Qorti Civili, Prim'Awla

Imhallef Anthony Ellul

Rikors numru:- 651/13AE

Dorian Mallia [I.D. 279493M]

Vs

Mario Mifsud [I.D. 442471M] u b'digriet tal-4 ta' Mejju 2015 il-qorti awtorizzat lil Argus Insurance Agencies Limited ghan-nom u in rapprezentanza tas-socjeta estera Argus Insurance Company (Europe) Limited, sabiex tintervjeni fil-kawza

L-Erbgha, 7 ta' Ottubru, 2015.

Permezz ta' rikors guramentat prezentat fit-3 ta' Lulju 2013, l-attur ippremetta u talab:-

1. Illi l-istanti Dorian Mallia, fil-11 ta' Awissu 2011, kien qed jaqsam it-triq minn fuq iz-zebra crossing fi Triq il-Belt Valletta, Paola;

2. Illi, flimkien ma' Dorian Mallia, kien hemm Antonia Bonello, detentrici tal-karta ta' l-identita' numru 116793M, li wkoll kienet qed taqsam it-triq;

3. Illi waqt li Dorian Mallia u Antonia Bonello kienu qed jaqsmu t-triq, u kienu kwazi waslu fin-nofs tat-triq, il-konvenut Mario Mifsud (detentur tal-karta ta' l-identita' numru 442471M), li kien qed isuq il-vettura tal-ghamla Hyundai Atos u li ghandha n-numru ta' registrazzjoni BBQ 385, baqa' ghaddej minn fuq iz-zebra crossing, bil-konsegwenza li tajjar lil Dorian Mallia u Antonia Bonello;

4. Illi l-incident stradali sehh unikament minhabba imperizja, negligenza, imprudenza u inosservanza tar-regolamenti tat-traffiku da parti tal-konvenut illi, minghajr ma ha d-dovuti kawteli, spicca biex baqa' ghaddej minn fuq zebra crossing, meta kienu qed jaqsmu t-triq l-attur u Antonia Bonello;

5. Illi rizultat ta' dan l-incident stradali, Dorian Mallia safa mwegga gravement u ser jibqa permanentement debilitate, u dan oltre' d-danni materjali minnu wkoll sofferti;

6. Illi l-konvenut bl-ebda mod ma ghamel tajjeb ghad-danni minnu kkagunati kif imfisser;

7. Illi l-istanti b'ebda mod ma kien responsabbli ghall-incident stradali msemmi;

Permezz ta' twegiba guramentata prezentata fid-19 ta' Awwissu 2013, il-konvenut wiegeb:-

1. Illi fil-mertu, t-talbiet attrici huma nfondati fil-fatt u fid-dritt stante li l-intimat ma kkawza l-ebda danni lill-attur u bl-ebda mod l-konvenut m'huwa responsabbli ghall-incident stradali illi

qieghed jigi allegat mill-attur.

Il-qorti semghet il-provi u rat l-atti.

1. Il-kawza titratta dwar incident tat-traffiku li sehh fil-11 ta' Awissu 2011 gewwa Triq il-Belt Valletta, Paola. Waqt li l-attur u Antonia Bonello kienu qeghdin jaqsmu t-triq minnu fuq *pedestrian crossing*, intlaqtu minn vettura Hyundai BBQ 385 li kien qieghed isuq il-konvenut.

2. M'huwiex kontestat li l-atturi kienu qeghdin jaqsmu minn fuq *pedestrian crossing*, fejn il-pedestrian igawdi minn dritt ta' precedenza. Skond il-Highway Code, gwida ghall-utenti tat-toroq:-

   "265. When approaching a PEDESTRIAN CROSSING always be ready to slow down or to stop so as to give way to pedestrians; give them the right of way on these crossings. Signal to other drivers your intention to slow down or to stop. Allow yourself more time to stop when the road is wet or downhill".

   Il-konvenut, ghalkemm isostni li m'huwiex responsabbli ghall-incident, ma ressaqx provi[1]. Fir-rapport tal-pulizija l-verzjoni li ta hi li:-

   *"kont qed insuq fi Triq il-Belt Valletta u kif wasalt fejn iz-zebra crossing ta' quddiem il-Kojak stationery **meta f'daqqa rajt dalma** u fil-frattemp f'daqqa wahda ndunajt li kont tajjart zewg persuni, tfajla u guvni, bit-tfajla tipsicca tifqa' l-windscreen b'rasha wara li l-guvni ntlaqat ukoll"* (fol. 66).

   Il-konvenut kellu l-oneru li jressaq provi sodisfacenti li ma kellux htija ghall-incident. Provi li ma ressaqx. M'hemmx indizji li l-atturi qabdu u qasmu t-triq b'mod li hasdu lix-xufier. Fejn sehh l-incident hi triq dritta. Zgur li xufier li kien qieghed izomm *a proper lookout* kien jara lill-attur u Antonia Bonello jaqsmu minn fuq il-*pedestrian crossing* u kellu d-dmir jatihom id-dritta.

3. L-attur jilmenta li b'rizultat tal-incident qieghed isofri minn *post traumatic stress disorder*, u f'dan ir-rigward ipprezenta certifikati tal-psikjatra Dr Anthony Dimech (fol. 5 sa 9[2]). F'rapport datat 15 ta' Mejju 2012, jinghad li wara l-incident l-attur:-

   "... developed repeated episodes (on a daily basis) of panic attacks, severe muscle contractions, fear of crossing the road and avoidance,

[1] Waqt is-seduta tas-17.11.2014 il-qorti ddikjarat maghluq l-istadju tal-provi tal-konvenut peress li naqas milli jressaq provi.

[2] Fis-seduta tat-30.4.2014 id-difensur tal-konvenut iddikjara li *"..... b'riferenza ghar-rapport medici ta' Dr Anthony Dimech, li ppreżenta l-attur, m'hemmx ghalfejn li dan jigi mharrek biex jikkonferma bil-gurament il-kontenut taghhom izda qieghed jirrizerva li jekk ikun il-kaz iharrku biex jaghmillu xi domandi dwar il-kontenut"* (fol. 59).

episodes of agitation and anger when he is confronted with the disability of his girlfriend and the mentioned flashbacks and vivid dreams about the accident".

Kompla:-

"In essence, Dorian Mallia (ID 279493M) developed Post Traumatic Stress Disorder, characterised by the above symptomatology and resulting from the traumatic experience of the road traffic accident of August 2011. He has a disability of at least forty (40%) percent according to the Global Assessment of Functioning (GAF) Scale".

4. B'digriet tat-2 ta' Mejju 2014 (fol. 74) il-qorti nnominat lill-psikjatra Dr Mark Xuereb bhala perit mediku sabiex jirrelata bil-miktub:

"i. Jekk l-attur huwiex qieghed ibati minn dizabilita mentali;
ii. Fl-affermattiv jaghti dettalji dwar il-kundizzjoni u opinjoni dwar x'wassal ghal din il-kundizzjoni. Il-perit mediku ghandu jaghti r-ragunijiet ta' x'wasslu ghal konkluzjonijiet li ser jaghmel.
iii. Jekk id-debilita hijiex permanenti u fil-fehma tal-perit mediku gietx ikkagunata mill-incident meritu tal-kawza, ghandu jaghti persentagg ta' debilita permanenti u jispjega kif wasal ghal tali persentagg. Inoltre ghandu jispjega kif inhu mistenni li l-kundizzjoni teffettwa lill-attur fil-futur".

5. Il-perit mediku pprezenta rapport fejn qal li l-attur qieghed ibati minn:

"1. Moderate reactive unipolar affective disorder with biological and phobic symptoms.
2. Moderate (chronic) post traumatic stress disorder (GAF 51-60).
3. Dissociative anxiety, emotional instability and crippling flashbacks. This results in the inability to cope with life in general.

The above are solely due to the accident he was involved with his partner Antonia on the 11th August 2011 in Paola.

Considering the above mentioned diagnoses his percentage psychological disability is as follows:

***40% (i.e. mild to moderate) disability**. This is reflected in the following excerpt:*

'Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks due to such symptoms as: depressed mood, anxiety, suspiciousness, panic attacks, chronic sleep impairment, mild memory loss (such as forgetting names, directions, recent events)'.

Technically Mr Mallia's symptoms are (thankfully) episodic, hence the given percentage which is a result of my assessment and the scales used. It is pertinent to note that such scales cannot be viewed in isolation and need to be backed by a comprehensive clinical assessment to reach a veritable and appropriate percentage disability.

The duration of psychological and pharmalogical therapy and requirement for family support is likely to be lifelong i.e. permanent due to the serious nature of his psychological disorders".

6. M'hemmx provi li llum l-attur qieghed ibati minn debilita fizika. Il-provi medici juru li l-incident ta lok ghal debilita mentali, li t-tobba ccertifikaw fi grad ta' 40%. Irrizulta li l-attur kien student fl-Universita ta' Malta u ggradwa [3]. Mir-rapport akkademiku (fol. 112-113) hu evidenti li l-attur kien student diligenti u fl-ezamijiet kellu success. Jidher ukoll li wara li ggradwa beda jahdem fs-servizz pubbliku fil-post ta' Ufficjal ghas-Sahha Ambjentali fil-Ministeru ghas-Sahha b'paga li tibda minn €14,694 fis-sena u tizdied kull sena b'€354, ghall-perjodu ta' sitt snin, sa massimu ta' €16,818[4]. Jidher ghalhekk li bhalissa d-debilita' li ghandu l-attur m'hiijex teffetwa l-qliegh tieghu. Ovvjament dan ma jfissirx li fil-futur ma tistax ikollha konsegwenza fil-progress tal-karriera tieghu, meqjus ukoll li l-attur ghadu zaghzugh[5]. Dan apparti li hu maghruf li f'kazijiet simili kemm-il darba l-hsara li ssofri l-vittma ma jkollix konsegwenza fuq l-introjtu taghha u madankollu l-qrati xorta rrikonoxxew li l-persuna ghandha l-jedd ghar-rizarciment[6]. Hu fatt li fir-realta' l-vittma tkun qeghda tigi kkumpensata ghal telf li m'ghandu x'jaqsam xejn ma' *lucrum cessans* u kontemplat fl-Artikolu 1045(1) tal-Kodici Civili.

7. L-attur jippretendi li d-danni ghandhom jigu kalkolati fuq rata ta' debilita permanenti ta' 40%. Is-socjeta intervenuta argumentat li gialadarba ma jirrizultax li l-attur sofra debilita fizika:-

   "… d-dizabilita psikologika ta' 40% sofferta mill-attur hija partial wreck b'mod allura illi l-whole body impairment ma jistax jigi kkalkluat sic et simpliciter fuq l-istess 40% aktar u aktar meta l-attur ma sofra l-ebda dizabilita fizika illi tista tiggustifika din id-dizabilta psikika ingenti… B'hekk id-dizabilta' psikologika ta' 40% ma tistax titqies bhala percentwali ta' debilita globali – whole body impairment".

   L-intervenuta pproponiet rata ta' debilita ta' 15%.

8. Il-qorti fehemet li l-incident in kwistjoni effettwa l-hajja ta' kuljum tal-attur. Jirrizulta li bhala kura qieghed jiehu medicina u wkoll jattendi sessjonijiet ta' terapija. Kif xehed il-perit mediku dawn jidhru li ser ikunu *long term*. Pero' ghalkemm l-attur gie ccertifikat li ghandu rata

---

[3] Minn dak li ddikjara fin-nota prezentata fil-15.9.2014, matul is-snin 2011-2012 ghamel *Preparatory Course for Diploma in Health Science with Environmental Health* filwaqt li matul is-snin 2013-2014 ghamel *Diploma in Health Science with Environmental Health*.

[4] Ara estatt mill-Gazzetta tal-Gvern numru 19142 u deposizzjoni ta' Mario Camilleri (fol. 86).

[5] L-attur ghandu 21 sena.

[6] Ara gurisprudenza li hemm riferenza ghaliha fis-sentenza tal-Qorti tal-Magistrati (Ghawdex) Gurisdizzjoni Superjuri fil-kawza **Koronata Azzopardi et vs Paul Sultana et**, 15 ta' April 2008.

ta' debilita permanenti ta' 40%, il-qorti hi tal-fehma li ma tistax taddotta dan il-persentagg. F'kazijiet ta' din in-natura li persuna jkollha debilita ta' 40% ghandu jfisser li qeghda ssofri minn difett gravi hafna f'sahhitha li jissarraf f'telf ta' qliegh. Fil-kaz in ezami m'hemmx prova ta' dan. Ghakemm il-perit mediku ffissa rata ta' debilita ta' 40%, fir-rapport qal ukoll li d-debilita psikologika hi: ***"mild to moderate"*** (fol. 134). Fid-dokument intestat *Global Assessment of Functioning (GAF) Scale* mehmuz mar-rapport tal-perit mediku *ex parte* (fol. 8) jinghad:-

*"**Some mild symptoms** (e.g. depressed mood and mild insomnia)*
OR some difficulty in social, occupational or school functioning *(e.g., occasional truancy, or theft within the household),* ***but generally functioning pretty well, has some meaningful interpresonal relationships****.*

Moderate symptoms *(e.g., flat affect and circumstantial speech, occasional panic attacks)*
OR moderate difficulty in social, occupational, or school functioning *(eg friends, conflicts with peers or co-workers)".*

Fic-cirkostanzi l-qorti ser taghmel il-kalkoli fuq persentagg ta' 25% li filwaqt li tirrifletti s-serjeta tad-debilita, min-naha l-ohra tiehu in konsiderazzjoni wkoll li kif qal il-perit mediku is-sintomi li jbati minnhom l-attur m'humiex kontinwi[7] kif ukoll li l-attur kompla bl-istudji tieghu, iggradwa u llum jahdem fil-professjoni li aghzel.

9. Id-danni ser jigu likwidati:-

9.1 Spejjez li nefaq l-attur bhala kura li fin-nota ta' sottomissjonijiet iddikjara li ghandhom total ta' €1,325.34, fir-rigward ta' liema pprezenta ricevuti waqt il-gbir tal-provi.

Irid jizdied ukoll id-dritt li hallas lill-perit mediku li skond it-taxxa mahruga mir-Registratur (€230.07)[8].

Total: **€1,555.41**.

9.2 Debilita:-

€17,000[9] x 35 sena = €595,00 x 25% = €148,750 – 20%[10] = **€119,000**.

---

[7] Il-perit mediku wza l-kelma *'episodic'.*

[8] Fol. 117.

[9] Fin-nota l-attur ippropona li l-kalkoli jsiru fuq din is-somma. Il-qorti tqies li dan hu altru milli gustifikat meta tqies is-salarju li ghandu 'l fatt l-multiplier ser ikun ta' 35 sena mehud in konsiderazzjoni l-eta' zaghzugha meta sehh l-incident. Ghalkemm l-intervenuta pproponiet li l-kalkoli jsiru dhul ta' €15,576 il-qorti ma taqbilx mehud in konsiderazzjoni li fuq medda ta' 35

Ghal dawn il-motivi l-qorti tiddeciedi l-kawza billi tichad l-eccezzjoni tal-konvenut u tilqa' t-talbiet tal-attur u:-

1. **Tillikwida d-danni fis-somma ta' mija u ghoxrin elf hames mija u hamsa u hamsin ewro u wiehed u erbghin centezmu (€120,555.41).**
2. **Tikkundanna lill-konvenut ihallas lill-attur is-somma ta' mija u ghoxrin elf hames mija u hamsa u hamsin ewro u wiehed u erbghin centezmu (€120,555.41), bl-imghax mil-lum.**

Peress li z-zewg partijiet kienu qeghdin jaghmlu uzu mill-ghajnuna legali, m'hemmx x'jinghad dwar l-ispejjez gudizzjarji.

Anthony Ellul.

sena hu ragonevoli li wiehed jistenna li l-attur ser javvanza fil-karriera u d-dhul tieghu ser ikompli jizdied.

[10] L-attur ipprezenta l-kawza fit-3 ta' Lulju 2013, u s-sentenza qeghda tinghata ftit iktar minn sentejn wara. Ghalhekk il-qorti hi tal-fehma li ghandha titnaqqas il-persentagg shih biex jikkunsidra l-aspett tal-*lump sum payment*. Dan meqjus ukoll il-perjodu ta' zmien li fuqu gew kalkolati d-danni.