MALTA

TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR DR.
PHILIP MANDUCA

Seduta tas-17 ta' Novembru, 2004

Talba Numru. 793/2004

GasanMamo Insurance Limited (C. Reg. No. C3143) hekk kif surrogata fid-drittijiet tal-assikurat taghha Harold Caruana (ID: 242064 M) sija bil-polza u sija bil-ligi u l-istess Harold Caruana

Vs

Colin Kelly (ID 290373 M)

It-Tribunal

Ra l-Avviz fejn l-atturi talbu l-hlas ta' Lm456.57c (erba' mija u sitta u hamsin lira Maltin u sebgha u hamsin centezmu) rapprezentanti danni f'incident tat-traffiku msemmi fl-istess Avviz.

Ra r-Risposta tal-konvenut fejn gie ddikjarat li l-istess konvenut ma kellux tort ghall-incident izda l-istess incident sehh unikament minhabba traskuragni u nuqqas ta'

osservanza tar-regolamenti tat-traffiku ta’ Alexandra Caruana.

Ra d-dokumenti esebiti.

Ra r-*Road Accident Report* fejn Alexandra Caruana qalet kif gej:

“She was driving along St. Luke’s Road, Pieta towards Bordin Street, and on reaching c/w Triq Santa Monika, she switched on the indicator to turn towards Triq Bordin, and on doing so a bus which was coming in the opposite direction stopped to give way to her to turn into Bordin Street. Driver stated that on turning and almost in Bordin Street, the motorcycle came from the left side of the road from behind the bus, and between the bus and the pavement. Driver stated that she did not see the motorcycle because of the bus, and stated that when she saw the motorcycle it was too late and collided with the motorcycle. She stated that she tried to avoid collision but this was to no avail.”

Fl-istess *Road Accident Report* il-konvenut qal:

“He was proceeding along St. Luke’s Road, Pieta towards St. Luke’s Hospital, and on reaching in front of the P.B.S. Buildings behind other traffic, a bus overtook his motorcycle, and he continued on his way. Driver stated that on reaching c/w Bordin Street, and he came from behind the bus, he suddenly saw the car which gave him no chance to avoid collision. He further stated that he never expected the other car to cross the road.”

Ra x-xhieda ta’ Alexandra Caruana fejn tikkonferma li qalet fir-*Road Accident Report* u zzid ili meta rat il-konvenut bil-mutur minn taht il-ghajn, hi ppruvat tisslowja pero’ tghid li kienu wisq vicin u ghalhekk saret il-kollizjoni. Tghid illi kellha hsara fil-bieba ta’ quddiem tal-passiggier kif ukoll fuq ta’ wara. Tichad li x-xarabank ghamel manuvra ta’ surpass in konnessjoni mal-mutur.

Tikkonferma illi s-socjeta’ attrici hallset id-danni u hi hallset l-*excess* ta’ Lm75 (hamsa u sebghin lira Maltin). Taqbel ma’ l-iskizz.

Fil-kontro-ezami tghid illi meta rat il-mutur, kien ghaddej fit-triq bejn il-bankina u tal-linja. Tghid ukoll illi l-*line of traffic* kien wara x-xarabank. Terga’ tikkonferma li l-mutur ma kienetx ratu mill-ewwel jigifieri ratu meta kienet diehla f’Bordin Street. Tikkonferma illi tax-xarabank cedielha biex tghaddi.

Ra x-xhieda ta’ Colin Kelly fejn ighid li kien wieqaf fit-*traffic* u giet tal-linja hdejh. Ighid illi hu kien wieqaf f’nofs il-wisa’ tal-karozza li kienet quddiemu. Kelly ighid li saq meta l-vettura ta’ quddiemu saqet u kien dak il-hin meta ra lil Caruana gejja u ghalhekk saret il-habta. Jaqbel ma’ l-iskizz.

Illi jikkonferma li bhala regola f’St. Luke’s Road ikun hemm *single lane traffic*.

Ikkunsidra

Li meta tkellem mal-pulizija ezatt wara l-incident il-konvenut ma qalx li kien hemm karozza quddiemu li saqet u mbaghad saq hu.

Illi Alexandra Caruana kienet se titlaq minn *main road* u taqsam il-*flow of traffic* quddiemha. Ghalhekk kellha ssuq bi prudenza kbira u tara li m’hijiex qieghda tostakola t-traffiku. Alexandra Caruana rat li x-xarabank quddiemha kien wieqaf u ghalhekk saqet fir-direzzjoni ta’ Triq Santa Monika. Hija kredibbli l-verzjoni taghha li qabel ma bdiet iddur ma ratx lill-mutur tal-konvenut li kien wara x-xarabank.

Il-konvenut li kellu xarabank fuq il-lemin tieghu kellu ostakolu ghall-vizjoni tat-triq izda l-konvenut kien fuq il-*main road*.

Fil-kawza **Mallia Vs Azzopardi (27/2/1990 PA)** intqal:

“Fil-kollizjonijiet dak li huwa mportanti biex tigi stabbilita r-responsabbilta’ ghad-danni huma l-fatturi rilevanti u determinanti ghall-habta.”

M’hemmx dubju li qabel ma qasmet il-*flow of traffic* Caruana kellha l-obbligu li tkun certa li l-manuvra taghha tista’ taghmilha minghajr ebda xkiel ghal dawk li qieghdin isuqu fit-triq principali. Fil-kawza **Mallia Vs Azzopardi** gie deciz li l-obbligu ta’ tali sewwieq hu li jara z-zewg karreggjati billi d-drivers fuq il-*main road* m’ghandhomx:

“Jikkunsidraw il-possibbilta’ li jidhol xi hadd fuq it-triq barra dawk li huma jistghu josservaw li diga’ qieghdin juzaw it-triq.”

Il-konvenut qabel l-incident kien wieqaf bix-xarabank fuq il-lemin tieghu. Hu jghid li meta saqet il-karozza ta’ quddiemu hu saq ukoll. Ma jafx jekk ix-xarabank saq jew waqafx hemm. Il-konvenut ighid ukoll li ra l-vettura ta’ Caruana l-ewwel darba meta saq. Il-konvenut kellu l-obbligu la kellu x-xarabank fuq il-lemin tieghu li jsuq b’certu prudenza. Il-konvenut kellu l-obbligu li jimminimizza r-riskju u mhux jidhol fihom ghax hekk ghandu dritt. Id-drittijiet fis-sewqan huma relattivi u relatati ma’ dawk ta’ sewwieqa ohra. Il-konvenut ghandu jigi ddikjarat in parti responsabbli ghall-incident ghaliex meta kien f’triq li hija *single lane traffic* u kellu xarabank fuq il-lemin tieghu fl-istess direzzjoni u t-tnejn kienu wieqfin hu kellu d-dover li johrog minn wara x-xarabank f’attenzjoni ghal dak li ma setax jara fil-pozizzjoni li kien meta kien wieqaf.

Tenut kont il-fatti kollha tal-kaz dan it-Tribunal jikkonkludi li z-zewg sewwieqa kienu responsabbli b’mod ugwali ghall-incident billi Caruana qasmet il-*main road* u l-konvenut li kellu ostakolu ghall-vizwali tieghu saq minghajr l-attenzjoni mehtiega.

Id-danni ma gewx ikkontestati.

Ghaldaqstant jiddikjara li l-konvenut kien responsabbli in parti ghall-incident u jikkundannah ihallas lill-atturi l-

ammont ta' Lm228.29c (mitejn u tmienja u ghoxrin lira Maltin u disgha u ghoxrin centezmu). Kull parti jhallas l-ispejjez tieghu. L-imghax mid-data tas-sentenza.

< Sentenza Finali >

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