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

Sitting of Thursday 8th May 2025

Number 7

Application number 951/2021

Bruno Roelog Glastra (numru tal-passaport Olandiz NXLJ8K7D6)
vs
Renard Mallia (KI 0463077M)

The Court:

Having seen the sworn application of Bruno Roelog Glastra (the plaintiff) of the 27th of September 2021 by which he premises and demands the following:

> Illi fis-17 ta` Marzu 2015 ghal habta tas-7,50am waqt li Bruno Glastra kien ghall-affarijiet tieghu wieqaf fuq il-bankina jistenna ix-xarbank f` Triq Bordin l-Imsida, Malta karozza tat-tip Suzuki Baleno, bin-numru tar-registrazzjoni KBC 048, baqghet tiela fuq il-bankina u ghaffget lill-attur mal-hajt, bil-konsegwenza li l-attur sofra griehi gravi u danni ta` nattura permanenti.
>
> Illi bhala risultat ta` dan l-incident Bruno Glasfora soffra grehi ta` Natura gravi ghax spicca kisser hafna qadam, ma setghux jimxi xejn ghal zmien twil, spicca li issa ghandu sieq wahda iqsar mill-ohra, ser jibqa` hajtu kolha juza wheelchair jew krozzi biex ikun jista jimxi limitament and dan kif ser jigi ippruvat fil-kors tal-kawza.
> Illi ghal-stess incident awtombilistiku u danni konsegwenzjali hu unikament responsabbli il-Konvenut, minhabba negligenza, imperizija, traskuragni, nuqqas ta` attenzjoni u naqqas ta` harsien tar-regolamenti relattivi, da parti tieghu u dan kif ser jirrizulta fil-kors tal-kawza.
> Illi ghalkemm interpellat sabiex jersaq ghall-likwidazzjoni u hlas tad-danni sofferti mill-attur, il-konvenut baqa` inadempjenti.

Jghid Ghalhekk il-konvenut ghaliex din l-Onorabbli Qorti m` ghandhiex:

1. Tiddikjara lill-kovenut unikament responsabbli ghal-incident li sehh fis-17 ta` Marzu 2015, meta waqt li Bruno Roelog Glastra kienu fuq il bankina go Triq Bordin, L-Imsida, il-konvenut tilef il-kontrol tal - Karozza tieghu, tela` fuq il- bankina u tajjar lil attur bil-konsegwenza li attur sofra danni gravi u ta` natura permanenti fuq il-persuna tieghu.

2. Tillikwida d-danni sofferti mill-attur bil-kosegwenza tal-imsemmi incident, okkorrendo bl-opera ta` periti nominandi.

3. Tikkundanna lill-Konvenut ihallas lill-attur dik is-somma li tigi hekk likwidata minn din L-Onorabbli Qorti.

   Bl-ispejjez, inkluz tal-ittri ufficjali tat-23 ta` Frar 2017, tat-12 ta` frar 2019 u tal-11 ta` Mejju 2020, u bl-imghaxijiet legali kontra l-konvenut ngunt ghas-subizzjoni.

Having seen the sworn reply of Renard Mallia (the respondent) of 22nd of November 2021 by which he answered and pleaded the following:

1. Illi, fir-rigward tal-ewwel talba rikorrenti, l-esponent jirrileva illi huwa digà accetta responsabbiltà ghall-incident awtomobilistiku illi sehh fis-17 ta' Marzu 2015, fi Triq Bordin, l-Imsida. Di fatti, l-esponent irregistra *claim* mas-socjetà assikurattiva tieghu Elmo Insurance Limited u ddelega lill-istess sabiex titratta hi mat-terz dwar l-imsemmi incident.

2. Izda, rigwardanti t-tieni u t-tielet talba rikorrenti, ossija ghal dak li ghandu x'jaqsam mall-entità tad-danni pretizi, dawn huma kontestati. Ghaldaqstant, jispetta lir-rikorrent il-prova skont il-ligi tad-danni minnu pretizi.

3. In partikolari huwa kontestat il-percentwal ta' debilità li r-rikorrent qieghed jallega li, konsegwenza tal-incident awtomobilistiku *de quo*, huwa garrab; dan in vista tar-rapport mediku redatt mill-konsultent ortopediku Mr. Frederick Zammit Maempel fid-29 ta' Lulju 2016 [hawn esebit u markat bhala **Dok. FZM**] fejn ikkonkluda li "*Mr. Glastra has a permanent disability rated at 15% (fifteen) as result of the accident of March 2015*".

4. Salvi eccezzjonijiet ohra permessi mill-ligi.

Having seen all documents and acts in the records of the Case.

Having heard and read the depositions of the witnesses produced by both parties to the Case.

Having seen that the Case has been adjourned for today in order for the Court to deliver its decision.

Facts of the Case

On the 17th of March 2015 at about 7.50 am, the plaintiff, while still on the pavement, was overrun by the motor car with registration number KBC 048, driven by the respondent. The plaintiff suffered multiple physical injuries in consequence of which plaintiff he sustained a number of crushed bones. Since this accident, he has been unable to walk, one of his legs is shorter than the other and he will have, for the rest of his life to cope with the effects and consequences of these permanent disabilities.

The plaintiff insists that since respondent is solely to blame for this accident, he has, according to law, to bear all the damage sustained by the plaintiff.

Points of Law

As can be seen from the respondent's sworn reply, he has already admitted responsibility for the accident in question. Consequently, the only matter to be decided in this case is the quantum of damages if ever, suffered by the plaintiff and the payment thereof by the respondent to the plaintiff.

The principal provision of the law that regulates damages 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.*

Considerations

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 examined in the order mention above.

The damnum emergens

As regards to these kind of damages 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 kind 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.

This tallies within English law, which 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, page 77** Emphasis of the Court).

The plaintiff states that before the accident he always did the cleaning of the house. However, after the accident this was no longer possible because of his dwindled health did not permit it. He states that as a consequence he had to engage a housekeeper by the name of Petra Farehill, costing him approximately €255 a month. She helped in the cleaning of the house and also did the shopping when the weather is cold or raining (a' fol 221 tergo u 222).

The plaintiff was incisively cross examined about this matter in the light, that he only produced invoices and not proper receipts about this service. To this regard he explains that he couldn't do without someone helping to take care of the house. He also states that each time he had to pay €50 which is relatively cheap considering on going rates for this kind of services (a' fol 333P). He also explained that each and every time he received the invoice, he paid but never issued a receipt because this is how it goes according to Dutch practice in this field of services (a' fol 333Q).

Whatever the Dutch practice, under Maltese law, the person alleging damage has to prove that damage. And the best kind of proof in case of payment, is a receipt demonstrating that payment was effectively made. However, this does not mean that the Court will be denying expenses in this regard. On the principle of equitative justice, the Court is allowing an amount which is reasonable and equitable in the circumstances. The Court is morally convinced that the plaintiff was indeed constrained to seek this kind of service. However, the Court must always keep in mind article 1135 and 1045 of the Civil Code (Vide **Decision in the names of Margaret Camilleri et -vs- The Cargo Handling Co Ltd deċiża fit-13 ta' Ottubru, 2004**).

The Court examined the bulk of these invoices (a' fol 265 to 294). Had proper receipts been exhibited, the amount would have been seven thousand two hundred and fifty euros (€7,250). In the circumstances, the

Court is liquidating *arbitrio boni viri* the amount of four thousand euros (€4000).

The plaintiff says that the Dutch insurance paid for all fees due to doctors and hospital fees (a' fol 333N). Indeed he states unequivocally that "... *they paid my physiotherapist, they paid the hospital, all the doctors there were these years that I have seen ... I think they even covered my stay in Malta*." (a' fol 333O u a' fol 333O Tergo). Therefore, the Court understands that even his travel expenses were paid by this Insurance.

However, there are other expenses. The plaintiff also exhibited a number of receipts which are not that legible in connection with medicinal expenses (a' fol 257 to 258). In this regards the Court applies the above-mentioned reasoning and liquidates *arbitri boni viri* the amount of two hundred euros (€200).

The plaintiff also engaged a private firm by the name of Laumen and again an invoice was issued for the amount of three thousand two hundred and sixty-seven euros (€3,267). Again no receipt in this regard was obtained and what is more the document exhibited is in Dutch (a' fol 376).

The Court does understand that the plaintiff sought expert advice from this firm to quantify the damages he suffered. On the other hand, this report is not going to be taken in consideration, since it is not a sworn report and hence the right of cross examination could not be exercised by the other party. What is more an unsworn report without being sworn by the person who made it does not qualify as proof. But as regards to expenses made

to obtain this report the Court does understand that plaintiff was constrained to seek expert advice. In the light of these circumstances, the Court again finds it equitable to liquidate *arbitrio boni viri* the amount of one thousand two hundred euros (€1200) in connection with the expenses of this report.

Therefore, the Courts concludes that the *damnum emergens* suffered by the plaintiff amounts totally to five thousand four hundred euros (€5400).

Lucrum cessans

The general guiding principles to arrive 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. In the current case this matter is somewhat complex in the light of convincing divergent views between the conclusions of the referee appointed by the court and the ex parte orthopedic report. This matter was further made complex when the referee of the Court Mr. Massimo Abela, was examined by the respondent.

To this regard the ex parte expert Mr. Fredrick Zammit Maempel concludes that the plaintiff has a 15% permanent disability. He examined the plaintiff on 21st of July 2016 (a' fol 26). Mr. Zammit Maempel concludes that the fractures caused by the accident are located in the femur and lower femur (a' fol 347). However, Mr Massimo Abela concluded that there was also a fresh injury in the ankle (caracanium) and concluded that the plaintiff was suffering from a 30% permanent disability. He examined the plaintiff on the

12th of April 2022 (a' fol 148). The plaintiff also refers to the conclusion that the Dutch experts concluded that he was suffering from 47% permanent disability (a' fol 223). However, this conclusion was not confirmed on oath by the Dutch medical experts and the court is going to disregard this in the light of the local law of evidence as explained above.

It transpires that the plaintiff had a series of incidents antecedent to the one being considered in this case. In fact the plaintiff admits that "*When I was younger I had an accident, I damaged my lower back a little bit and my left ... bone and that was the chronic pain in the past ... I dropped from my ladder from nine metres down to the floor concrete and after that I always had little bit problems with my lower back"* He further states that he is still in pain. (a' fol 333A).

In this regards the Court is somewhat perturbed by the fact that Mr. Massimo Abela, when being examined by counsel to respondent admits, that he was unaware that the plaintiff had another incident before the accident subject matter of this case (a' fol 363 tergo). He also admits that he was also unaware that the plaintiff was "*a chronic pain sufferer*" as in fact transpires from the medical history of the plaintiff.

On the other hand Franco Davies, the physio therapist states that *"... his left lower limb was generally weaker <u>due to a previous injury in his youth</u>"* (a' fol 356 Emphasis of the Court). Questioned whether the plaintiff can recover from the last injury *"From what I remember not that much because there were limitations from the new one*" (a' fol 356 tergo). Questioned

whether the plaintiff would have improved his mobility had he continued physiotherapy the answer is "*There were many fractures so I wasn't expecting full normal mobility*... *I was expecting him to be walking normally in the long term may be needing aids for example ... I don't know but crutches or sticks"* (a' fol 361 tergo). In this regard even Mr. Frederick Zammit Maempel also says this (a' fol 347 tergo). Now the Court must stress, that it was the plaintiff who on his own accord stopped physiotherapy, thinking that this did not seem to improve his condition.

Therefore, as can be seen, there is a melee' of circumstances that in themselves do not give a clear answer as to what should the percentage of permanent disability. It should not be less than 15% and not more than 30%. The Court is aware that article 681 of Chapter 12 of the laws of Malta lays down that "*The court is not bound to adopt the report of the referees against its own conviction*".

To this Court, this does not mean that it cannot accept partially the findings of the appointed referee. What it means, is that there must be good solid grounds to discard the conclusions of the referee in their totality in matters that are highly technical. The technical judgment of an expert is not to be set aside lightly by the Court (Vide **Decision of the 9th of January 2008 in the names of Joseph Sciberras -vs- John Vassallo**).

In view of the above the Court holds that circumstances dictate that the percentage established by the Court appointed referee be abated. It considers that it will be just and equitable were the court to establish a

twenty five percentage (25%) as signifying the permanent disability suffered by the plaintiff.

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. In this case the plaintiff was 50 years old at the time of the accident (a' fol 220). As regards this particular consideration in the **Decision in the names of John u Laura konjugi 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 ittieħed 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' possibilta' 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 lifetime of the victim independently from the accident itself.

Now there is no doubt that the Plaintiff is domiciled in Holland. Therefore, the Court must look at Dutch law regarding the retirement age in that Country because in all probabilities, it is there that the plaintiff will reside for the rest of his life. The Court has researched the matter, and it transpires

that the retiring age in Holland is that of 67 years (Vide Dutch Government Official web site). This meaning, that the multiplier in this case should be that of 27 years, considering that the plaintiff was 50 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**). After having considered the note of observations of both parties, the Court agrees with the method and reasons submitted by the respondent and is therefore establishing 18% deduction as lump sum payment which is equitable in the circumstances.

The last point to be considered is that of establishing the annual income of the plaintiff. At the time of the accident, the plaintiff was unemployed. The plaintiff states that when he was last employed, he earned approximately €2000 a month. But he did not exhibit any supporting documents. He also states that the monthly minimum wage in Holland is €1450 (a' fol 224 tergo). Considering that he was unemployed before the accident, the best measure is to take in consideration the Dutch minimum wage. Again, since

he is domiciled in Holland, clearly intends to remain in this country, the minimum wage in Holland is the best gauge to go by.

Again, the Court researched the matter and found that the minimum wage in Holland for those that are over 21 years is that of €14,06 per hour. Taking a 40-hour week of five days it counts up to (€29,244) per annum (to the nearest euro). Therefore, the court will be calculating on this source of income.

As regards to 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".* (Ara **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 life time effect that the accident will be having on the plaintiff. 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. The plaintiff had several pleasures in life, such as diving and fishing, which he can no longer practice. He used to cope with all the chores of daily life, which now he cannot do (a' fol 333F).

In other words *fictio iuris* the injured person has to 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, it is easier said. It follows therefore that in this matter, this Court cannot simply rest on the formula established in **Butler - vs- Hurd**. Although this decision introduced an innovative mathematical formula to 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 **€5000**, which, the Court thinks, is not only reasonable but still does not really do justice with the plaintiff.

The liquidation of damages.

(€29,244) x 27 (one year income for 27 years) = (€789,588) less 18% (lump sum payment) = (€647,462). 25% of this sum (permannent disability) = (€161865) (lucrum cessans) + €7082 (interest) = €168947 + €5400 (damnum emergens) = (€174,347) + €5000 (quality of life) = **(€179,347).**

Decide

Now therefore the Courts decides the matter in the following way:

Accedes to the first demand as requested.

Accedes to the second demand by liquidating total of damages suffered by plaintiff in the sum of **one hundred and fourteen thousand, and ninety-three euro (€114,093)**[1]

Accedes to the third demand and condemns respondent to pay the said liquidated sum to the plaintiff with interests according to law from this decision until effective payment.

All costs are to be borne by respondent.

Judge Toni Abela

Deputy Registrar

[1] Authorised correction by means of a decree dated 12th May 2025