



Court of Magistrates (Malta) as a Court of Criminal Judicature

THE POLICE (INSPECTOR CHARLOTTE CURMI) V. MITE MURGOSKI (ID. 263053A)

MAGISTRATE: DR. VICTOR G. AXIAK

15 May 2024

THE COURT,

having seen the charges proffered against the person charged:

To: Mite Murgoski son of N/A born on the 07/11/1982 Residing: 84, Windsor Apartments, Fl 3, Triq il-Munxar, Marsascalea ID NO: 0263053A

As you have been charged: with having on the 22nd April 2022 at about 11:00hrs in Triq San Leonardo, Zabbar drove the vehicle(digger) without a registration number ;

1. Moreover through imprudence, negligence and unskillfulness in your art or profession, and non observance of the motor vehicle regulations, collided in vehicle with registration no:RAI018 and caused involuntary damages to the detriment of Raisa Cutajar.

having seen that this case was assigned to it following the recusal of the Magistrate who was presiding it by means of a decree issued on 9 January 2023,

having heard the testimony of Joseph Demicoli, Rhys Buttigieg, Raisa Cutajar as well as the testimony of the person charged,

having seen the affidavit of PS 1500 A. Cutajar,

having seen all the acts of the case,

having heard the final submissions made by the Prosecution (as well as the injured party) and the Defence,

gives the following

Judgement

1. In his affidavit **PS 1500 A. Cutajar** declared that on 22 April 2022, at around 23.00 hrs, Raisa Cutajar filed a report at Zabbar Police Station with regard to an incident that had occurred earlier that morning, that is around 11.00 hrs. She reported that she was driving along Triq San Leonardu, Zabbar, when her vehicle was stuck by an excavator that was being operated in the same road. She reported that sustained damages to her vehicle bearing registration number RAI 018. The Police made contact with Joseph Demicoli, the foreman representing the construction company that was carrying on road works at the time in question, who informed the Police that the road was closed due to road works and that there was a traffic sign in this regard. This notwithstanding, according to Joseph Demicoli, Raisa Cutajar kept on driving and the left hand doors of the vehicle were struck by the excavator whilst this was turning. Demicoli insisted that Cutajar was to blame as she shouldn't have been passing through the road at that time. On 12 May 2022 Demicoli went to Zabbar Police Station and declared that on the day in question the road was closed and there was a sign prohibiting entry to vehicles as well as bollards. He stated that the vehicle passed near the excavator and it was the vehicle that struck the excavator. The excavator was being operated by Mite Murgoski. From her end, Raisa Cutajar stated to the Police that the road was open and produced documentary evidence showing the damages she sustained in the amount of € 470.
2. In his testimony given on 11 October 2023, **Joseph Demicoli** *inter alia* explained that he is not specifically a foreman but does assist his cousin who owns the company Rockcut Ltd. From time to time he is called upon to assist when issues crop up on site. On the day in question he was requested by his cousin to report on site, near Tal-Milord. He saw a lady in a vehicle near the excavator that was being operated by the accused. He insisted that the road was closed to traffic due the ongoing works being carried out. The accused was operating the excavator to dig a trench. According to Demicoli, the lady informed him that even though the road was closed she had to pass through it as she knew of no other way to arrive to her intended destination. The witness testified that the incident happened roughly three-quarters along the road and not at its entrance. The signs were put in place by the employer but there were no Transport Malta officials or community officers present to close the road.
3. In the same sitting, **Rhys Buttigieg**, *inter alia* explained that he runs the daily business of the company Rockcut Ltd. He had been informed of the incident at a later stage, possibly on the following day. He insisted that the company had all permits in place including a permit to have the road closed for traffic. Although he said that he had this

permit and that he would be able to submit it at a later stage, no documentation was submitted in the acts of the case in this regard.

4. In her testimony given on 13 March 2024, **Raisa Cutajar** explained amongst other things that on the day and at the time in question she was driving her vehicle (Toyota Vitz with number plate RAI 018) along Triq San Anard, Zabbar and as she made a left turn in the same road past a roundabout she encountered the excavator being driven by the accused. She insisted that she was driving slowly and that the accused was not looking out when he turned the machine in a sudden manner and struck her vehicle. She said that she attempted to settle the matter amicably but at a certain point, Joseph Demicoli, the representative of the company that was carrying out the works (Rockcut), came on site and started arguing with her. According to Cutajar, Demicoli was not on site at the time of the incident and so could not see what had actually taken place. Cutajar confirmed that she suffered damages in the amount of € 470 and confirmed the quotation exhibited in the acts of the case that had been issued to her.
5. In his testimony given on 15 May 2024, the accused **Mite Murgoski** said that on the day in question the road was closed for traffic. In this regard he exhibited a photograph showing this, which photo was given to him by Joseph Demicoli. The excavator that he was operating was fixed and at that moment he was using it to excavate a trench for pipes. The excavator could rotate 360° whilst staying in the same position but could not move forward or backward. A car passed next to him, parked and a lady got out of the car informing him that he had hit her. The accused insisted that it was the other vehicle that hit him and not the other way round. The damage was negligible and he didn't expect that this would end up in Court. Upon a question by the Court as to whether he was rotating the excavator at the time of the alleged incident, he said that he wasn't aware, he couldn't remember and that he couldn't have hit her since the excavator had a basket container that made it impossible to hit something or someone. Upon another question by the Court as to whether he looked behind him whilst operating the excavator, he said that the road was closed for traffic and that he would only be focused on the object in front of the excavator and not behind him.

Consideration

6. The Court considers that even though the road may have been closed for traffic on the day in question (although in this regard no proof was submitted showing that the road was closed upon instructions by Transport Malta), the person charged was still obliged to keep a proper lookout, even more so given that he was operating a specialised

machinery used in road works. The court finds the injured party's testimony, particularly the statement that the accused had turned the machine in an abrupt manner when he struck her vehicle, to be credible, particularly in light of the accused's testimony to the effect that he does not look behind when he operates the said excavator given that would be focused on the works being done by the machine.

Decision

- 7. For these reasons having seen the relevant article of the law (Article 328(d) of the Criminal Code) the Court finds the accused guilty of the charge brought against him and condemns him to pay a fine (*multa*) of € 100. The Court also issues a compensation order under Article 15A of the Criminal Code in favour of the injured party (Raisa Cutajar bearing identity card number 323999M) whereby the accused is being ordered to pay to the injured party the amount of € 470 within one month from today.**

V.G. Axiak
Magistrate

Y.M. Pace
Dep. Registrar