerged slowly, only to suddenly see a motorcycle overtaking a bus at an erormously high speed and then the impact occurred and she called for assistance. She also explained that from the junction, she could not see the continuous white line painted onto the road surface. During her interrogation, the defendant was shown to aerial shots of the road area and surrounding vicinity where the incident took place.<sup>24</sup>

The defendant also gave her version of events when she was spoken to on site immediately after the incident as documented in the police report with the reference NPS 9/V/459/2020<sup>25</sup> whereby she stated

*“I was on the stop sign going out of Mistra Bay and turning right to cross lanes direction to Xemxija, after I checked on both sides for any coming vehicles I drove out of the stop sign*

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<sup>23</sup> Fol. 6-8 of the acts of the proceedings

<sup>24</sup> Dok LI1, LI2, Folio 9-10 of the acts of the proceedings

<sup>25</sup> Folio 17 of the acts of proceedings

*and all of a sudden I saw the motorcycle coming with excessive speed and crashed into the right side of my vehicle and immediately called the police.”*

### **Considerations**

The defendant was primarily accused of having breached article 225(1) of the Criminal Code which states:

*Whosoever, through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations, causes the death of any person, shall, on conviction, be liable to imprisonment for a term not exceeding four years or to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87).*

The Court here makes reference to the writing of **Mario Codagnone** from his book **“Casi Pratici in Materia di Circolazione Stradali”** where at page 51 there is stated:

*“Riteniamo che allo stato attuale delle cose, si imponga anzi tutto un affermazione di principio: la strada e’ di tutti. Essa e’ un bene alcui utenza i cittadini tutti sono ammessi con parita’ di diritti e di doveri ed oseremo anzi dire con maggiori doveri da parti di coloro che la dominano alla guida di mezzi che, per le loro intrinseche caratteristiche di velocita’ e potenza, possono costituire, anche solo per questo, un imminente pericolo per la circolazione.”*

The Court also makes reference to **Archbold** in his book **“Criminal Pleading Evidence and Practice”** where he said:

*“Where death results in consequence of a negligent act, it would seem that, to create criminal responsibility, the degree of negligence must be so gross as to amount to recklessness . . . probably, of all the epithets that can be applied, reckless most nearly covers*

*the case . . . but whatever epithet be used, and whether an epithet be used or not, in order to establish criminal responsibility, the facts must be such that . . . the negligence of the prisoner went beyond a matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving punishment..”*

The Court also makes reference to **Blackstone’s Criminal Practice**<sup>26</sup> where it is stated:

*“It should be noted that danger to the person is not qualified by any adjective and therefore, as long as it is not de minimis, any danger to any person, even though slight, if obvious to the ‘competent and careful’ driver, would suffice. In **Hennigan** [1971] 3 All ER 133, a case of causing death by reckless driving under the TRA 1960, the recklessness consisted mainly of the speed at which the defendant was driving; the driver of the other car, which contained the two persons who were killed, may well have been substantially to blame for the accident. The court held that there was nothing in the legislation which required the manner of the accused’s driving to be a substantial or a major cause of the accident, as long as it was ‘a cause and something more than de minimis.’ Similarly, it was said in **Skelton** [1995] Crim LR 635 that no particular degree of contribution to the death, beyond a negligible one, is required. An acceptable direction to the jury is that they do not have to be sure that the defendant’s driving ‘was the principal, or a substantial, cause of the death, as long as [they] are sure that it was a cause and that there was something more than a slight or a trifling link’ (**Kimsey**) [1996] Crim LR 35).*

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<sup>26</sup> 2006

*The standard of driving must fall 'far below' that expected of a 'competent and careful' driver and it must be obvious to a 'competent and careful' driver that the manner of driving is dangerous."*

With regards to the elements required for diligent driving the Court makes reference to the judgment in Court of Criminal Appeal in the United Kingdom in the case of **Knight** where it was upheld:

*"driving in such a manner as to create an obvious and serious risk of causing physical harm to some other person who might happen to be using the road, or doing substantial damage to property' and 'that in driving in that manner [the defendant] did so without having given any thought to the possibility of there being any such risk, or having recognised that there was some risk involved, had nonetheless gone on to take it."*

In our jurisdiction the elements required to prove the *mean rea* was addressed in the case **Il-Pulizija vs Saverina sive Rini Borg et**<sup>27</sup> where it was stated:

*"Dan ifisser li fil-materja tal-kolpuż, hemm neċessarjament l-element ta' attività diretta għal xi fini partikolari li minħabba nuqqas ta' ċertu prekawzjonijiet jistgħu jiġu leżi jew dannegġjati jew ippreġudikati linteressi ta' terzi. ...*

*Hemm diversi forom ta' kondotta kolpuża, derivanti minn atti ta' negligenza, imprudenza, imperizja u non-osservanza ta' liġijiet, regolament, ordnijiet u simili:*

*L-imprudenza tiġi mill-aġir ta' xi hadd mingħajr ma' jieħu l-opportuni kawteli;*

*In-negligenza tiġi mid-disattenzjoni u disakkortezza ta' l-aġent filkondotta tiegħu;*

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<sup>27</sup> Deciza nhar il-31 ta' Lulju 1998, Qorti tal-Appell Kriminali; Imhalled Emeritus Patrick Vella

*L-imperizja hija l-forma specifika tal-kulpa profesjonali, cjoe', kif jgħid il-Manzini: "inettitudine e insufficienza professionale generale e specifica, nota all'agente, di cui egli vuole non tener conto":*

*Il-kulpa tista' tkun dovuta ukoll għal non-osservanza tal-liġijiet, regolamenti, ordnijiet u simili, bħal ma huma l-assjem ta' regoli predisposti mill-awtorita' pubblika dwar xi attivita' determinata u specifika bl-iskop li jiġi evitat il-possibilita' ta' ħsara u dannu lil terzi cjoe', dawk li jkollhom l-element tal-prevenzjoni..."*

In fact in these types of crimes it is not the *mens rea* per se in relation to the intention to cause the crime that must be examined and that is why the test that should be adapted is an objective test and not subjective as it was retained in the case **Loukes** [1996] 1 Cr App R 444 where the Court of Appeal upheld:

*"Proof of guilt depends on an objective standard of driving, namely, what would have been obvious to a competent and careful driver. The accused's driver's state of mind is relevant only if and to the extent that it attributes additional knowledge to the notional competent and careful driver...It should be noted too that the threshold of proof is high. It must be shown that the defect was 'obvious' to a 'competent and careful driver'. It is not enough to show in the case of such a driver that, say, if he had examined the vehicle by going underneath it, he would have seen the defect."*

Whilst the legislator failed to give an explanation of the terms 'lack of thought' and 'carelessness' as done in foreign jurisdictions, our Courts have always interpreted these terms as a lack of attention and taking precautions that were expected in the particular circumstances.

These principles were established in the case **Il-Pulizija vs Perit Louis Portelli**<sup>28</sup> where it was upheld:

*“Hu meħtieġ għall-kostituzzjoni tar-reat involontarju skond l-artikolu 239 (illum 225) tal-Kodiċi Penali, illi tirrikorri kondotta volontarja negligenti – konsistenti ġenerikament f’nuqqas ta’ ħsieb (“imprudenza”), traskuraġni (“negligenza”), jew ta’ ħila (“imperizja”) fl-arti jew professjoni jew konsistenti speċifikatament f’nuqqas ta’ tħaris tar-regolamenti – li tkun segwita, b’ness ta’ kawżalità minn event dannuż involontarju.*

*Għandu jiġi premess illi, għall-aċċertament tal-ħtija minħabba f’kondotta negligenti, għandu jsir il-konfront tal-kondotta effettivament adoperata ma’ dik ta’ persuna li s-sapjenza rumana identifikat mal-bonus pater familias, dik il-kondotta, cioè illi fil-każ konkret kienet tiġi użata minn persuna ta’ intelligenza, diligenza u sensibilità normali, kriterju dan li filwaqt li jservi ta’ gwida oġġettiva għall-ġudikant, iħallih fl-istess ħin liberu li jivvaluta d-diligenza tal-każ konkret.”<sup>29</sup>*

These principles were confirmed in the case **Il-Pulizija vs Richard Grech**<sup>30</sup> li that made reference to the judgment just quoted and in addition upheld:

*“Biex wieħed jifhem l-essenza vera tal-kolpa, wieħed irid iżomm f’moħħu li fil-ħajja soċjali spiss jinħolqu sitwazzjonijiet li fihom attivita' diretta għal xi fini partikolari tista' tagħti lok għal konsegwenzi dannużi lil terzi. Lesperjenza komuni jew l-esperjenza teknika - ċjoè, l-esperjenza komuni għall-bnedmin kollha jew dik l-esperjenza ta' kategorija ta' nies li jesplikaw attivitè partikolari - tgħallem li f’dawn il-każijiet wieħed għandu juża ċerti prekawzzjonijiet bil-għan li jevita li l-interessi ta’ l-oħrajn jiġu ppreġudikati;*

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<sup>28</sup> Qorti Kriminali, Deciza 4 ta’ Frar 1961

<sup>29</sup> Volum 45, Parti Nru 4, Pagna 870, 903

<sup>30</sup> Qorti tal-Appell Kriminali; Imhallef Emeritus Dr. Vincent DeGaetano; Deciza 21 ta’ Marzu 1996



.... Jekk l-prudenza tikkonsisti filli persuna tagħmel dak li hu raġonevolment mistenni minnha sabiex tipprevoġeni l-konsegwenzi dannużi ta' għemilha, l-imprudenza, li hi negazzjoni ta' din il-virtu, tikkonsisti filli wieħed jagħmel avventatament daww l-affarijiet li messu preveda li setgħu jikkaġunaw ħsara. It-traskuraġni, mill-banda l-oħra, timplika ċertu non-kuranza, ċertu abbandun kemm intellettiv kif ukoll materjali. Fiż-żewġ każijiet però, il-ħsara tkun prevedibbli għalkemm mhux prevista; kieku kienet ukoll prevista wieħed ikun qiegħed fil-kamp doluż b'applikazzjoni tad-dottrina ta' l-intenzjoni pożittiva indiretta."

**Professor Anthony Mamo** in his notes opined:

*"In these definitions the essence of negligence is made to consist in the "**possibility** of foreseeing the event which has not been foreseen. The agent who caused the event complained of did not intend or desire it, but could have foreseen it as a consequence of his act if he only had minded: so his negligence lies in his failure to foresee that which is foreseeable."*

[emphasis of this Court]

Reference is also made to the jurist **Francesco Carrara** who explained *"Il non aver previsto la conseguenza offensiva sconfinata la colpa dal dolo. Il non averla potuto prevedere, sconfinata il caso dalla colpa"*

**Antolisei**, in his book *Manuale di Diritto Penale (Parte Generale)*, makes reference to Carrara, and states:

*“Secondo la dottrina tradizionale che vanta origini antichissime e in questi ultimo tempi torna a prevalere, la colpa consiste nella prevedibilita' del risultato non voluto. Scrisse il Carrara: La colpa si definisce la volontaria omissione di diligenza nel calcolare le conseguenze possibili e prevedibili del proprio fatto. Dicesi conseguenza prevedibile, perche' l'essenza della colpa sta nella prevedibilita'”*

With regards to the level of diligence that the law requires, Professor Mammo states:

*“The amount of prudence or care which the law actually demands is that which is reasonable in the circumstances of the particular case. This obligation to use reasonable care is very commonly expressed by reference to the conduct of a 'reasonable man' or of 'an ordinarily prudent man', meaning thereby a reasonable prudent man: “negligence” it has been said “is the omitting to do something that a reasonable man would do, or the doing something that a reasonable man would do”*

Finally the Court makes reference to the judgment **Il-Pulizija vs Alfred Mifsud**<sup>31</sup> which delved into the various explanations and elements required that should be given to each time of driving.

*“Sewqan traskurat (negligent driving) hu kwalsiasi forma ta' sewqan li jiddipartixxi minn, jew li ma jilhaqx il-livell ta' sewqan mistenni minn sewwieq ragonevoli, prudenti, kompetenti u ta' esperjenza. Bhala regola l-ksur tar-regolamenti tat-traffiku kif ukoll in-non-osservanza taddisposizzjonijiet tal-Highway Code li jincidu fuq il-mod jew il-kwalita' ta' sewqan ta' dak li jkun, jammonta wkoll ghal sewqan traskurat.*

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<sup>31</sup> Deciza mill-Qorti tal-Appell Kriminali nhar s-sitta ta' Mejju, 1997

*Sewqan bla kont (reckless driving) hu deskritt fis- Subartikolu [2] talimsemmi Artikolu 15, bhala 'sewqan bi traskuragni kbira'. Din t-tieni ipotesi, jigifieri ta' sewqan bla kont, tikkontempla ssitwazzjoni fejn il-grad ta' traskuragni tkun kbira, u tinkludi l-kazijiet 'fejn wiehed deliberatament jiehu riskji fis-sewqan li m'ghandux jiehu, minhabba l-probabilita ta' hsara li tista' tirrizulta lil terzi, kif wkoll kazijiet fejn wiehed ikun indifferenti ghal tali riskji'.*

*Sewqan perikoluz (dangerous driving) jirrikjedi li fil-kaz partikolari, ssewqan kien ta' perikolu ghal terzi jew ghal proprjeta taghhom. Biex wiehed jiddeciedi jekk kienx hemm dana l-perikolu, wiehed irid jara c-cirkostanzi kollha tal-kaz, inkluzi l-hin w il-lokalita tal-incident u l-presenza o meno ta' traffiku iehor jew ta' nies ghaddejjin bir-rigel.*

*Naturalment, sewqan f'kaz partikolari jista jaqa' taht tnejn jew aktar minn dawn t-tlett forom ta' sewqan, f'liema kaz, japplikaw id-disposizzjonijiet tal-ligi w id-dottrina in materja ta' konkors ta' reati. Ai finijiet ta' piena, l-legislatur pogga s-sewqan bla kont w is-sewqan perikoluz fl-istess keffa. Ir-reat ta' sewqan traskurat hu kompriz w involut f'dak ta' sewqan bla kont u f'dawk ta' sewqan perikoluz." (vide Il-Pulizija v Charlotte Chamberlain19)."*

With regards to what should be considered as a proper look out our Court have opined that "*Hu dover ta' "driver to see what is in plain view"* (App. Krim. "**Il-Pulizija vs. Joseph Vella**" - [10.8.1963] ) and that "*min ma jarax dak li ragonevolment ghandu jara, ifisser li ma kienx qed izomm "a proper lookout"* (Appell Kriminali : "**Il-Pulizija vs. J.M. Laferla**" [17.6.1961] ) also opined:

*"Keeping a proper lookout means more than looking straight ahead. It includes awareness of what is happening in one's immediate vicinity. A motorist shall have a view of the whole road, from side to side, and in the case of a road passing through a built-up area, of the*

*pavements on the side of the road as well.*" Reference was also made to "**Newhaus vs. Bastion Insurance Co. Ltd.**" [1968].

Therefore it results that in criminal proceedings every driver is responsible for his actions independently of what others do, provided that what happens is not solely and exclusively due to the sole fault of a third party. These principles were also upheld in the criminal appeal cases "**Il-Pulizija vs. Gaetano Schembri**" [16.3.1961]; "**Il-Pulizija vs. John Polidano**" [3.11.1963] "**Il-Pulizija vs. Rev.C.Mifsud**" (Kollez. Vol. XXXVIII; iv. p.1131) and others).

In other words *contributory negligence* does not exonerate the driver completely from taking responsibility of his obligations as explained in the case **Il-Pulizija vs P.Vassallo**", [Kollez.Vol.XXXVII, iv.p.883]).

Furthermore if there was any contributory negligence on the part of the parte civile this can only, at most, serve to mitigate the penalth and nothing more (see **Il-Pulizija vs Mariano D'Amato** decided 26<sup>th</sup> May 2015).

The Court also makes reference to **Archbold Criminal Pleading, Evidence and Practice 2021** whereby the principles of recklessness where explained as follows:<sup>32</sup>

*In G., above, it was held that a person acts recklessly with respect to –*

*(a) a circumstance when he is aware of a risk that it exists or will exist, and*

*(b) a result when he is aware of a risk that it will occur, and it is in the circumstances known to him, unreasonable to take the risk.*

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<sup>32</sup> 17-50, Page 2167

*Caldwell, above, should not be followed because:*

*(1) it was a salutary principle that conviction of serious crime should depend on proof not simply that the defendant caused, by act or omission, an injurious result to another but that his state of mind when so acting was culpable; whilst the most obvious culpable state of mind was an intention to cause an injurious result, knowing disregard of an appreciated and unacceptable risk of causing an injurious result or a deliberate closing of the mind to such a risk would be readily accepted as culpable also; but it was not clearly blameworthy to do something involving a risk of injury to another if, for reasons other than self-induced intoxication, one genuinely did not perceive the risk;*

*(2) the Caldwell formulation was capable of leading to injustice;*

*(3) the criticism by academics, judges and practitioners of Caldwell was not to be ignored; and,*

*(4) it was clear that the majority's interpretation of "reckless" in Caldwell had been a misinterpretation of Parliament's intention which had been to leave the essential law unchanged, whilst doing away with the outmoded and misleading use of the word "maliciously".*

**Archbold 2021** also delved into what should be considered as recklessness:<sup>33</sup>

*The standard of due care and attention is an objective one, fixed and impersonal, governed by the essential needs of the public, fixed in relation to the safety of other users of the highway: **McCrone v Riding** [1938] 1 All E.R. 157, DC ; **Taylor v Rogers** [1960] Crim.L.R. 270, DC .*

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<sup>33</sup> 32-54, Folio 3263

*Whether a person was driving carelessly raises only a question of fact. If the defendant was not exercising the degree of care and attention that a reasonable, competent and prudent driver would exercise in the circumstances, he should be convicted. If the circumstances show that his conduct was not inconsistent with that of a reasonably prudent driver he should be acquitted. It is undesirable to complicate these cases by considering whether or not there has been an “error of judgment”:*

*Simpson v Peat [1952] 2 Q.B. 24, DC . The condition of the driver, although relevant and admissible, does not of itself prove that the driving was careless, because it does not determine whether the way in which he drove was careless:*

*Jones (Adrian) v CPS [2019] EWHC 2826 (Admin); [2020] 1 W.L.R. 99 , following Webster (see § 32-18).*

*Failure to exercise due care and attention may be a deliberate act: Taylor v Rogers, above (overtaking on a curve).*

*As to subs.(3) of the new s.3ZA , and the need to take account of circumstances within the knowledge of the accused, see DPP v Milton and Bannister, § 32-14.*

## **Considerations**

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In the acts of the criminal inquiry it results that architect Richard Aquilina was appointed as a technical expert.<sup>34</sup> However from the acts of the inquiry there is no report exhibited. Equally the prosecution did not call the technical expert to testify.

As a result the Court was deprived of an architectural site plan which would have clearly provided road markings and an accurate explanation of the area. Whilst

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<sup>34</sup> Folio 259 acts of the proceedings

photos were made available by the prosecution, these photos serve to provide a visual aide to the scene of the crime. However, it is only by means of an accurate, to scale, site plan indicating the point of impact, road markings, the rubble walls and other necessary components that this Court would have been able to full comprehend the site area.

There does not appear any reason why the prosecution did not ensure that the this technical expert was brought forward and in the acts of proceedings there are no subpoenas attempting to notify the technical expert to attend court to testify.

Consequently the Court has no formal indication of how the road lay out was, most notably when it comes to the continuous white lines which were raised by both parties owing to the fact that one of the charges focuses on the defendant allegedly violating these rules.

From the report exhibited by the technical expert Mario Buttigieg a number of witnesses gave their version to the expert. Amongst these were Ralph John Christie, WPS 223 Charlene Calleja, Kedar Karki and Charlton Schembri. However none of these were brought forward by the prosecution to testify.

In the police report it also results that civil protection officer Christopher Buttigieg and Ralph John Christie were spoken to by the police to take their version of events however in spite of this the prosecution did not present them as prosecution witnesses.

From Ralph John Christies' statements to the police and the technical expert he claims that when the defendant stopped on the Stop sign to turn to the right side direction to Xemxija, they both checked both sides for any oncoming vehicles and when they pulled out of the Stop sign, they saw the bike coming with excessive

speed whilst he was trying to brake. The victim was standing up but he couldn't control the bike and crashed into the right side of the vehicle.

In his testimony to the technical expert Christie states that the road was clear and that from his position he could not see any white lines in the road but he saw that the motorcyclist coming on the side of his road at a very fast speed and he lost control of his bike, crossed the white line, the right knee of the motorcyclist hit the front right hand side of the car and he got separated from his bike.

The version given by Christie to both the technical expert and the police indicate that the defendant expressed and showed due diligence when exiting from the Stop sign and that the impact was solely accountable to the victim who overtook a bus at an excessive speed resulting in him losing control of the bike and crashing into the defendant's car.

The version given by Christie to the technical expert and to the police provide a third party independent visual and factual point of view and therefore it was essential that the prosecution should have brought him forward to confirm the contents of the testimony he gave to the technical expert. The evidence of Christie would have provided the Court another important aide in reconstructing the incident and he could have brought to light other details and evidence through further examination and cross examination.

Having said this, despite the fact that the prosecution failed in bringing forward such an important witness, it results that the defence also did not attempt to bring him forward at their stage of the case.

The prosecution also failed to bring forward another key witness Kedar Karki who gave his testimony to the technical expert. It also does not appear that there was



any particular reason why the prosecution did not bring him forward. The defence from their part brought forward the witness to give evidence at the defence stage. Whilst the witness confirmed that he did not see the collision he was able to confirm that a motorcyclist had just overtaken him at an excessive speed.

From the evidence heard it transpires from the evidence of the technical expert Mario Buttigieg that the victim was driving at an excessive speed and had overtaken a bus the recklessly. In addition to this the driver of the motorcycle was standing up whilst driving, a practice which the technical expert explained was not conducive to careful driving. The motorbike in question was powerful with an engine of 12CC and had the engine the equivalent of a family car.

Shortly before the impact the driver overtook the bus, was standing on his motorbike with his right hand up driving at an excessive speed. These factors were all bad practice and exposed his life to unnecessary risk and danger. As a result after overtaking the bus, the driver of the motorcycle did not brake as he should have were he sitting down with both hands on the handle bar and only braked with this rear brake. The fatal and catastrophic result was that he lost control and collided with the car of the defendant.

In examining the evidence brought forward by the prosecution, the Court is not convinced that the death of the motorcyclist is on account of the fact that the driver did not keep a proper look out.

As explained in the judgment and renowned authors above, the defendant had to take all necessary care and diligence in ordinary circumstances. The defendant had no way of knowing that the motorcyclist would over take the bus at such a high speed or that he would not have full control of the motorcycle.

The Court also has no particular reason to believe that the defendant did not keep a proper look out owing to the circumstances of the incident and did not check out the area or look both sides before exiting from the Stop sign. In the particular circumstances of this case it is reasonable to understand that the defendant would have not had the time or reflexes to change her course of direction if another motorbike is speeding excessively towards it after overtaking a slow moving bus whereby it would have not been noticed.

Therefore the Court is morally convinced that the first charge was not proved to the decree required by law of beyond reasonable doubt and will proceed to acquit the defendant.

With regards to the second charge against the defendant the prosecution brought forward no evidence to prove that the defendant was driving a car that was unlicensed. Furthermore in light of the explanations above the Court does not find that the defendant was driving in a reckless, negligent or dangerous manner.

With regards to the third charges against the defendant, the prosecution failed to bring forward evidence either through the inquiry appointed expert or other local authority confirming that on the date in question there existed a continuous white line. From the evidence of architect David Vassallo reasonable doubt is established as to the actual road works and markings on the date in question.

Therefore, the Court finds that the second and third charges against the defendant have not been proven to the level required by law being that of beyond reasonable doubt and will proceed to acquit the defendant of the second and third charges.

*Decide*

Therefore, after having seen Art. 225(1) of Chapter 9 of the Laws of Malta; Art. 15(1)(a) of Chapter 65 of the Laws of Malta; Schedule, Part IV, A(i) of S. L. 65.05 of the Laws of Malta, the Court hereby finds Ligita Imbrasiene **not guilty** of the charges proffered against her and accordingly acquits of all responsibility and punishment.

Delivered today the 9<sup>th</sup> of November 2023 at the Courts of Justice in Valletta, Malta.

**Dr. Nadine Lia**  
**Magistrate**

**Oriana Deguara**  
**Deputy Registrar**