MALTA

TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
AUDREY DEMICOLI**

Seduta tat-30 ta' April, 2003

Talba Numru. 703/2002/1

Eric Saliba

vs

Paul Muscat

It-Tribunal,

Ra l-Avviz fl-ismijiet premessi prezentat fl-25 ta' Marzu 2002 fejn gie mitlub li l-konvenut jigi kkundannat ihallass lill-attur is-somma ta' tlett mija u erbgha u sittin lira Maltin u tmienja u sittin centezmu (Lm364.68) rapprezentanti danni kaguanti f'incident awtomobilistiku tal-25 ta' Novembru 2001, fi Triq Borg Olivier, Rabat, Ghawdex bejn il-vettura KAA 978 misjuqa mill-attur u l-vettura BGL 001 misjuqa mill-konvenut, liema ncident sehh unikament tort tal-konvenut minhabba mperizja, traskuragni u nuqqas ta' 'proper lookout' da parti tal-konvenut.

Bl-ispejjes, inkluzi dawk tal-1 ta’ Marzu 2002 u dawk tal-ittra ufficjali prezentata kontestwalment mal-Avviz kontra s-socjeta’ assikuratrici tal-konvenut, kontra l-istess konvenut.

Ra r-risposta tal-konventu fejn huwa eccepixxa li t-talbiet attrici kif diretti kontra tieghu huma nfondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjes billi l-incident in kwistjoni ma sarx tort tal-eccipjent izda b’tort tal-attur Eric Saliba,, is-sewwieq tal-vettura numru KAA 978, minhabba negligenza, traskuragni u nuqqas ta’ tharis tar-regolamenti tat-traffiku da parti tal-istess sewwieq, kif jigi pruvat waqt it-trattazzjoni tal-kawza.

Sema’ x-xhieda tal-attur, ta’ PS 187 Mario Cassar, ta’ Sarah Hili, ta’ Josette Muscat u tal-konvenut. Ha konjizzjoni tac-cirkostanzi kollha tal-kaz u tad-dokumenti esebiti.

Sema’ t-trattazzjoni tal-avukati dfiensuri tal-partijiet.

Ikkunsidra:

Illi l-kaz jirrigwarda ncident awtomobilistiku li sehh fil-25 ta’ Novembru 2001, f’Triq Giorgioi Borg Olivier, Rabat, Ghawdex bejn il-vettura bin-numru tar-registrazzjoni KAA 978 misjuq mil-attur u l-vettura bin-numru tar-registrazzjoni BGL 001 misjuqa mill-konvenut. L-attur xehed li fid-data tal-incident huwa kien qed isuq il-vettura tieghu fil-lokalita’ msemmija qrib il-Eurosport u kien diga’ beda jikser ghal fuq il-lemin tieghu biex jidhol fi triq sekondarja. Huwa xeghel l-‘indiator’ u beda jaqsam Triq Borg Olivier ghal karreggjata l-ohra u jidhol fit-triq sekondarja u malli kien hekk miksur u kwazi dahal fit-triq sekondarja habtet mieghu il-vettura tal-konvenut li skond hu kienet gejja bi speed qawwi minn warjah u pruvat taqbzu. Il-hsara fuq il-vettura tal-attur kienet fuq il-mudguard u l-bieba ta’ quddiem. Dejjem skond l-attur il-konvenut prova jaqbzu mill-lemin u biex jaghmel hekkhareg fuq in-naha tal-lemin tat-triq. In kontro-ezami l-attur qal li huwa hares fil-mirja biex jara humiex gejjin vetturi minn warajh qabel ma’ dar u fuq domanda tat-

Tribunal huwa qal li kellu vizwalli fit-tul in kwantu jirrigwarda l-vetturi gejjin minn warajh.

Illi l-konvenut xehed li fid-data tal-incident huwa kien qed isuq il-vettura tieghu fi Triq Borg Olivier, Rabat, Ghawdex u kien hemm il-vettura tal-attur qed tipprocedi fl-istess karreggjata u fl-istess direzzjoni madwar metru u nofs quddiemu. IL-konvenut ried idur ghal triq laterali fuq in-naha tal-lemin tieghu, ra li m akienux gejjin vetturi minn warajh u li seta' jdur stante li ma kienx hemm linja bajda kontinwa fin-nofs tat-triq, huwa ghalhekk xeghel l-'indicator', beda jdur u malli ghamel hekk il-vettura tal-attur, li kienet quddiemu, ukoll daret lejn il-lemin u sehh l-impatt. Il-konvenut jghid li l-ewwel impatt fuq il-vettura tieghu kien fuq in-naha ta' wara man-naha tal-passiggier.

Illi mill-provi jirrizulta li z-zewg sewwieqa nvoluti fl-incident mertu tal-kawza huma t-tnejn responsabbli ghall-akkadut anki jekk mhux f'porzjoni ugwali. Fil-fehma tat-Tribunal l-attur ghandu jigi akkollat bil-htija principali ghall-incident stante li huwa ttenta jeffetwa 'right hand turn' minghajr ma' zamm 'a proper lookout' u minghajr ma acerta ruhu li t-traffiku li kirn gej minn warajh fehem l-intenzjoni tieghu li jikser lejn il-lemin. L-attur jghid li xeghel l-'indicator' u li hares fil-mirja biex jara jekk kienux gejjin vetturi minnn warajh. Huwa jghid ukolll li ma rax il-vettura tal-konvenut qabel l-impatt u li kellu vizwali tajba f'din id-direzzjoni. Fil-fehma tat-Ribunal dan ifisser li l-attur ma harisx warajh qabel ma dar ghaliex altrimenti huwa kien jara l-vettura tal-konvenut qed tipprocedi warajh.

Illi r-regoli li jirregolaw ksur lejn il-lemin huma dawk indikati mir-**regolament 85 tal-Highway Code** li jipprovdi li:-

"Well before you turn at junctions or intersections take full account of the position and movement of following traffic. Signal your intention and when safe to do so take up the appropriate position. Wait until there is a safe gap between you and any approaching vehicles before you complete a right turn".

“On turning at a junction look right, then left and right again. Do not go on until you are sure that it is safe to do so.

Illi skond il-**Gibb** - ***“Trial of Motor Car Accident Cases”*** jinghad ukoll li:-

“A motorist has a right to turn his car in the highway, unless prohibited by some regulation. In so doing, however, he must have regard to the safety of others using the highway. He must be charged with negligence, if he turns his car to the right across the path of an approaching vehicle…..making it impossible for the driver of the rear car to avoid a collision….The cut of turning across the line of oncoming traffic is one which imposes a special duty of care”.(p.85).

Illi l-istess awtur ikompli jghid li:-

“It is not enough to sound the horn or give some either signal; it is also nesessary that such warning be given at the proper time and place”. The signal should be given so that it will serve its purpose”.

Illi l-istess issostni l-awtur **Wilkinson** fil-ktieb tieghu ***“Road Traffic Offences”*** meta jsostni li *“the driver’s duty is not confined to making signals; he must see, so far as he can that they have been understood”.*

Illi konformament mal-istess gie diversi drabi ritenut mill-Qrati taghna inkluz fis-sentenza **“Il-Pulizija vs F. Schembri”.** (A.K.26 ta’ Gunju 1968) li:

“Min johrog l-indicator, ikun qed jaghti, kif huwa obbligat, avviz lit-traffiku ta’ warajh u ta’ quddiemu, imma ma jistax, sempliciment ghax hareg l-indiactor, jaghmel li jrid, jikser il-priorita’ li jaghtu r-regolamenti u jaqleb ir-rule of the road favur tieghu”. “Is-sinjal ghall-ewwel ifisser illi tkun l-intenzjoni tad-driver li jaqsam it-triq, izda mhux bizzejjed biex jkun jista’ jaqsam”.

Illi min-naha l-ohra min l-konvenut jidher li qabel ma beda jikser lejn il-lemin, huwa beda jeffetwa manuvra ta' sorpass tal-vettura tal-attur u dan jirrizulta mill-entita' tal-hsara fil-vettura tal-konvenut, l-ewwel daqqa fil-fatt kienet fuq in-nha ta' wara tan-naha tal-passiggier tal-vettura tieghu. Min ikun qed jaghmel manuvra ta' sorpass ghandu jaghmel dan b'sigurezza. Illi fuq is-suggett ta' sorpass huwa principju generali indikat fil-paragrafu 71 tal-*Highway Code* li:-

"Never overtake unless you are sure that you can do so without danger to yourself and to others. Be specially careful at dusk and in mist, when it is more difficult to judge speed and distance".

Illi bhala regola ghandha tigi segwita wkoll il-manuvra indikata f'paragrafu 73 tal-istess *Highway Code* li tghid:-

"Before overtaking, give the appropriate signal, keep at a safe but not excessive distance from the vehicle being overtaken on return to the appropriate lane or side of the road as soon as practicable after overtaking. Do not cut in sharply infront of the vehicle you have just overtaken".

Illi f'dan ir-rigward it-Tribunal jaghmel referenza ghal dak li ntqal mill-Prim'Awla tal-Qorti Civili fis-sentenza **"Hugh Zammit nomine vs Keith Farrugia"** (P.A. RCP. 28 ta' Gunju 2001) u cioe' li *"minn dawn ir-regoli jidher li meta wiehed jaghmel sorpass dan ghandu jiehu r-responsabilita' tal-istess manuvra tieghu, u dan ifisser li persuna ragonevoli ghandha tiddesisti milli taghmel l-istess manuvra meta din tkun tista' jew ser tikkawza perikolu lill-istess sewwieq u lill-utenti l-ohra tal-istess triq, tant li f'certu cirkostanzi fuq elenkati fil-Highway Code, u kkonfermati fil-gurisprudenza nostrali, huwa imprudenti li tigi ttentata l-istess manuvra.* ***"Atlas Insurance Agency Limited vs Brian Cilia" -*** *P.A. (RCP) 16 ta' Jannar 2001). Fil-fatt f'kaz ta' dubju wiehed ghandu jiddesisti milli jaghmel tali manuvra, stante li l-prudenza hija l-bazi tas-sewqan regolat u responsabbli"*.

Illi ghalhekk abbazi tal-premess u peress li jirrizilta li hemm konkors ta’ htijiet tal-partijiet, dan it-Tribunal ihoss li l-attur ghandu jinzamm responsabbli fil-kwota ta’ zewg terzi (⅔) ghall-istess incident u l-konvenut jassumi t-tort ta’ terz (⅓) tal-kollizzjoni li tifforma l-mertu tal-kawza odjerna.

Illi l-quantum tad-danni reklamati mill-attur ma gewx kontestati mill-konvenut u fi kwalunkwe kaz gew esebiti l-ircevuti relattivi. L-ammont reklamat mill-attur in linea ta’ danni huwa ta’ Lm364.68 u in vista ta’ dak li ghadu kemm intqal aktar il-fuq in kwantu jirrigwarda r-responsabilita’, l-konvenut ghandu jaghmel tajjeb ghal terz min dan l-ammont u cioe’ mija u wiehed u ghoxrin lira Maltin u sitta u hamsin centezmu (Lm121.56).

Ghal dawn il-motivi, t-Tribunal jaqta’ u jiddeciedi billi jilqa’ t-talbiet attrici limitatament ghall-ammont ta’ mija u wiehed u ghoxrin lira Maltin u sitta u hamsin centezmu (Lm121.56) u konsegwentement jikkundanna lill-konvenut ihallas lill-attur dan l-ammont ta’ mija u wiehed u ghoxrin lira Maltin u sitta u hamsin centezmu (Lm121.56), bl-imghaxijiet pagabbli mid-data tal-prezentata tal-Avviz sal-hlas effettiv.

L-ispejjes ta’ din l-istnaza, nkluzi dawk tal-ittra ufficjali prezentata kontestwalment mal-Avviz kontra l-assikurazzjoni tal-konvenut, ghandhom jigu sopportati in kwantu ghal zewg terzi (2/3) mill-attur u terz (1/3) mill-konvenut.

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