



Criminal Court of Appeal

Hon. Judge Edwina Grima

Appeal No: 417/2023

The Police

vs

Ligita Imbrasiene

Today, the 13th of September 2024

The Court,

Having seen the charges brought against Respondent Ligita Imbrasiene, holder of Lithuanian Passport bearing number 22806073 and Maltese Residence Permit bearing number 0159758A, wherein she was accused before the Court of Magistrates (Malta) as a Court of Criminal Inquiry of having:

1. On the 1st of February 2020 in Triq il-Mistra, San Pawl il-Bahar and on these Islands, through imprudence, carelessness, unskillfulness in your art or profession, or nonobservance of regulations, caused the death of Mark Camilleri.
2. Moreover, on the same date, time, place and circumstances, driven a motor vehicle or other vehicle without a license or an unlicensed motor vehicle or other vehicle, or in a reckless, negligent or dangerous manner.

3. Moreover, on the same date, time, place and circumstances, whilst driving motor vehicle bearing registration number ECE261, having crossed the continuous white line (center line).

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated the 9th of November 2023, wherein the same Court, 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, found Ligita Imbrasiene not guilty of the charges brought against her and accordingly acquitted her of all responsibility and punishment.

Having seen the appeal application of the Attorney General, filed on the 30th of November 2023, wherein he requested this Court to cancel and revoke the decision of the Court of Magistrates (Malta) where it acquitted Respondent of all the charges, instead asked that it finds the accused guilty of the same and imposes the punishment provided by the law.

Having seen the reply filed by Respondent Ligita Imbrasiene on the 16th of May 2024.

Having seen all the records of the case.

Having seen the updated conduct sheet of the Respondent, exhibited by the Prosecution as requested by this Court.

Having heard submissions by the parties.

Considers:

That, the Attorney General, aggrieved by the judgment of the First Court wherein it acquitted Respondent of all charges brought against her, entered this appeal since she is of the opinion that this decision was based on a wrong interpretation of the law and of the facts of the case, which she contends should have led to a conviction.

Now, as has been oft held by our courts, the only instance in which this Court may revoke a judgment delivered by the First Court on its merits is when it deems that the said judgment is unsafe and unsatisfactory. Therefore, the Court has re-examined the acts of the proceedings and this in order to determine whether the evaluation of the evidence carried out by the First Court was reasonably and legally correct¹.

The case centers around a fatal traffic accident which occurred on the 1st of February 2020 at around 14:42hrs, in Triq il-Mistra, San Pawl il-Baħar resulting in a collision between a motor vehicle (Toyota Passo) having registration number ECE-261 and a motorcycle, (KTM) having registration number KBL-796, with a resulting loss of life of the driver of the motorcycle, a certain Mark Camilleri. A magisterial inquiry was subsequently launched, the Inquiring Magistrate appointing several experts to assist in the inquiry relating to the *in genere*. It resulted also from the investigations carried out by the police that Respondent's vehicle sustained heavy damages along its right side, the victim suffering serious life threatening injuries which led to his demise, and the motorbike also suffering extensive damage, so much so that the scene of the accident was littered with debris.

In an initial statement given to the investigating police officers on site, Respondent Ligita Imbrasiene stated that **"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 and all of a sudden I saw the motorcycle coming with excessive speed and crashed into the right side of my vehicle and I immediately called the police"**. Furthermore, the passenger in Respondent's vehicle, Ralph Christie, in his initial statement declared that **"when Imbrasiene stopped on the stop sign to turn to the right side direction to Xemxija, we both checked both sides for any coming vehicles and when we pulled out of the**

¹ Ara, fost oħrajn, l-Appelli Kriminali Superjuri: Ir-Repubblika ta' Malta v. Rida Salem Suleiman Shoaib, 15 ta' Jannar 2009; Ir-Repubblika ta' Malta v. Paul Hili, 19 ta' Gunju 2008; Ir-Repubblika ta' Malta v. Etienne Carter, 14 ta' Dicembru 2004 Ir-Repubblika ta' Malta v. Domenic Briffa, 16 ta' Ottubru 2003; Ir-Repubblika ta' Malta v. Godfrey Lopez u r-Repubblika ta' Malta v. Eleno sive Lino Bezzina 24 ta' April 2003, Ir-Repubblika ta' Malta v. Lawrence Asciale sive Axiak 23 ta' Jannar 2003, Ir-Repubblika ta' Malta v. Mustafa Ali Larbed, 5 ta' Lulju 2002; Ir-Repubblika ta' Malta v. Thomas sive Tommy Baldacchino, 7 ta' Marzu 2000, Ir-Repubblika ta' Malta v. Ivan Gatt, 1 ta' Dicembru 1994; u Ir-Repubblika ta' Malta v. George Azzopardi, 14 ta' Frar 1989; u l-Appelli Kriminali Inferjuri: Il-Pulizija v. Andrew George Stone, 12 ta' Mejju 2004, Il-Pulizija v. Anthony Bartolo, 6 ta' Mejju 2004; Il-Pulizija v. Maurice Saliba, 30 ta' April 2004; Il-Pulizija v. Saviour Cutajar, 30 ta' Marzu 2004; Il-Pulizija v. Seifeddine Mohamed Marshan et, 21 ta' Ottubru 1996; Il-Pulizija v. Raymond Psaila et, 12 ta' Mejju 1994; Il-Pulizija v. Simon Paris, 15 ta' Lulju 1996; Il-Pulizija v. Carmel sive Chalmer Pace, 31 ta' Mejju 1991; Il-Pulizija v. Anthony Zammit, 31 ta' Mejju 1991.

stop sign we saw the bike coming with excessive speed and also saw him trying to brake and standing up but he couldn't control the bike and crashed into the right side of the vehicle". Finally, the bus driver Kedar Karki who was driving in the same direction as the motorcycle downhill from Xemxija towards Mellieha declared that he did not see how the accident occurred.

Ralph Christie and Kedar Karki also gave their testimony before the traffic expert appointed in the inquiry, Dr. Mario Buttigieg. Ralph Christie, the passenger in the motor vehicle in question stated as follows:-

I am Ligita Imbrasiene boyfriend. I have been living with her for the past three weeks. I live in Greece and I am supposed to return back to Greece in another three weeks or month. Yesterday the 1st of February 2020 we had lunch at the Margo's Restaurant, over dinner Imbrasiene drank one pint of lager. We finished at around twenty past two (14:20hrs) in the afternoon and we were going to Dingli Cliffs. Imbrasiene was driving a red car I do not know the registration of the car. When she arrived at the junction she stopped on the stop sign. We were there for around forty five seconds or even longer as cars were coming from both directions. As the junction is on a slope one cannot see the actual road as the bonnet projects out. Imbrasiene decided to emerge as the road was clear and turned to the right. From the position that I was seated I could not see the continuous white line in the middle of the road. She pulled out, I am not sure 100% sure but most probably the car was over the white line. At that instant I saw the motorcyclist coming on his side of the road at a very fast speed. The motorcyclist lifted his right hand and made a quick gesture with his hand. As he made the gesture, he lost control of the bike. Here the bike wobbled to the left and the right. The bike crossed the white line, the right knee of the motorcyclist hit the front right hand of the car. The motorcyclist and the motorbike separated. From there on I do not know what happened. After the collision had occurred 3 motorcyclists arrived. I got out of the car and they gave us the police phone number.

Kedar Karki in his testimony to the expert stated as follows: -

"I work as a bus driver with Malta Public Transport. Yesterday the 1st February 2020, I started duty from ten to seven (6:50hrs) in the morning till three o'clock (15:00hrs) in the afternoon. At the time of the accident the route I was on route number forty two (42) being from Valletta to Cirkewwa and vice versa. The accident occurred in the afternoon it was before three (15:00hrs) in the afternoon. When I arrived on site the collision had already thereat. I did not see the collision occur. When u saw the collision I immediately phoned our control room and from their end they informed the police. There wasn't any cars in front of me and I only saw a body in the middle of the road and the car on the right hand side. I did not see where the

motorbike was. As I stopped the bus I took a photo of the accident. I am going to send it to you on whatsapp”.

Kedar Karki also testified before the First Court where he repeated this testimony. When he was asked whether or not the victim’s motorcycle had overtaken the bus, he replied **“I was driving, normal. But when I was uphill the Xemxija there was one bike overtaking me but I do not know if it is the same bike or not”**. He further specified that the overtaking had taken place on the right side.

That, Ligita Imbrasiene also released a detailed statement to the Police on the 2nd of February 2020 where she stated that on the day of the accident at around 13:30hrs she was in Mistra Bay with Ralph Christie where they had pizza and **“a couple of sips of beer”**. Then they decided to go to Dingli Cliffs. Driving the same road she had driven on her way to Mistra, she stated that:

“I stopped at the sign and the cars were passing. I think they were passing in both directions. So I waited for a while, I kept looking towards both sides of the road. From the right I saw a bus coming from far away and from the left I saw a white car coming but there was a safe gap for me to come out onto Triq il-Mistra. I was on the edge of the stop sign, the car was very steep so the view was limited but I could still see the cars in Triq il-Mistra. The car I was driving is automatic and I had to press the accelerator a bit more to get the car out from the steep road onto Triq il-Mistra” ... “I was looking towards Xemxija which is the way I was driving, and I saw the bus and I saw a motorbike overtaking the bus and it was split seconds but the speed he was coming at was enormous. Boom. And I called the police”.

Asked where the car was when she first saw the motorcycle, she answered:

“I had already come out of the narrow road and I was almost fully positioned in the opposite lane leading towards Xemxija. I may have still been turning a little but I was certainly not obstructing the lane leading towards Mellieha” ... “He was coming with very big speed, as he was overtaking the bus he had come into the lane leading to Xemxija but he was towards the middle of the road because I remember him being straight ahead of me”.

She specifies that the motorbike was not driving in his lane but straight ahead of her, on her lane.

That, Ligita Imbrasiene also chose to testify before the First Court where she confirmed the same statement of facts. She reiterated once more that she had stopped at the Stop sign in question and had stood there until passing cars had gone by. Then:

“I watched on the right and saw a bus coming from Xemxija Roundabout and looked at the left, I saw white car coming from Mellieha. But to see that I needed to push a little bit forward like to push my car to see cause of the rocky wall, and yes I drove a little bit forward and stopped again, and saw the bus ... it was at the top of the hill ... the direction told me logically to go the right ... little of my car forward ... the bus was coming but very slowly, the white car was coming from my left ... so I saw the gap and I can fit in, so I speed up, cause I like I was on the angle of the road. To take my direction from the side road, I saw motorbike coming but it was moving very fast ... there was no reaction possible”.

Asked whether she knew that the lanes on the main road were separated by a continuous white line, she replied:

“Yes, it is but I did not see that line cause of the position of my car, the side road goes from ... the side road it goes from bottom upwards, so the car was at an angle and if you are focused to see is there is traffic, from the left and right, it is basically impossible to see that white line in the middle”.

Finally, she also stated that the mirror opposite the Stop sign was very dirty and dusty and thus the image of the road was not clear.

Traffic expert Dr Mario Buttigieg concludes in his report that the victim of this accident Mark Camilleri had been speeding at 195km/hr. He states:

“Illi fejn allegatament sehh l-incident ma hemm l-ebda bini. Sezzjoni 127 tal-Motor Vehicle Regulation jghid li l-velocita' ta' vettura misjuqa go nhawi bhall dawn m'ghandiex teccedi l-velocita' ta' sittin kilometru fis-siegha”.

Dr. Buttigieg also reaches the following conclusions -

Illi din il-kollizzjoni sehhet go Triq il-Mistra, San Pawl il-Bahar meta mutur li ghandu n-numru ta' registrazzjoni KBL 796 tal-ghamla KTM mudell 1190 li kien qed jigi misjuq minn Mark Camilleri fil-karregjata tieghu, meta Ligita Imbrasiene li kienet qed issuq vettura tal-kiri tas-socjeta' J. Zammit Ltd, bin-numru ta' registrazzjoni ECE 261 tal-ghamla Toyota mudell Passo harget minn triq sekondarja sabiex tidhol go Triq il-Mistra. Illi kif Imbrasiene invadiet il-karregjata li kien qed isuq Camilleri sehhet il-kollizzjoni.

Illi kien l-ewwel ta' Frar 2020 ghall-habta ta' tlieta neqsin ghoxrin ta' wara nofsinhar u skond l-evidenza li l-esponent kellu f'idu u anki meta l-esponent ghamel l-access, it-temp kien wiehed tajjeb waqt li t-triq kienet xotta u l-vizibilita' kienet tajba. Is-sewwieqa tal-vettura kellha passigier waqt l-incident.

Illi l-incident seħħ fuq in-naħa tax-xellug tat-triq meta wiehed iħares lejn il-Mellieħa. Illi l-incident seħħ meta Camilleri kien qed isuq il-mutur tiegħu b'veloċità' għolja ta' mija disgħa u ħamsin kilometru fis-siegħa u kif wasal hdejn l-inkroċju Imbrasiene kienet ħarġet mit-triq sekondarja. Imbrasiene dak il-ħin kienet qed tisporġi sabiex tikser fuq il-karreġjata tan-naħa tal-lemin. Illi kif Camilleri kien għaddej u ra l-manuwvra, fix-xhieda li ta' Ralph John Christie li kien passigier xehed li ra lil Camilleri jgħolli idu l-leminija. Fl-istess ħin hu għafas il-brejk ta' wara. B'din il-manuwvra li għamel il-motoċiklist hu tilef il-kontroll tal-mutur bil-konsegwenza li baqa' diehel fil-vettura. Fl-opinjoni tal-esponent jidher b'mod lampanti li Camilleri kien f'sitwazzjoni ddisprata meta hu lemaħ u għaraf il-vettura f'nofs ta' triq li kienet qed tostakola l-via tiegħu. Għalkemm hu prova jwaqqaf il-mutur bil-veloċità' li huwa kien għaddej qatt ma kellu ċans u l-ikbar zball li għamel meta Camilleri għolla idu flok għafas il-brejk ta' quddiem u tal-engine brejk. Jidher li l-unika tama tiegħu kienet li japplika l-brejks li dak il-ħin sab taħt saqajh.

Illi b'din il-kollizzjoni Mark Camilleri miet fuq il-post. B'din l-informazzjoni l-Pulizija ezekuttiva nfurmat lill-Magistrat Inkwerenti fejn infethet inkjesta magisterjali.

Illi, fl-opinjoni tal-esponent jidher li Ligita Imbrasiene saqet il-vettura b'manjiera traskurata u perikoluza u ma kelliex a proper lookout tat-triq li kienet qed issuq fiha.

Considers:

On the basis of this evidence and other reports and testimonies found in the acts the First Court acquitted Respondent from all the charges brought against her and this for the following reason:

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 drive 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 degree 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.

Now, the First Court also listed a number of misgivings with regard to the manner in which the Prosecution chose to bring forward its evidence. It berates the fact that one of the most important experts appointed in the inquiry was not brought to testify and never exhibited his report. Architect Richard Aquilina's report, in the First Court's opinion, "would have clearly provided road markings and an accurate explanation of the area. Whilst 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. 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.”

The First Court also decries the lack by the Prosecution to bring forward all the witnesses who testified before expert Mario Buttigieg during the *in genere* inquiry, foremost amongst whom were Ralph John Christie, WPS 223 Charlene Calleja, Kedar Karki and Charlton Schembri.

This Court, however, begs to differ with these findings. To begin with, although it is true that the prosecution failed to bring forward the witnesses indicated by the First Court to testify, however in terms of article 550 of the Criminal Code **the procès-verbal, if regularly drawn up, shall be received as evidence in the trial of the cause, and the witnesses, experts or other persons who took part or gave evidence during the Magisterial inquest shall not be produced to give evidence in inquiry before the Court of Magistrates as court of criminal inquiry during the compilation stage.** This signifies that the First Court could take cognizance of the witness testimony received by the expert appointed during the inquest without the need that the Prosecution summons them to testify once again before the Court, unless the defense requests that the same be brought to give evidence in cross-examination.

Moreover, although it is true that the report of Architect Richard Aquilina could have shed a light with regards to the configuration of the scene where the accident took place, including any markings, to-scale measurements and the exact spot from where evidence was gathered at the scene, however the First Court was aided in its analysis by several photographs exhibited by the scene of crime experts, the traffic expert as well as the medico-legal expert taken on the day of the accident, together with the detailed report of expert Mario Buttigieg who described in detail the scene and all

relevant information which was observed by him at the time, with the continuous white line and the brake mark left by the motorcycle clearly visible in the said photographs. This Court, thus, has no doubt that on the day of the accident there was a continuous white line separating the carriageways as well as brake marks left by the motor cycle at the scene.

Having thus premised, the Attorney General criticizes the appealed judgment on the grounds that in her opinion there was enough evidence in the acts to indicate that Respondent failed to observe road regulations in her driving and was negligent and reckless when she took the risk to exit from the secondary road in Mistra onto an arterial road leading from Xemxija to Mellieha, and actually crossing over to the opposite side of the road from where she had exited, even driving over a continuous white line in order to head towards Xemxija. Even the traffic expert Mario Buttigieg, according to the Attorney General concludes in his report that Respondent failed in her duty to keep a proper lookout and to ensure that in crossing an arterial road, she would not prove to be an obstacle to traffic both coming from the direction of Xemxija, as well as proceeding from the direction of Mellieha onto Mistra Road.

Considers,

Respondent is facing charges relating to involuntary homicide allegedly caused through her negligent and reckless driving.

Francesco Carrara states the following about the concept of *culpa* –

... il tripode sul quale si asiede la colpa sara` sempre questo

- *1° volontarieta` dell'atto*
- *2° mancata previsione dell'effetto nocivo*
- *3° possibilita` di prevedere.*

That, in the same manner, Professor Anthony J.Mamo expresses the view that: –

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.

That, Antolisei went one step further than Carrara when he stated that –

Si tratta di regole di condotta volte a prevenire determinati accadimenti; tali regole possono essere sociali (negligenza imprudenza o imperizia) oppure giuridiche (regolamenti, ordini discipline). Quindi occorrono due requisiti:

- (a) la violazione di una regola;*
- (b) che l'evento provocato sia esattamente quello che la norma voleva evitare. In definitiva il giudizio di rimprovero è un rimprovero per leggerezza, perché il soggetto non è stato cauto e diligente come doveva.*

That, moreover, Mantovani and Padovani combine Antolisei's rule with the rules of predictability and inevitability so that they state that "culpa" has four elements -

- 1. un requisito oggettivo consistente nella violazione di una regola di condotta;*
- 2. un requisito soggettivo, cioè la capacità di osservare tale regola;*
- 3. l'evitabilità dell'evento mediante l'osservanza di tale regola;*
- 4. la prevedibilità ed evitabilità, cioè che il soggetto avesse la capacità o la possibilità di tenere un comportamento diverso.*

Now it is undoubted that Respondent:

1. exited from the side road leading from Mistra onto the arterial road which side road leads on to the carriageway of traffic moving in the direction from Xemxija towards Mellieħa, and thus not in the direction she wished to proceed.
2. Thus, she should have exited from the side road on the opposite side of the arterial road, the one exiting onto the carriageway leading in the direction from Mellieħa towards Xemxija.
3. Her view of oncoming traffic from the direction of Xemxija was obstructed by the configuration of the road itself since it presented a significant elevation which even made it impossible for her to observe the continuous white line separating the carriageways on the arterial road, together with a rubble wall to her right.
4. *Ex admissis* she even states that the mirror aiding drivers to emerge from the side road was blurred due to dirt thus offering no assistance.

5. She knowingly and consciously undertook a serious risk when crossing over a continuous white line found in the middle of an arterial road, obstructing the flow of traffic on an arterial road on both carriageways.

Consequently, there is no doubt that in her driving Respondent violated a number of traffic regulations foremost amongst which regulation 2 and Part IV A(i) of Subsidiary Legislation 65.05. Now, what the First Court had to establish was whether these violations were either the main cause of the accident or at least contributed to the same. This in view of the fact that the driver of the motorcycle was also in violation of the law when driving at an excessive speed way above the speed limit in the area. Now, Respondent alleges that when she decided to exit the side road onto the main road, she calculated that she would exit in time although she saw vehicles proceeding towards her from both directions, and this although she admits that her view was obstructed so much so that she could not see the continuous white line in the middle of the road indicating that she was categorically precluded from proceeding from her stationary position at the edge of the side road and crossing over to the opposite side of the arterial road.

This Court, thus, cannot understand why the First Court decided to distance itself from the opinion of the traffic expert who concluded that Respondent did not keep a proper lookout and was to blame for this fatal traffic accident, although pointing out that the victim's overspeeding could have contributed to the accident. Respondent should have foreseen that her driving, which violated all traffic regulations, could have led to serious consequences and that she was placing vehicles driving on the arterial road in extreme danger when she crossed the path of both carriageways thus obstructing the free flow of traffic proceeding from Mellieħa towards Xemxija, and even more so of traffic coming from Xemxija downhill towards Mellieħa. In fact, the consequences of her decision were serious such that it cost the victim his life.

The Court also considers that Respondent's testimony does not tally with her initial version of events and also with the testimonies of the only two lay witnesses present at the scene. Her allegation that the victim overtook a bus such that she could not

possibly foresee his presence on the road when she decided to exit the side road, and also that the collision took place on the carriageway of traffic leading from Mellieħa to Xemxija, contrasts with the evidence found in the acts. To begin with, the driver of the bus states that that the only motorcycle that overtook him had done so earlier on when he was proceeding up the hill from Xemxija and thus way before the accident took place so much so that he confirms that he did not witness the accident happening. Also, the brake marks left by the motorcycle on the scene are found in a straight line entirely on the carriageway leading towards Mellieħa where he was driving meaning that the impact occurred in the said carriageway and not on the other side of the road as alleged by Respondent implying that the motorcycle was driving in this lane in order to overtake the bus. Moreover, Respondent's boyfriend Ralph John Christie makes no mention of this fact and states that as soon as the vehicle emerged from the road and was crossing over to the opposite side, he observed the driver of the motorbike lifting his arm and standing up seconds before impact. In fact, the brake marks on the road² indicate the moment the victim applied the rear brakes upon seeing Respondent's vehicle obstructing his carriageway, which marks indicate that he was rather close when Respondent emerged from the side road so as to be unable to avoid the impact.

The Court is convinced that this was the victim's natural reaction upon finding Respondent's car in his pathway making a last minute, panicked attempt to attract her attention to his presence which unfortunately was futile, and even led to his losing control of his motorbike, his excessive speed contributing to the fatality.

Thus, although the victim's over speeding contributed in part to the accident, however it was not the direct cause of it, and contrary to what the First Court concluded, it was Respondent's uncalculated risk when exiting the side road onto the main road violating all traffic norms that caused the fatality.

The Court thus finds that the conclusions reached in the appealed judgment are both unsafe and unsatisfactory and concludes that Respondent should have been found

² Vide photograph exhibited at folion 98, reference number FS 200130 20 AEZ 1002.

guilty of all three charges brought against her, finding guilt for the offence of involuntary homicide as envisaged in article 225(1) of the Criminal Code, the offence of negligent and reckless driving in terms of article 15(1)(a) of chapter 65 of the Laws of Malta and also of the violation found in the First Schedule to Subsidiary Legislation 65.05, when she crossed a continuous white line.

The Court, however, will take into consideration the contributory negligence of the victim in meting out the appropriate punishment in the circumstances.

Consequently for the above mentioned reasons, the Court upholds the appeal of the Attorney General, revokes the judgment of the First Court, and after having seen articles 225(1) of the Criminal Code, article 15(1)(a)(3) of Chapter 65 of the Laws of Malta and Regulation 2 of, and Part IV, A(i) of the Schedule to, Subsidiary Legislation 65.05, finds Respondent Ligita Imbrasiene guilty of the charges brought against her and condemns her to a period of six months imprisonment, which period of imprisonment, after having seen article 28A of the Criminal Code is being suspended for a term of one year. Furthermore, disqualifies the said Ligita Imbrasiene from holding or obtaining a driving license for a period of three months from today. After having seen article 533 of the Criminal Code condemns the said Ligita Imbrasiene to pay the Registrar of Courts the sum of €2306.55 representing the costs incurred in connection with the employment in the proceedings of court experts.

The Court warns Ligita Imbrasiene with the consequences according to law if she were to commit another crime within the operative period of this judgment.

Edwina Grima

Judge

