MALTA

TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR DR.
PHILIP MANDUCA

Seduta tat-2 ta' Ottubru, 2003

Talba Numru. 2376/2002

Citadel Insurance Plc kif surrogata fid-drittijiet tal-assigurata taghha Daniel Camilleri sia bil-polza u sia bil-ligi u l-istess Daniel Camilleri

Vs

Ivan Mallia

It-Tribunal

It-Tribunal ra l-Avviz ghall-hlas ta' Lm220.17c (mitejn u ghoxrin lira Maltin u sbatax-il centezmu) rappresentanti danni u spejjez inkorsi wara incident tat-traffiku kif deskritt fl-Avviz.

Ra r-Risposta tal-konvenut fejn qal li l-incident mhux tort tieghu.

Ra x-xhieda u l-atti kollha tal-kawza.

Ra li skond ir-rapport tal-Pulzija, wara l-incident, l-attur qal :
“Kont gej minn taht il-mina, rajt in-Nissan jitfixkel u jiskidja ghal gos-central strip, u bqajt diehel fih u l-Hunter (il-konvenut) baqa’ diehel fuqi.”

Il-konvenut qal:

“Rajt lil tan-Nissan jiskidja u beda sejjer l’hawn u l’hemm. Tal-Opel dahal quddiemi u ma stajtx ma nahbatx fih.”

Meta xehed quddiem it-Tribunal l-attur qal li kien niezel fil-bypass ta’ Santa Venera. Kienet ix-xita. Ra l-karozza ta’ quddiemu tiskidja, l-karozza wehlet fis-central strip. L-attur tilef il-kontrol u dahal go fiha. Fil-pront il-Hillman tal-konvenut dahal go fih. L-incident gara fil-kurva.

Daniel Camilleri qal li ma hallas ebda excess u mhux qed jitlob flus f’din il-kawza. Ghalhekk il-konvenut ghandu jigi liberat mill-osservanza tal-gudizju fil-konfront ta’ Daniel Camilleri.

Illi l-konvenut qal li ra lil Nissan jiskidja, dak il-hin dahal Camilleri gon-Nissan u hu dahal go Camilleri. Il-konvenut qal li ghafas il-brake minn xi distanza ta’ karozza jew giex karozzi qabel ma dahal fil-karozza ta’ Camilleri.

It-Tribunal jaghmel referenza ghal Bingham Motor Claims Cases (5th edition page 172 et sek):

“People are apt to think that if only they can show that their car skidded, because of certain decisions given a very long time ago, there is an end of the matter. When the cases are examined carefully, it will always be seen that it is only where the skid occurs unavoidably that the driver cannot be held responsible. If he is driving in a way which is asking for a skid then he is liable.”.

Fis-sentenza Vella Vs Camilleri (PA 291/1/1998) intqal:

“Gie ritenut mill-Qrati taghna li f’materja ta’ skid il-principju regolatur ma jistax hlief ikun li skid wahdu la hu prova ta’ negligenza u lanqas skriminanti. Hemm bzonn li jkun indagat jekk kienx hemm xi negligenza antecedenti jew konkomitanti. Jekk negligenza simili tirrizulta allura hemm ir-responsabbilita’ nonostante l-iskid. Jekk ma tirrizultax allura l-iskid hija difiza ghax tkun incident inevitabbli.”

Fl-istess kawza hemm referenza ghal kawza Pulizija Vs C. Cachia Vo. 37 pt. 4 p. 920 fejn gie ritenut: “ghaldaqstant biex id-difiza ta’ skid tirnexxi jehtieg li d-driver jipprova mhux biss li l-iskid kienet dovuta ghall-art tizloq, imma ukoll li l-iskid saret bl-ebda tort tieghu u li huwa jkun ha l-prekawzjonijiet kollha li ghandu jiehu sewwieq prudenti meta l-art tkun tizloq”.

Ma hemmx prova f’din il-kawza li l-konvenut kien qed isuq b’mod li wiehed jista jghid li “he was asking for a skid”. Fir-rapport tal-Pulizija - Brief Description hemm il-kliem:

“Curved road becomes very slippery and dangerous when it rains”.

Illi nonostante dan, meta tkun qed taghmel ix-xita driver prudenti ghandu isuq b’mod li jikkontrolla l-karozza tieghu u jhalli bizzejjed spazju quddiemu sabiex ikun jista jieqaf jekk il-karozza ta’ quddiem tieqaf. Illi l-konvenut kien qed isuq distanza ta’ zewg karozzi l-boghod mill-attur.

Illi tenut ic-cirkostanzi kollha tal-kaz it-Tribunal jikkonkludi li l-konvenut ma ipprovax li l-iskid kien inevitabbli. Huwa veru li habtu karozzi ohrajn izda l-konvenut kien jaf li kien hemm ix-xita u li kien qieghed fuq kurva u ghalhekk kellu d-dover li jzomm lura u jsuq b’mod iktar prudenti. Sir Wilfred Green MR ((1941) I KB 549 at pp. 552 & 553) qal: “the degree of care which is called from a driver depends upon the circumstances of the case. A driver who is proceeding along a piece of road which he knows to be slippery has imposed upon him the burden of driving with any extra degree of care…”. Illi din il-kawza hija differenti mill-kawza Citadel Vs Busuttil (9/10/2002 – 1201/01PM

Tribunal) ghaliex f'dik il-kawza l-konvenuti ma kienux jafu biz-zejt li kien hemm fit-triq.

Id-danni ma gewx kontestati.

Ghaldaqstant jichad ir-Risposta tal-konvenut, jilqa' t-talba biss tas-socjeta' Citadel Insurance Plc u jikkundanna lil konvenut biex ihallas Lm220.17c (mitejn u ghoxrin lira Maltin u sbatax-il centezmu) bl-ispejjez u bl-imghax mid-data tan-notifika tal-ittra ufficjali.

< Sentenza Finali >

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