



MALTA

**TRIBUNAL GHAL TALBIET ZGHAR
GHAWDEX**

**GUDIKATUR DR.
MERCIECA GRAZIO**

Seduta tas-16 ta' Dicembru, 2002

Talba Numru. 37/2001/1

SMS Insurance Agency Limited

vs

Michael Attard

**U b'digriet tal-24 ta' Mejju 2002 gie mahtur Dr. Chris
Said**

**kuratur deputat sabiex jirrapprezenta lill-Michael
Attard li jinsab imsiefer**

**U b'digriet iehor tat-30 t'Ottubru 2001 it-Tribunal
ammetta bhala intervenut fil-kawza lil Atlas Insurance
Agency Limited, agenti Malta tas-socjeta' estera AXA
Insurance plc**

It-Tribunal;

Ra l-avviz tat-talba, r-risposta tal-konvenut, is-sottomissjonijiet tal-intervenut fil-kawza, kif ukoll l-atti tal-kawza;

Ikkunsidra

Illi jirrizulta mill-atti processwali li z-zewg sewwieqa kienu telghin fid-direzzjoni ta' Victoria, Ghawdex fi Triq l-Imgarr, Ghajnsielem. Il-konvenut Michael Attard kien isuq quddiem filwaqt li Russel Caruana kien warajh. Fin-nofs tat-triq kien hemm linja bajda diskontinwa. Hekk kif Attard wasal magemb Saint Andrew Street, triq sekondarja li kien hemm fuq in-naha tal-lemin tas-sewwieqa, huwa beda jdur biex jidhol fiha; filwaqt illi Caruana li kien warajh ghamel manuvra ta' sorpass u sehhet il-habta. Billi Attard jinstab imsiefer, ma setax jaghti l-verzjoni tieghu quddiem it-Tribunal; a tempo vergine lis-surgent li rrediga l-iskizz u okkorrenza tal-incident pero' qal xeghel l-indicator qabel dawwar ghat-triq sekondarja – verzjoni michuda mill-attur.

Dwar l-uzu tal-indicator, ippronunzjat ruhha diversi drabi l-gurisprudenza:

Hekk per ezempju f' *Emmanuel Galea vs Paul Galea (04.11.1997 – Qorti tal-Magistrati (Ghawdex) Superjuri)* intqal li mhuwiex bizzejjed li wiehed jixghel l-indicator, u li dan m'huwiex xi brevet tal-immunita. Il-fatt li s-sewwieq li jbidel id-direzzjoni jghid li hares u ma ra lil hadd ifisser li ma harisx sew jew ma tax kaz ta' dak li kien qieghed jigri warajh, fejn kien hemm vizwali tajba u fit-tul. Kif gara l-incident, ma kienx hemm xi distanza twila warajh u ma kien hemm ebda raguna l-ghala l-attur ma kellux jarah jekk verament hares fil-mirja u kien jaf x'kien qieghed jaghmel. *Il-Qorti ssib li dan is-sewqan ta' Emmanuel Galea ferm perikoluz u negligenti u ghandu jerfa' r-responsabilita' shiha ta' dan l-incident.*

Kawza ohra ta' min isemmi hi *Brian Valenzia noe vs Monica Calleja(Qorti tal-Appell, 14.06.1995)* fejn il-Qorti qalet li gie ritenut diversi drabi mill-Qrati taghna u l-awturi esperti in materja li l-uzu tal-indicator ma jaghtix dritt lil dak is-sewwieq li juzah li jaghmel kif jidhirlu minghajr ma jiehu in konsiderazzjoni traffiku iehor li jkun juza l-istess parti tat-triq. Irid jassikura li s-sewwieqa l-ohra jifhmu l-

intenzjoni tieghu u li meta tigi esegwita l-manuvra ghandha tigi esegwita bl-iktar heffa possibbli u li b'ebda mod ma tostakola l-passagg liberu ta' vetturi ohra.

Jghid ic-Charlesworth & Percy: 9-206: *Well before a driver overtakes, changes direction, slows down or stops, the rear mirror must be used then a signal given to indicate clearly the intended manoeuvre.*

Buchanan¹ jghid a propozitu: *In cases of collision between an overtaking motorist and a right-turning motorist, it is first of all necessary to have regard to the duties of the right-turning motorist.*

Early decisions tended to consider that all the right-turning motorist was required to do was to give a clear indication to following motorists of his intention. As regulations requiring a motorist to have a clear view through his rear view mirror became stricter, it became the duty of the driver to keep a proper look-out both in front and behind. He no longer complies with his duty unless after giving his turning signal, he takes reasonable steps to satisfy himself that following traffic has both seen and reacted to his signal, which it is submitted boils down to taking reasonable steps that there will be no traffic overtaking him as he makes his turn.

Dawn il-principji gew addottati mill-Qrati taghna² li stabbilew diversi drabi illi l-manuvra li kien qed taghmel l-attur fil-mument tal-incident u cioe' dik ta' overtaking jew surpass hija wahda perikoluza u li wiehed m'ghandux jaghmilha jekk mhux wara li jiehu l-prekawzjonijiet mehtiega u jassikura li b'din il-manuvra hu ma jkunx sejjer ikun ta' periklu ghall-utenti tal-istess triq:

¹ Liability in Motor Cases, page 29

² F Clarke vs- C Aquilina 6.12.1977; Sciberras vs C Zammit 13.7.78; E Azzopardi vs L McCharthy 20.9.1978; E Deguara vs J Mallia 25.1.1983; C Gendrex vs J Vassallo 15.1.1988, T Duca vs E Mifsud 15.6.1988; Hugh P Zammit noe vs Raymond Debono PA 16.10.1995; Alex Zammit vs David Debono noe 3.7.1995

Never overtake unless you are SURE that you can do so without danger to yourself or others.....(Paragrafu 72 Highway Code). A driver is entitled to assume he can overtake without danger if what he is overtaking gives not the slightest sign of any unexpected manoeuvre.

L-attur zbalja u kien ferm negligenti fil-manuvra ta' surpass illi ghamel, speċjalment meta kien jaf li kien qiegħed joqrob lejn punt fejn kien hemm side-street li l-vettura ta' quddiemu setgħet tkun sejra tidhol fiha; Infatti l-Highway Code jikkellem bl-iktar mod car kontra l-manuvra tal-attur: Regola 74

DO NOT OVERTAKE when approaching....
(ii) a road junction.....
IF IN DOUBT HOLD BACK

Is-segħenti sentenzi Nglizi riportati minn Bingham: Motor Claims Cases (ninth ed, p 82 et seq) jillustraw tajjeb dan il-principju:

Fil-kawza Clarke vs Winchurch (1969 1 Acl Er 275)(1969) 1 WLR 69, 112 Sol Jo 909 CA) gie ritenut li "a cyclist or moped rider is entitled to overtake stationary traffic but to do this warrants a very high degree of ease and he must ride in such a way that he can immediately deal with an emergency."

Alfred Zammit Cutajar noe vs Joseph Formosa et (XLV, 253) Appell, 26.06.1961 irriteriet illi l-driver ta' karozza li jigi biex jissorpassa karozza ohra għandu jkun zgħur, qabel ma jagħmel dik il-manuvra, illi jista' jagħmilha b'sikurezza.

Stabbilit għalhekk li z-zewg sewwieqa kienu jahtu għall-incident, jonqos jigi stabbilit f'liema proporzjon kienu hekk kontribwenti. Kif gie stabbilit, f'sitwazzjoni bħal din, it-Tribunal, biex jikkwantifika d-danni jrid jiddermina l-proporzjon li fih kull wieħed mis-sewwieqa kien ikkontribwixxa għall-accident.³

³ Formosa vs Psaila, Prim'Awla, Onor. Victor Borg Costanzi
18.08.1987

F'sentenza ferm ricenti⁴, it-triq kienet maqsuma b'linja bajda kontinwa li ezatt fil-punt fejn sehhet il-habta, il-linja bajda kienet maqsuma biex tindika d-dhul ghall-istabbiliment li hemm fin-naha tal-lemin. Is-sewwieq tal-karozza xehdet li xeghlet l-indicator, bdiet tikser lejn il-lemin taghha biex tidhol fl-istabbiliment imsemmi, meta giet investita mill-mutur. Is-sewwieqa tal-karozza izda ammettiet li ndunat bis-sewwieq tal-mutur biss meta habtu. Hija ammettiet li ma harsitx lura, imma qaghdet attenta biss ghat-traffiku li seta' kien gej mid-direzzjoni opposta, ghax ippretendiet li vehikolu sorpoassanti seta' jaqla' min-naha tax-xellug taghha. Il-qorti wiznet ir-responsabilitajiet u ddecidiet li s-sewwieq tal-mutur sorpassanti kien responsabbli ghal terz tal-incident filwaqt illi s-sewwieqa tal-karozza kienet responsabbli kwantu ghal zewg terzi.

F'kaz iehor,⁵ l-attur, waqt li kien qieghead isur il-karozza tieghu fi Triq Borg Olivier, Mellieha, u kien qieghead jissorpassa karozza misjuqa minn Colin Arthur Greening, dan tal-ahhar, bla ebda preavviz, qabad u dar lejn il-lemin u konsegwentement habat fl-attur. Il-Qorti qasmet ir-responsabilita' ghall-incident terz lill-attur u zewg terzi lil Greening.

F'kaz iehor,⁶ Joseph Attard kien qed isuq il-karozza tieghu tul Naxxar Road, San Gwann. Qal li xeghel l-indicator biex juri li kien sejjer jikser lejn il-lemin, fejn kien hemm junction. Billi ma ra lil hadd, huwa beda l-manuvra tieghu meta l-konvenut Debono baqa' diehel go fih biz-ziemel u l-karettun. Debono qal li Attard kien waqaf u dar f'daqqa bla ma tah l-opportunita' li jieqaf. Il-Qorti qalet li Debono kien qed jigri, jekk mhux ukoll itellaq, iz-ziemel tul it-triq. Ir-responsabilita' giet apporzjonata zewg terzi lill-attur, u terz lill-konvenut.

⁴ Onor Ray C Pace, Citazz Nru 611/96, riportata f'*In-Nazzjon*, 5 ta' Novembru 2001

⁵ Onor Geoffrey Valenzia, Prim'Awla, 03.07.1995 Alexander Zammit vs David Debono noe

⁶ Onor Geoffrey Valenzia, Prim'Awla, Hugh P Zammit noe vs Raymond Debono 16.10.1995, *The Times*, Monday, Nov 20, 1995

Skond sentenza tal-Qorti tal-Kassazzjoni penali fl-Italja, sez. IV, 30.05.1989 : *in tema di circolazione stradale, il conducente che si accinga ad eseguire manovra di svolta a sinistra in area di crocevia, ha obbligo di ispezionare la strada retrostante, onde rendersi conto della eseguibilita' della manovra "de qua" senza creare pericoli nei riguardi di altri utenti ancorche' versanti in situazione di illegittimita' (sottolinear tat-Tribunal) quale quella di chi esegue un sorpasso in prossimita di crocevia. Tale obbligo di prudenziale ispezione dello spazio retrostante, sussiste, a maggior ragione nel caso in cui il veicolo svoltante riprende la Marcia partendo da posizione di quiete, pur se determinate da necessita' di traffico, come la concessione di precedenza ad altri veicoli (fattispecie di infortunio verificatosi in prossimita' di crocevia, a causa dell'urto di un motociclista contro un automobile il cui conducente, dopo essersi fermato per accordare la precedenza ai veicoli provenienti dalla sua destra, riprese la Marcia svoltando a sinistra senza avvedersi, per non avere ispezionato la strada retrostante, del sopraggiungere della veloce motocicletta che, imprudentemente eseguiva il sorpasso. La Corte ha ritenuto legittimo l'addebitamento di concorso di causa e di colpa ai danni dell'automobilista).*

Fis-sentenza taghha, il-Qorti tal-Kassazzjoni, akkordat ir-responsabilita' nofs bin-nofs bejn il-partijiet.

L-opra ta' massima awtorita' Ngliza Il-Bingham and Berryman's Motor Claims Cases, ippubblikat minn Butterworths, 2000, Il-hdax-il Edizzjoni jikkwota s-sewgenti sentenzi f'sitwazzjonijiet simili:

(para 9.1, pagina 334) *Holdack v Bullock Bros (Electrical) Ltd (1964)*

In daylight on a straight road a motor scooter was overtaking a motor van when the van swerved to the offside (cioe' lejn in-naha tal-lemin) and the scooter collided with the offside front wing of the van. The van driver had not seen the scooter in spite of having two outside mirrors and an interior mirror. The judge held the

van driver was negligent in changing course without warning when it was extremely dangerous to do so, but held the scooter rider one-third to blame for having failed to hoot to show his intention to overtake. The scooter rider appealed.

HELD: there was no ground on which the Court of Appeal should interfere. In the ordinary way if a motor scooter was overtaking another vehicle which was going straight along a road there was no need for the scooter to hoot before overtaking if the scooter was giving reasonable clearance. In this case the judge must have come to the conclusion that the movement of the van was such as to put the scooter rider on enquiry as to what the van was going to do.

(para 9.4, pagna 335) Hillman v Tompkins (22 February 1995)

The defendant was driving her Ford Sierra in a slow moving line of traffic held up by temporary traffic signals. The plaintiff was riding a motorcycle in the same direction, overtaking the slow moving traffic. The defendant reached Godwin Way, a junction to her offside, into which she wished to turn. She signaled her intention, failed to see the motorcyclist approaching from her rear, turned and the collision occurred.

The defendant's case was that she was positioned at the crown of the road, clear of the line of traffic and visible to the plaintiff. The plaintiff alleged that the defendant commenced her turn from within the line of traffic and so was unable to see her indicator until the turn had commenced.

In the face of this and other conflicting witness accounts the judge found the defendant's vehicle had not moved into a position clear of the line of traffic or otherwise to enable the motorcyclist to see her flashing indicator before she commenced the turn. The plaintiff was probably traveling between 30-40 mph at or near the center of the opposite carriageway in the overtaking

position. The judge held both parties equally to blame. The defendant appealed.

HELD: There was no reason to interfere with the judge's findings. The defendant was negligent for failing to see the plaintiff's approach: 'undesirable as it may be, motorcyclists do and can be expected to overtake in circumstances of this kind and in my judgement the defendant was negligent in failing to see the plaintiff as he approached'. The plaintiff was approaching a road junction overtaking slow moving and stationary traffic. In the circumstances he increased the standard of care required by him. The speed which he was doing was too fast to discharge that standard of care. Appeal dismissed.

Fil-cirkostanzi tal-kaz prezenti, jidher li l-konvenut kien responsabbli fi grad oghla mill-attur.

Ma jidhirx li kien hemm kontestazzjoni dwar il-*quantum* tad-danni.

Ghaldaqstant dan it-Tribunal jaqta' u jiddeciedi billi jiddikjara lis-socjeta' attrici responsabbli kwantu ghal terz tal-incident, filwaqt li l-konvenut huwa responsabbli ghal zewg terzi u ghalhekk jilqa' in parte t-talbiet attrici billi jikkundanna lill-konvenut ihallas lis-socjeta' attrici s-somma ta' LM466; bl-imghax legali mid-data ta' din id-decizjoni sad-data tal-hlas effettiv.

Fl-ahharnett it-Tribunal jiddikjara li s-socjeta' assikuratrici Atlas Insurance Agency Limited ma hija bl-ebda mod responsabbli ghall-hlas ta' danni rizultanti mill-incident stradali mertu ta' din il-kawza billi l-polza tal-assikurazzjoni minnha mahruqa fir-rigward tal-vettura IAV-723 misjuqa mill-konvenut ma kinitx tkopri lill-assikurat taghha Charles Attard, sid il-vettura u missier il-konvenut kemm-il darba l-vettura tkun misjuqa minn persuna ta' eta' ta' inqas minn hamsa u ghoxrin sena; kif fil-fatt kien il-kaz billi s-sewwieq involut fl-incident kien iben l-attur li kellu biss dsatax-il sena. Ghalhekk din is-sentenza bl-ebda mod ma hija esegwibbli fil-konfront tal-intervenut fil-kawza.

Kopja Informali ta' Sentenza

L-ispejjez inkluzi dawk tal-ittra ufficcjali ta' Settembru 1999 ghandhom jinqasmu zewg terzi lill-konvenut u terz lis-socjeta' attrici. Is-socjeta' intervenuta, tbatl l-ispejjez taghha stess.

(ft) Grazio Mercieca
Gudikatur

(ft) M'Jane Attard
Deputat Registratur

Vera Kopja

Ghar-Registratur