



**FIRST HALL OF CIVIL COURT
HON. JUDGE TONI ABELA LL.D.**

Sitting of Thursday 8th May 2025

Number 6

Application number 585/2021

Cem Kofoglu (K.I. 159569A)

Vs

L-Agenzija ghal Infrastruttura Malta u

Kunsill Lokali tas-Siggiewi

The Court:

Having seen the sworn application of Cem Kofoglu (the Plaintiff) dated 17th of June 2021 by means of which he premised and demanded the following:

1. Illi nhar it-2 ta` Mejju 2020 għall-habta tal-15:50 fi Triq Għar Lapsi Siggiewi, l-esponent kien qiegħed isuq fid-direzzjoni tas-Siggiewi fuq il-mutur tiegħu tal-ghamla Piaggio Vespa Sprint bin-numru tar-registrazzjoni JCA-257.
2. Illi Minkejja l-prekwazjonijiet li l-esponent ha bħala sewwieq responsabbli u prudenti, l-esponent dahal f' *pothole* fl-imsemmija triq u minhabba f' hekk, tiflew kontroll tal-vettura tiegħu u waqa.
3. Illi fortunatament, f' dak il-mument kienet għadejja terza persuna li setgħet tagħti l-ewwel għajjnuna, filwaqt li saret telefonata lill-Pulizija kif ukoll intalbet l-assistenza ta` ambulanza.

4. Illi ftit wara li waslu l-Pulizija, waslet ambulanza li hadet lill-esponent ghal kura gewwa l-Isptar Mater Dei, Waqt li l-esponent kien qiegħed jingħata l-ewwel għajjnuna ittieħedet il-verżjoni tiegħu tal-fatti u apparti minn hekk giet ippreparata *sketch* tal-post ta' l-incident. Fost affarijiet ohra, il-Pulizija osservat li t-temp kien "*Clear*" li t-triq kienet bl-asfalt u niexfa u, kruċjalment, it-triq kienet f' kundizzjoni hazina (ara rapport tal-Pulizija, Dok. 'A')
5. Illi kif jingħad, l-esponent ittieħed l-Isptar Mater Dei fejn hemm gie ccertifikat li kien sofra griħi ta' natura gravi b' rizzultat ta' dan l-incident. Illi minħabba l-pandemija tal-COVID-19 u l- eventwali riabilitazzjoni li l-esponenti kien ser ikollu bzonn, l-esponent iddecieda li kien ikun għalqi li jmur lura pajjizu, t-turkija fejn hemm sarulu interventi medici sabiex jindirizzaw il-griħi gravi varji li kien sofra. Eventwalment l-esponent irritorna Malta u baqa jigi invistat mit-tobba regolarment.
6. Illi l-incident in kwistjoni wassal għal dizabbilita' permanenti fil-gisem ta' l-esponent u għalhekk, apparti l-impatt negattiv fuq il-kwalita tal-hajja tiegħu, wassal ukoll sabiex l-esponent garrab danni konsistenti kemm f'*damnum emergens* kif ukoll *lucrum cessans*. Skont rapport tal-konsulent Dr. Ryan Giordmaina, l-esponent qiegħed isofri minn dizabilita permanenti fl-ammont ta' hda fil-mija (11%) (ara rapport, Dok. 'B').
7. Illi l-konvenuti huma responsabbli li jassiguraw li t-triq fejn seħħ l-incident tinzamm f' kundizzjoni tajba u tassigura li jsiru dawk ix-xoghlijiet ta' manutenzjoni u rimedjali sabiex jassiguraw li t-triq tkun f' qagħda tajba għas-sewqan u ma tkunx ta' periklu għas-sewwieqa;
8. Illi dan l-incident seħħ b' rizzultat dirett tan-nuqqas tal-konvenuti li jharsu l-obbligi tagħhom li jzommu t-triq in kwistjoni f' kundizzjoni tajba għas-sewqan u mingħajr periklu. Konsegwentement, huma responsabbli għad-danni kolha li sofra l-esponent konsegwenza ta' dan l-incident.
9. Illi l-esponent interpella lill-konvenuti sabiex jersqu għal-likwidazzjoni u hlas tad-danni li hu sofra b' rizzultat ta' dan l-incident izda huma baqghu inadempjenti.

Għaldaqstant, l-esponent jitlob lil din l-Onorabbli Qorti sabiex previa kull dikjarazzjoni necessarja u opportuna:

1. Tiddikjara li l-konvenuti in solidum jew min minnhom naqsu mill-obbligi tagħhom li jizguraw li fit-2 ta' Mejju 2020, Triq Għar Lapsi, Siggiewi kienet f' kundizzjoni tajba għas-sewqan u fi stat ta' manutenzjoni tajbe u mingħajr periklu għas-sewwieqa;

2. Konsegwentement tiddikjara illi l-konvenuti in solidum jew min minnhom huma responsabbli għall-incident stradali u d-danni konsegwenzjali li sofra l-esponenti nhar fi 2 ta' Mejju 2020 għall-habta ta' 15.50 fi Triq Għar Lapsi;
3. Tillikwida, okkorrendi bl-opera ta' periti nominandi, id-danni li sofra l-esponent kemm *damnum emergens* kif ukoll *lucrum cessans*;
4. Tikkundana lill-konvenuti *in solidum* jew min minnhom ihallsu lill-esponent dik is-somma hekk likwidata.

Bl-ispejjeż, inkluz tal-ittri ufficcjali 685/2021 u 2050/2021 u bl-imghax mill-prezentata ta' l-ittra ufficjali rispettivi kontra l-konvenuti li huma minn issa ngunti għas-subizzjoni.

Having seen the sworn reply of Infrastructure Malta (the respondent Agency) of the 9th of July 2021 by virtue of which it answered and pleaded the following:

1. Illi preliminarjament jispetta lill-attur jgib prova li kien prezenti f' Malta fil-mument tal-prezentata tal-kawza u li kkonferma l-kontenut tagħha bil-gurament
2. Illi preliminarjament, l-Agenzija intimata ma hix il-legittimu kontradittur ta' l-azzjoni attri u għandha tigi liberata mill-osservanza tal-gudizzju. It-Triq in kwistjoni ma taqax that ir-responsabilita' ta' l-Agenzija intimate izda tal-Kunsill Lokali rispettiv kif del resto jistipulal -Kaptitolu 363 tal-Ligijiet ta' Malta;
3. Illi minghajr pregudizzju għas-suespost l-azzjoni attrici hija nulla u bla effett fil-ligi stante li ai termini tal-Kap 558 tal-Ligijiet ta' Malta din il-kawza kellha tigi istitwita esklussivament kontra l-Kunsill Lokali li fir-responsabilita' tiegħu tkun t-triq rilevanti;
4. Illi minghajr pregudizzju għas-suespost, l-Agenzija eccepjenti mhijiex responsabbli għad-danni reklamati mill-atturi, u f' kull kaz jispetta lill-atturi jippruvaw li l-Agenzija esponenti tahti għal xi nuqqasijiet li jrenduha responsabbli għad-danni pretizi minnhom.
5. Illi b' zieda mal-premess, u dejjem bla pregudizzju l-atturi għandhom igibu l-ahjar prova tad-danni pretizi minnhom.

6. Illi Minghjar pregudizzju ukoll, u f' kull kaz, it-talbiet
7. Salv eccezzjonijiet ulterjuri.

Having seen the sworn reply of the Siggiewi Local Council (the respondent Council) dated the 13th of July 2021 by virtue of which it answered and pleaded the following:

1. Illi preliminarjament it-talbiet tar-rikorrenti kif impost ma jirrigwadawx lil-esponenti Kunsill Lokali tas-Siggiewi u konsegwentement il-Kunsill Lokali Siggiewi mhuwiex il legittimu kuntradittur u ghalhekk ma kelhomx jigu inkluzi f' dawn il-proceduri u ghandhom jigu liberate mill-osservanza tal-gudizzju bl-ispejjez kontra l-istess rikorrenti;
2. Illi fil-mertu, l-esponenti Kunsill Lokali Siggiewi ghall-finijiet u effetti kollha tal ligi qed jirrispingi l-pretensjonijiet kollha migjuba fil-konfront tieghu bhala infondati fil-fatt u fid-dritt u dan *stante, inter alia*, illi mhuwiex responsabbli ghat-toqba fejn alleagament sehh l-incident;
3. Illi t-talbiet rikorrenti huma infondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez kontra tieghu billi l-Kunsill esponent ma jahtix ghall-istess toqba u m' ghandux responsabilita legali ghall-allegat akkadut u ghalhekk ma tezisti ebda relazzjoni guridika bejn il-kontendenti;
4. Illi t-talbiet rikorrenti huma infondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez kontra tieghu billi huwa stess jahti ghal dawn id-danni billi l-incident sehh b' konsegwenza ta' nuqqas ta' attenzjoni u negligenza tieghu;
5. Illi minghajr pregudizzju ghas-suespost, jidher li Triq Lapsi, Siggiewi hija triq arterjali jew distributorja u ghalhekk il-manteniment u titjib taghha mhumix responsabilita tal-Kunsill esponent;
6. Illi minghajr pregudizzju ghas-suespost, lanqas ma gie stabbilt b' certezza fejn sehh l-allegat akkadut;
7. Illi minghajr preguzzju ghal premiss, jigi eccepit inoltre li l-allegati Danni sew dak attwali u sew dak konsegwenzjali qed jigi kontestati u ghandhom se mai jigu ppruvati mill-attur skont il-ligi;
8. Salv linji difensjonali ohra permessi mill-ligi jekk ikun il-kaz.

Ghaldaqstant it-talbiet kolha tar-rikorrenti ghandhom jigu michuda a spejjez tal-istess rikorrenti.

Bl-ispejjez inkluz dawk tal-ittra ufficjali risponsiva tas-26 ta Mejju 2021, u atti ohra pprezentati kontra r-rikorrenti.

Having seen the documents and all records of the case.

Having read and heard the depositions of the witnesses produced by all parties during the course of these proceedings.

Have seen that the case has been adjourned to today for the Court to deliver its decision.

Points of fact

On the 2nd of May 2020, the plaintiff was driving his motor bike with the registration number JCA-257. He was driving through Triq Ghar Lapsi going towards Siggiewi. At the time the weather was clear and the road was dry. The accident happened at around 15.50 hours.

At one moment the plaintiff stumbled into a pot hole, lost his balance, fell off the motor bike and sustained serious injuries and is now suffering from a permanent disability.

The plaintiff was taken to hospital where he was certified as having sustained an injury of a serious nature. He went to Turkey where he was operated.

Now the plaintiff is suing the respondents, affirming that they are to blame for the accident and that they must make good for the damage he sustained.

Points of Law

The action being proposed is the *actio aquliana*, intended to attribute all fault to the respondents for the accident in question and who consequently are to bear all damages sustained by the plaintiff.

Damages arising from *culpa aquiliana* are regulated by article 1031 et sequens of the Civil Code. The burden of proof of responsibility and damages sustained, rests on the plaintiff. As such, the general principles laid down by the Civil Code, do not specifically provide a definition of culpa, however as consequence of article 1032(2) culpa is identified with a behavior that is not prudent, diligent, and not exercised with the caution of a *bonus pater familias*.

Local jurisprudence states, that “*F’dan ir-rigward l-ermenewtika ġurisprudenzjali lokali tgħallem li “min ifittex għad-danni jrid jipprova mhux biss l-att jew ommissjoni kolpuża iżda li dak l-istess att jew ommissjoni għandhom konnessjoni ta` kawża u effett mad-danni sofferti”* (vide **Kollez. Vol. XXX. I. 142**). These same Decisions also explain that a person causing the damage, could have for seen the harm originating from his legally incongruent behavior (vide - **Kollez. Vol. XLII. I. 74**).

These Courts have also explained that: “*quando vi ha la violazione di un dovere ed una volontaria omissione di diligenza per cui non si prevedono le conseguenze della propria azione od omissione, e si viola il diritto altrui, senza volerlo ed anche senza avvedersene*” (vide **Kollez. Vol. XXIV. I. 172**). Furthermore, it rests on the plaintiff to establish that causation exists between the harmful act and the damage sustained by him.

The Courts also remind, that though the present action is addressed against a Local Council, as such it is also bound by the above mentioned principles, notwithstanding that it is a moral entity. However, over and above the general principles of the law, Local councils are also regulated by special rules emanating from Chapter 363 of the Laws of Malta, particularly article 33(1)(b) of the said law, as will be explained at a later stage of this decision.

In this regard, it has been observed that "*E' detta colpa in senso generale della nostra scienza qualunque violazione di un obbligo giuridico; anche la violazione dolosa. In senso piu' ristretto la parola colpa esclude il dolo, e significa volontaria omissione di diligenza, per cui non prevediamo le conseguenze illecite di una commissione od omissione, e violiamo senza avvedercene un nostro dovere giuridico. Pero', si dice, che l'inadempimento dell'obbligazione dipende da colpa, quando sebbene la causa dell' inadempimento sia stata l'opera del debitore medesimo, costui non ne abbia avuta la coscienza, e solo abbia mancato di quella diligenza, che egli era tenuto di usare.*" (Giorgio Giorgi ,**Teoria delle Obbligazioni nel Diritto Moderno Italiano** ed. 1903 vol. II. # 18 p.32 – 33 ara wkoll f'dan ir-rigward **Giovanna Visintini, Trattato Breve della Responsabilita' Civile, Cedam, pg 655, 1996 Ed).**

Considerations

The first matter to be established is, who of the respondents is to be retained responsible for the accident in question, if ever. And only after

responsibility is established, will the Court consider liquidating the damages sustained by the Plaintiff, if any.

Responsibility

According to the plaintiff *“Whilst I was driving along Lapsi Road, direction towards Dingli Cliffs, a few meters after I turned the corner, immediately the condition of the road changed dramatically, in the sense that all of a sudden it was as the level of the road went down by a few centimeters and I drove into a pothole. ... There were no signs indicating that a few meters further, the road surface would deteriorate and I had no reason to believe or understand that the surface would change in such a manner”* (a’ fol 51). Simon Cusens confirms that the road in question was in bad state (a’ fol 118).

Indeed Simon Cusens states that *“What struck me was that the place of the accident as pointed out to me by the people who were on location happened exactly where the tarmac ended. You could like cut with a knife, and then there is a drop of few centimeters and a hole in the road ... so there was a different level, two roads coming together and the road at the lower level was in a very bad state”* (a’ fol 144). He confirms that the motor bike was on that part of the road in disrepair (a’ fol 144 tergo).

John Fenech of Elles Urban Services Ltd, the company engaged by the respondent Council to maintain the roads, after seeing the photographs of the road in question, said he has no qualms to recognize that it was in a state of disrepair and need to be resurfaced from scratch. He also

concludes that the damage to this road is principally attributable to the frequent passage of heavy vehicles in the service of nearby quarries. He unequivocally states, that this road was not built to take the weight of these vehicles. (a' fol 174).

Caroline Galea, the nurse who attended on the scene of accident, remembers telling the ambulance drivers, to drive slowly *because the road was very bumpy* (a' fol 49C). In fact, even the Plaintiff recalls the nurse instructing the drivers to drive slowly (a' fol 52). To seal conclusively the matter as to the state of this road, Ritianne Giorgino, Executive Secretary to respondent Council states, that Respondent Agency "*was roped in because of the number of potholes*" (Court's emphasis). She also corroborates the plaintiff's description of this road, when she says that "... *when you continue slip edged the road, I mean the surface becomes uneven*" (a' fol 195 tergo). But if there was any lingering doubt as to the state of disrepair of this road, the photographs exhibited in the course of these proceedings tell it all (vide Photos of road at time of accident (a' fol 46 to 48 and 54 to 57) and photos after the accident in November 2021 (a' fol 56 sa 61). This tallies with the description of the Police report which states the road is in bad condition (a' fol 12). Furthermore, PC Francesco Farrugia having been on the site of the accident, also confirms that the road was in a bad state of disrepair. He unequivocally says that there were several cracks in the asphalt and there were several potholes.

It is amply clear that this road was indeed an emergency matter since its state of disrepair was an evident traffic hazard to oncoming traffic, particularly to motorcycle drivers. It is therefore important to establish who of the two respondents is responsible.

Perit David Vassallo, from Infrastructure Malta says “*So this is a council road normally, its not arterial distributor and so its maintenance pertains to the Council. Having said that Infrastructure Malta had intervened by issuing an emergency allocation to contractor Philip Agius and Sons for Triq Ghar Lapsi, Siggiewi for works ... for the value of 1.5 million excluding VAT which was issued on the 18th of December 2020.*” He confirms that the road is classified in the Local Councils Act as not being arterial and not distributor. Therefore, according to this witness, it falls within the responsibility of the Local Council, in this case of Siggiewi (a’ fol 102 Emphasis by the Court). On the other hand, Ritianne Giorgino, Executive Secretary to the respondent Council, whilst recognizing that this road falls within the boundaries of the Council in question, does however caveat that “*The responsibility of the local Council is the maintenance of the road ... the patching. But the resurfacing is under the responsibility of the local Government*”. She falls short from specifying which administrative arm or branch of the Local Government she is referring to. By this she meant that a total rehaul of a road does not fall within the Council’s remit under the law.

Now Article 33 (1) of chapter 363 of the laws of Malta states that “*Subject to sub-article (2) and to the provisions of any other law for the time being in force, the functions of each Local Council shall be:*

(a) to provide, with respect to any road, other than any road the responsibility for which vests in Infrastructure Malta in terms of the Agency for Infrastructure Malta Act or any regulations made thereunder, for its upkeep and maintenance, or improvements therein, and to provide and maintain proper road signs and road markings, in conformity with national and international standards:

Provided that maintenance in relation to any road referred to under this paragraph includes the patching and resurfacing thereof, but does not include its reconstruction” (Emphasis of the Court).

Furthermore, the proviso of article 5(1)(c) of Chapter 588 of the laws of Malta clearly states that “*Provided that where the maintenance of any local road is by law the responsibility of a local council, the maintenance of such road shall not, to the extent of such responsibility, be the function of the Agency.*”

In other words when reading article 33(1)(a) of Chapter 363 of the Laws of Malta and the proviso of article 5(1)(c) of Chapter 588 of the Laws of Malta conjointly, it becomes amply clear that the whole responsibility for the maintenance and resurfacing of roads falls within the duties of a Local

Council. In the light of all the evidence in this case, the Court therefore comes to the conclusion, that the respondent Council is responsible for the upkeep and maintenance of Ghar Lapsi Road, albeit that in the case of resurfacing, extensively depends on the prompt intervention of the respondent Agency (vide testimony of Perit David Vassallo).

In his affidavit the Mayor of respondent Council explains that the Council has several structures to monitor and ascertain that roads are kept in a good state of repair. To this effect the respondent Council employs a Works Manager and a number of workers who on regular basis monitor roads' condition. And as if this was not enough, the Council also engages a contractor to this effect. Furthermore, every time that a complaint is lodged with the Council, this is immediately addressed.

Yet, the accident at hand happened in a road, which has been proven to be in a state of disrepair and riven with potholes. It also means that notwithstanding the layers of surveillance adopted by the Council, somewhere down the line, somebody is not doing his job properly or else the technical operandi is not functioning.

The Court must remind, that it has transpired that the road is frequently used by heavy construction vehicles, meaning that a system should have been in place to monitor more closely this road and with frequency. It does not transpire that this was the case. Responding promptly to complaints is a good thing, but it's a far better thing to survey frequently used roads by way of precaution against such accidents. The photographs

exhibited show, that this road was clearly a harbinger of road accidents and only after the plaintiff sustained his injuries, was this road properly repaired.

In view of the above reasonings the Court comes to the conclusion that the respondent Council is wholly to blame for the accident, this meaning that the respondent Agency will be freed from judgment *ab observantia*.

The Damages

Having established that the respondent Council is responsible for the accident in question, it now remains to liquidate the damage sustained by the plaintiff.

The principal provision of the law that regulates damage is article 1045 of the Civil Code which states the following:

“The damage which is to be made good by the person responsible in accordance with the foregoing provisions shall consist in the actual loss which the act shall have directly caused to the injured party, in the expenses which the latter may have been compelled to incur in consequence of the damage, in the loss of actual wages or other earnings, and in the loss of future earnings arising from any permanent incapacity, total or partial, which the act may have caused omissis the sum to be awarded in respect of such incapacity shall be assessed by the court, having regard to the circumstances of the case, and, particularly, to the nature and degree of incapacity caused, and to the condition of the injured party.”

In other words, damages fall in two categories and have always been classically described as being: the damnum emergens that is to say *the actual loss which the act shall have directly caused to the injured party*; and the lucrum cessans that is to say *the loss of actual wages or other earnings, and in the loss of future earnings arising from any permanent incapacity, total or partial, which the act may have caused*.

Needless to say, these two types of damages shall be examined by this Court in the light of local jurisprudence and the learned legal teachings of authors on the matter.

Therefore, they shall be examined in the order mentioned above.

The damnum emergens

As regards to this kind of damage in the decision in the names of **Paul Debono -vs- Malta Drydocks, Qorti Ċivili Prim' Awla of the 27th April 2005**, the court explained that the damages under this head of the law includes amongst others, expenses incurred by the plaintiff of medical care, medical bills of all kinds and even loss of wages lost during the convalescence. In other words, all those damages that would not have been incurred were it not for the injuries caused by the illegal behavior of the respondent Council.

This tallies with English law where these kind of damages are classified as past loss. It has been stated that "*It is easy enough to apply the rule in case of earnings which have actually been lost, or expenses which have actually*

been incurred, up to the date of trial, the exact or approximate amount can be proved, and, if proved, will be awarded as special damage” (Vide **Munkman on Damages for personal Injuries and Death, 12th Edition, Lexis Nexis, pg 77**).

Medical expenses incurred are the first to be considered. The plaintiff paid €237 to St. James Operations Hospital Ltd (a’ fol 62 a’ fol 71 u a’ fol 124). Albert Fenech confirms this payment (a’ fol 123A). Furthermore, the Plaintiff incurred air tickets expenses which would not otherwise have been made were it not for the accident at hand, amounting to €205.53 (a’ fol 68). However, this last expense was paid by the Turkish Government and therefore unclaimable. This means that the total amount of *damnum emergens* is €237.

Lucrum cessans

The general guiding principles that lead to a just liquidation of damages were established by the now iconic case of **Butler -vs- Hurd**.

First and foremost, one has to take into consideration the expert medical advice. According to an ex parte medical report by Mr. Ryan Giordimaina the plaintiff has sustained 11% permanent injuries (a’ fol 17). Whereas, according to the Court’s appointed medical referee, Mr. Fredrick Zammit Maempel, the plaintiff has sustained 10% permanent disability (a’ fol 79). The Court is confirming the findings of its referee.

This referee also concludes that 21 months after the accident the radial nerve is incompletely recovered. He concludes that further recovery of this

nerve is possible but a full recovery improbable. Mr. Frederick Zammit Maempel also observes that the fracture of the distal tibia involved an articular surface of the ankle joint and will inevitably lead to arthritic change. What is more the plaintiff has substantial amounts of metal implants attached to the humerus and tibia. They constitute foreign bodies and provide a slightly increased risk of bone infection during bacteremia.

The second criterion in liquidating damages is that of the multiplier. It is said that *“a figure somewhat less than the number of years for which the loss is likely to continue - that is, in a personal injury action, until the plaintiff’s injuries cease to affect earnings or the plaintiff dies or retires. This figure is then reduced partly because of the ‘contingencies’ (i.e. that the plaintiff might not have lived or worked so long or might have lost earnings even if the accident had not occurred), and partly because the plaintiff is going to receive not an income but a capital sum which can be invested to produce an income. The multiplier is not the product of precise calculation, but of estimation in the light of the facts of the particular case and of other comparable cases”* (Vide **Peter Cane, Atiyah’s Accidents, Compensation and the Law (6th Edit, 1999), page 128**).

For the purpose of making the right calculation in this regard the departure point is the year when the accident occurred and not when the calculation is being made. This calculation takes in consideration the age of the victim. The plaintiff was born on the 15th August 1987 (a’ fol 53). Therefore, in this case the plaintiff was 33 years old at the time of the accident. As

regards this particular consideration in the **Decision in the names of John u Laura konjuġi Ransley vs Edward u Lydia konjuġi Restall of 25th January 2012** the Court observed the following:

“Hawnhekk għandna fattur pjuttost diskrezzjonali. Il-metodu ta’ likwidazzjoni tad-danni kien għal żmien twil ibbażat fuq il-prinċipji enunċjati fil-kawża Butler vs Heard deċiża mill-Qorti tal-Appell Ċivili Superjuri fit-22 ta’ Diċembru, 1967. F’dik il-kawża intqal li fid-determinazzjoni tal-multiplier, wieħed irid jieħu in kunsiderazzjoni c-‘chances and changes of life’, b’mod li dan il-multiplier ma jwassalx lid-danneġġjat li jieħu kumpens daqs li kieku baqa’ jaħdem sad-data li jirtira, iżda l-figura tiġi mnaqqsa biex b’hekk ikun ittiegħed in kunsiderazzjoni l-fatt li l-persuna ddanneġġjata setgħet, fil-kors normali tal-ħajja tagħha, ma waslitx qawwija u sħiħa sa l-eta’ tal-pensjoni”.

However, this principle was not always a standard matter to our Courts and different approaches have been adopted. In fact, the **Commercial Court in its Decision in the names of Lambert vs Buttigieg of the 18th of April, 1963** had this to say:

“F’din il-materja ta’ lucrum cessans il-Qorti għandha tipproċedi b’kawtela kbira peress li l-qliegħ hu ħaġa ta’ possibiltà u mhux ta’ ċertezza u jkun jista’ jonqos minn mument għall-ieħor anke għal kwalunkwe kawża materjali bħal mewt jew mard tad-danneġġjat.”.

The most certain criterion in calculating the multiplier is the age of the victim at the time of the accident until the age of retirement. Subject however, to

pre accident health conditions that would have presumably shortened the life time of the victim independently from the accident itself.

Now there is no doubt that the Plaintiff is domiciled in Turkey. Therefore the Court has to look at Turkish law regarding the retirement age in that Country because in all probabilities, it is there that the plaintiff will reside for most of his life. The Court has researched the matter and it transpires that the retiring age in Turkey has no limit of age. That law has only been recently changed (Vide Turkish Government Web Site) In this case, this Court is going to consider the retiring age at 65 years, having seen that the accident occurred in Malta. This means, that the multiplier in this case should be that of 32 years, considering that the plaintiff was 33 years of age at the time of the accident.

Now, according to the **Butler -vs- Hurd** criteria, the Court must also deduct a lump sum payment to the maximum of 20%. This will be deducted in its entirety when the case has been decided within a reasonable time. If the case takes more than three years to be decided, unreasonableness is a factor that comes into play.

Court decisions have also explained that a deduction of two percentages is to be made for every period of two years delay. (Vide **Decision in the names Scicluna -vs- Meilaq PA of 16th July, 2001 and Caruana -vs- Camilleri PA of 5th October, 1993**). In the circumstances the Court deems it fit that a multiplier of 18% should be appropriate.

The last point to be considered is that of establishing the annual income of the plaintiff. The plaintiff states that at the time of the accident he was employed with Data Logic and had a salary of €32,000 gross apart from bonuses (a' fol 51). From his tax returns, the Court can safely conclude that his gross annual income is that of €31,000. Tax is approximately €5000, this meaning that his net pay is that of €26,000. This is the amount that this Court is taking into consideration for this purpose.

As regards the principle of inflation it has been said that "*The indication that standard awards would be adjusted for inflation can have a major practical effect. Such adjustment require the use of the Retail Price Index imperfect instrument it may be, it is the best we have*". (Vide **Munken on Damages for Personal Injuries and Death; 12th Ed. Lexis Nexis pg 73**). The Court shall be increasing the sum liquidated as *lucrum cessans* at arm's length by 5% to make good for the inflationary erosion of the capital sum being awarded as damages *lucrum cessans*.

Lastly the Court cannot ignore the lifetime effect that the accident will be having on the plaintiff. This Court has already evinced at this aspect in so far as according to the Courts appointed medical referee, the Plaintiff will be suffering from arthritis, his radial nerve will not recover and that due to the number of metal implants, the plaintiff may a be susceptible to infections in the future.

In order that the principle of *restitutio in integrum* makes sense it must give the meaning it means that of restoring the victim to the same state he was

in before the accident. In other words, *fictio iuris* the injured person must be restored to the same position he enjoyed before the accident (vide **Decision in the names of Borg pro et noe – vs – Muscat, Prim' Awla, Qorti Civili, of the 9th of January, 1973**).

However, this is easier said than done. It follows therefore, that in this matter, this Court cannot simply rest on the mathematical formula established in **Butler -vs- Hurd**. Although this decision introduced an innovative mathematical formula by which we can apply the principles in article 1045 of the Civil Code, it still falls short from considering the life time ailment and missed future opportunities of the injured person or the denial of him continuing to practice his joys of life.

True, there is no fixed and hard rule of how to quantify this aspect of quality of life of a person, though the rules of common sense and justice dictate that the Judge awards a sum of money to compensate for this unseen loss. In this regard, the Court is going to award a further €3000, which is not only reasonable, but still does not really do justice with the plaintiff.

Liquidation damages

$32 \times \text{€}26,000$ (number of working years x annual wage) = €832,000 – 18% (lump sum payment) = €682,240 - 10% (rate of disability) = €68,224 + €3,412 (5% inflation) = €71,636 + €3000 (compensation for future quality of life) = €74,636 + €237 (damnum emergens) = **€74,873** (Total amount of damages).

Decide

Now therefore the Court is deciding this case in the following manner:

Accedes to the first request of the plaintiff limitedly as regards the respondent Council and is freeing the respondent Agency ***ab observantia judicio***.

Accedes to the second request of the plaintiff but only in regards of the respondent Council.

Accedes to the third and fourth requests of the plaintiff and liquidates the damage suffered by plaintiff in the amount of **seventy-four thousand and eight hundred and seventy-three euro (€74,873)** and consequently condemns the respondent Council to pay the plaintiff this amount with interest from today till effective payment.

All costs to be borne by the respondent Council as requested.

Judge Toni Abela

Deputy Registrar