MALTA

TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
PHILIP MANDUCA**

Seduta ta' l-14 ta' Gunju, 2006

Talba Numru. 1847/2004

Jonathan Xerri

Vs

Gasan Mamo Insurance Limited kif surrogata fid-drittijiet ta' l-assigurat taghha Richard Busuttil u b'digriet tat-tribunal giet ordnata korrezzjoni fl-okkju fis-sens li l-konvenut ghandu ikun Richard Busuttil.

It-Tribunal

Ra l-avviz li fih l-attur talab il-hlas ta' seba mija u erba u tletin Liri Maltin u tnejn u tletin centezmu (Lm734.32c) rapprezentanti danni f'incident awtomobilistiku ghall-liema incident il-konvenut kien unikament responsabbli minhabba mprudenza, imperizja, negligenza w inosservanza tar-regolamenti.

Ra r-risposta tal-konvenut fejn jghid illi t-talba tal-attur ghandha tigi michuda bl-ispejjez billi s-socjeta assikurativa konvenuta m'hiex il-leggittimu kontradittrici.

Ra l-korrezzjoni ordnata mit-Tribunal.

Ra r-road accident report fejn Busuttil jghid kif gej:

"Jiena kont gej mid-direzzjoni ta' B'Kara sejjer lejn id-direzzjoni ta Attard. Kif wasalt ma Villa Madama. Rajt vettura FBH 515 gejja mid-direzzjoni opposta. Jiena rajtu gej fuq in-naha tieghi, slowjajt il-vettura tieghi u gennibt kemm stajt u l-vettura l-ohra gibditli l-genb tan-naha tad-driver."

L-attur Jonathan Xerri qal: "Jiena kont gej mid-direzzjoni ta' Hat Attard sejjer lejn B'Kara, kif kont ghaddej minn triq Bubal kont ghaddej fuq sajdi u kif wasalt ma Villa Madama rajt vettura gejja mid-direzzjoni opposta tieghi. Jiena gennibt kemm stajt u l-vettura HMC 156 baqghet gejja u hbatna."

Ra x-xhieda ta' warden 160 Patrick Attard fejn jghid illi kien prezenti on site wara l-incident u ghamel road accident report u skizz. Illi nizzel kull ma qalulu l-partijiet. Illi ma stabbiliex l-"point of impact".

Ra x-xhieda ta' Richard Busuttil fejn jghid illi ra lill-attur idur mas-centre strip fejn baqa sejjer head on ghal fuqu minflok ma mar lejn ix-xellug fejn kellu jdur. Illi meta ra hekk Busuttil naqqas l-ispeed kemm seta. Jghid illi ssikka kemm seta mal-karozzi tax-xellug u waqaf.

Busuttil jghid illi d-distanza ta' bejn il-karozza tieghu w il-bankina tal-lemin kienet ikbar minn kif tidher fl-iskizz tal-wardens. Illi huwa gibed xi ritratti ghaliex tal-wardens ma hargux. Fl-ahhar Busuttil jghid illi wara l-incident mar ikellmu missier l-attur fejn dan qallu biex ma jinkwieta xejn ghaliex ghandu insurance tajba w li ser ihallas l-ispejjez kollha tal-konvenut. Busuttil jghid ukoll illi rcieva ittra

minghand l-avukat ghaliex l-attur zammu responsabbli tal-incident.

Ra x-xhieda tal-attur Jonathan Xerri fejn jghid illi waqt li kien qed isuq ra lill-konvenut gej fid-direzzjoni tieghu u li kien wrong side. Illi ghafas kemm seta fuq in-naha tieghu w il-konvenut laqtu min-naha tad-driver. Illi huwa kien fuq in-naha tieghu izda l-konvenut ma kienx. Xerri jghid illi wara l-habta l-konvenut baqa sejjer kwazi sal-kantuniera l-ohra u hu waqaf kwazi mad-daqqa.

Ra x-xhieda ta’ Dyrk German li kien front seat passenger mal-attur meta sehh l-incident. Jghid illi kif qabzu z-zebra crossing giet karozza mid-direzzjoni opposta ghalihom u li kienet qisha f’nofs tat-triq. Illi mall-habta huma mxew ftit u waqfu. German jghid illi hadd ma accetta t-tort u li ma semax lill-missier ‘l attur jghid li ha jhallas. Illi wara l-habta l-konvenut baqa miexi u huma waqfu ftit wara.

Ra x-xhieda ta’ Godwin Xerri missier l-attur fejn jghid illi l-karozza tal-attur kienet fuq in-naha t-tajba tat-triq izda tal-konvenut kien fin-nofs. Illi Xerri qal lill-konvenut qallu li huwa kellu tort minhabba l-pozizzjonijiet tal-karozzi Jghid illi l-konvenut baqa jinsisti li ma kellux tort. Xerri jghid li qal lill-konvenut biex jistennew lill-wardens imbaghad issir referenza ghas-socjetatjiet tal-assikurazzjoni.

Jghid illi l-konvenut qallu li fuq in-naha tieghu kien hemm il-karozzi pparkjati u habba f’hekk kellu jghaddi min-nofs tat-triq. Jikkonferma li l-konvenut qal li l-attur ukoll kien gej min-nofs tat-triq.

Illi l-attur ma gabx bizzejjed provi bizzejjed biex juri li l-konvenut kien “wrong side” fil-mument tal-habta. Illi l-warden ma setax jistabilixxi l-“point of impact”.

Illi huwa minnu li l-konvenut kellu vetturi ipparkjati fuq in-naha tieghu izda kien hemm bizzejjed spazju fit-triq.

Illi Charlesworth & Percy, - On Negligence (Sweet & Maxwell) 1997 para 9-221 – Collisions in center of road” jikteb: “When there is a collision between two motor

vehicles in the highway and there is no evidence pointing to one driver being any more to blame than the other, the proper inference to be drawn is that they are both to blame (Baker vs. Market Harborough, Howard vs. Bemrose. So when there had been a collision in the center of crossroads of equal status and, after the accident the defendant said to a policeman “I was going along the road and we met in the middle” it was held that there was a prima facie case that both drivers were to blame. (France vs. Parkinson). Each driver who was involved in an un-witnessed and inexplicable head-on collision between two vehicles, is likely to be held equally to blame for negligence, even where there is some indication that one of them might have been on his wrong side of the road. (Howard vs. Bemrose (1973 RTR 32, CA).

Id-danni ma gewx kontestati.

Ghaldaqstant t-tribunal jikkonkludi li z-zewg sewwieqa kellhom tort ugwali ghal dan l-incident u ghalhekk l-konvenut ghandu ihallas lill-attur l-ammont ta’ tlett mija u seba u sittin Lira Maltin u sittax il-centezmu (Lm367.16c). L-ispejjes bin-nofs bejn il-partijiet. Imghax mid-data tas-sentenza tal-lum.

< Sentenza Finali >

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