

Kopja Informali ta' Sentenza



TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
GRAZIO MERCIECA**

Seduta tat-23 ta' Ottubru, 2003

Talba Numru. 40/2003

Francesco Gauci

vs

Frances Vella

u

**b'digriet tat-22 ta' Mejju 2003
gie kjamat fil-kawza
Dennis Vella**

It-Tribunal;

Ra l-avviz tat-talba li jghid hekk:

“Illi fit-tmienja (8) ta' Lulju tas-sena elfejn u tnejn (2002) waqt li l-attur kien qed isuq vettura bin-numru ta' registrazzjoni KAT-279 fi Triq it-Tigrija, Nadur, Ghawdex,

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huwa kien involut f'incident stradali ma' vettura bin-numru ta' registrazzjoni IBF-643 misjuqa mill-konvenuta.

Illi dan l-incident sehh minhabba imperizja, negligenza u nuqqas ta' tharis tar-regolamenti tat-traffiku fis-sewqan da parti tal-konvenuta.

Illi d-danni sofferti mill-attur konsegwenza ta' dan l-incident jammontaw ghal mija u sebgha u hamsin (Lm157) rapprezentanti hlas ghal tiswijiet komprizi parts, xoghol u spray.

Illi ghalkemm interpellata diversi drabi, l-konvenuta naqset li tersaq ghal likwidazzjoni u hlas tad-danni kollha sofferti minnu konsegwenza ta' tali incident.

Illi l-attur qed jitlob li din il-Qorti tikkundanna lill-konvenuta thallas dan il-bilanc flimkien ma' l-ispejjes ta' dawn il-proceduri u ta' l-ittri interpellatorja spediti fl-14 ta' Jannar 2003 u 15 ta' Frar 2002 u tal-ittra ufficjali pprezentata kontestwalment ma' dan l-avviz.”

Ra r-risposta:

“Illi in linea preliminari jigi sollevat illi s-sewwieq involut fl-incident de quo ma kienetx Frances Vella, imma zewgha Dionysius Vella, u ghaldaqstant jehtieg illi ssir id-debita korrezzjoni fl-atti tal-avviz;

Illi minghajr pregudizzju ghall-premess, it-talbiet attrici ghandhom jigu michuda fid-dritt u fil-fatt, u dan ghaliex l-incident in kwistjoni gara unikament tort u htija tal-attur u dan peress illi naqas li jzomm *proper look out* u ghamel manuvra bruska u mhux mistennija minghajr ma ta ebda pre avviz tal-intenzjoni tieghu illi jaghmel dan, kif jigi dettaljatament pruvat waqt it-trattazzjoni.

Salvi eccezzjonijiet ulterjuri fid-dritt u fil-fatt.”

Sema' l-provi;

Ikkunsidra:

Illi jirrizulta mill-atti processwali li z-zewg sewwieqa kienu qeghdin isuqu fi Triq it-Tigrija, Nadur fl-istess direzzjoni, bl-attur isuq quddiem. X'hin waslu hdejn Church Street li hija triq laterali li tisbokka fuq in-naha tal-lemin taz-zewg sewwieqa, il-konvenut ghamel manuvra ta' sorpass b'mod li gie magemb l-attur u t-tnejn kisru lejn il-lemin sabiex jidhlu ghejwa Triq il-Knisja, izda ma lestewx din il-manuvra billi hakkew bi zbrixx ma' xulxin u waqfu gemb ma' gemb fin-nofs ta' Triq it-Tigrija.

L-attur a tempo vergine (ara fol 35) stqarr li huwa ghamel l-indicator biex jikser ghal triq il-Knisja meta karozza li giet minn wara bdiet tikser ukoll ghall-istess naha u saret il-habta.

Il-kjamat fil-kawza a tempo vergine (ara fol 35) stqarr li l-karozza ta' quddiemu gibdet ghax-xellug tat-triq meta f'daqqa wahda regghet kisret ghal-lemin u sehhet il-habta; u li ma kellix indicator mixghul la ghax-xellug u l-anqas ghal-lemin. Din il-verzjoni giet ikkonfermata quddiem dan it-Tribunal kemm mill-kjamat fil-kawza Dennis Vella kif ukoll minn martu Frances Vella.

Ghalhekk il-partijiet taw verzjoni daqsxejn differenti tal-fatti ta' kif seh l-incident, ghalkemm mhux ikkontestat li l-incident seh hdejn side-street hekk kif l-attur kien qieghed jikser ghal go fiha filwaqt li l-kjamat fil-kawza kien qieghed jaghmel manuvra ta' sorpass ukoll bl-intenzjoni li jidhol fl-istess side-street.

Dwar l-uzu tal-indicator, ippronunzjat ruhha diversi drabi l-gurisprudenza:

Hekk per ezempju f' *Emmanuel Galea vs Paul Galea (04.11.1997 – Qorti tal-Magistrati (Ghawdex) Superjuri* intqal li mhuwiex bizzejjed li wiehed jixghel l-indicator, u li dan m'huwiex xi brevet tal-immunita'. Il-fatt li s-sewwieq li jbidel id-direzzjoni jghid li hares u ma ra lil hadd ifisser li ma harisx sew jew ma tax kaz ta' dak li kien qieghed jigri warajh, fejn kien hemm vizwali tajba u fit-tul. Kif gara l-incident, ma kienx hemm xi distanza twila warajh u ma

kien hemm ebda raguna l-ghala l-attur ma kellux jaraħ jekk verament haħes fil-mirja u kien jaħ x'kien qieghed jaħmel. *Il-Qorti ssib li dan is-sewqaħ ta' Emmanuel Galea ferm perikoluz u negligenti u ghandu jerfa' r-responsabilita' shiha ta' dan l-incident.*

Kawza oħra ta' min isemmi hi *Brian Valenzia noe vs Monica Calleja*(Qorti tal-Appell, 14.06.1995) fejn il-Qorti qalet li gie ritenut diversi drabi mill-Qrati tagħna u l-awturi esperti in materja li l-uzu tal-indicator ma jaħtix dritt lil dak is-sewwieq li jzaha li jaħmel kif jidħirlu mingħajr ma jjeħu in konsiderazzjoni traffiku iehor li jkun jura l-istess parti tat-triq. Irid jassikura li s-sewwieqa l-oħra jifħmu l-intenzjoni tieghu u li meta tigi esegwita l-manuvra għandha tigi esegwita bl-iktar heffa possibbli u li b'ebda mod ma tostakola l-passaħ liberu ta' vetturi oħra.

Jghid ic-Charlesworth & Percy: 9-206: *Well before a driver overtakes, changes direction, slows down or stops, the rear mirror must be used, then a signal given to indicate clearly the intended manoeuvre.*

Buchanan¹ jghid a propozitu: *In cases of collision between an overtaking motorist and a right-turning motorist, it is first of all necessary to have regard to the duties of the right-turning motorist.*

Early decisions tended to consider that all the right-turning motorist was required to do was to give a clear indication to following motorists of his intention. As regulations requiring a motorist to have a clear view through his rear view mirror became stricter, it became the duty of the driver to keep a proper look-out both in front and behind. He no longer complies with his duty unless after giving his turning signal, he takes reasonable steps to satisfy himself that following traffic has both seen and reacted to his signal, which it is submitted boils down to taking reasonable steps that there will be no traffic overtaking him as he makes his turn.

¹ Liability in Motor Cases, page 29

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L-attur filwaqt li qal li l-kjamat fil-kawza gie minn warajh u enfasizza li xeghel l-indicator qabel beda jdawwar ghan-naha tal-lemin, kien tacitu ghall-ahhar dwar jekk rax jew le l-karozza gejjja warajh, x'distanza kienet imbieghdha minnu meta lemaghha, u f'liema punt suppost xeghel l-indicator. Dan kollu juri li da parti tal-attur, certament kien qieghed jonqos li jzomm *a proper look-out*, anke jekk m'ghamilx il-manuvra bruska li l-kjamat fil-kawza u l-konvenuta qalu illi ghamel.

Ghar-rigward tal-manuvra tas-sorpass, il-Qrati taghna stabbilew diversi drabi illi l-manuvra li kien qed jaghmel l-attur fil-mument tal-incident u cioe' dik ta' overtaking jew surpass hija wahda perikoluza u li wiehed m'ghandux jaghmilha jekk mhux wara li jiehu l-prekawzjonijiet mehtiega u jassikura li b'din il-manuvra hu ma jkunx sejjer ikun ta' periklu ghall-utenti tal-istess triq:

Never overtake unless you are SURE that you can do so without danger to yourself or others.....(Paragrafu 72 Highway Code). A driver is entitled to assume he can overtake without danger if what he is overtaking gives not the slightest sign of any unexpected manoeuvre.

Il-kjamat fil-kawza zbalja u kien ferm negligent i fil-manuvra ta' surpass illi ghamel, specjalment meta kien jaf li kien qieghed joqrob lejn punt fejn kien hemm side-street li l-vettura ta' quddiemu setghet tkun sejra tidhol fiha; Infatti l-Highway Code jitkellem bl-iktar mod car kontra l-manuvra tal-attur: Regola 74

DO NOT OVERTAKE when approaching....

(ii) a road junction.....

IF IN DOUBT HOLD BACK

Is-segwent i sentenzi Nglizi riportati minn Bingham: Motor Claims Cases (ninth ed, p 82 et seq) jillustraw tajjeb dan il-principju:

Fil-kawza *Clarke vs Winchurch (1969 1 Acl Er 275)(1969) 1 WLR 69, 112 Sol Jo 909 CA*) gie ritenut li "a cyclist or moped rider is entitled to overtake stationary traffic but to

do this warrants a very high degree of ease and he must ride in such a way that he can immediately deal with an emergency."

Alfred Zammit Cutajar noe vs Joseph Formosa et (XLV, 253) Appell, 26.06.1961 irriteriet illi Id-driver ta' karozza li jigi biex jissorpassa karozza ohra ghandu jkun zgur, qabel ma jaghmel dik il-manuvra, illi jista' jaghmilha b'sikurezza.

Stabbilit ghalhekk li z-zewg sewwieqa kienu jahtu ghall-incident, jonqos jigi stabbilit f'liema proporzjon kienu hekk kontribwenti. Kif gie stabbilit, f'sitwazzjoni bhal din, it-Tribunal, biex jikkwantifika d-danni jrid jiddetermina l-proporzjon li fih kull wiehed mis-sewwieqa kien ikkontribwixxa ghall-accident.²

F'sentenza ferm ricenti³, it-triq kienet maqsuma b'linja bajda kontinwa li ezatt fil-punt fejn sehhet il-habta, il-linja bajda kienet maqsuma biex tindika d-dhul ghall-istabbiliment li hemm fin-naha tal-lemin. Is-sewwieqa tal-karozza xehdet li xeghlet l-indicator, bdiet tikser lejn il-lemin taghha biex tidhol fl-istabbiliment imsemmi, meta giet investita mill-mutur. Is-sewwieqa tal-karozza izda ammettiet li ndunat bis-sewwieq tal-mutur biss meta habtu. Hija ammettiet li ma harsitx lura, imma qaghdet attenta biss ghat-traffiku li seta' kien gej mid-direzzjoni opposta, ghax ippretendiet li vehikolu sorpassanti seta' jaqla' min-naha tax-xellug taghha. Il-qorti wiznet ir-responsabilitajiet u ddecidiet li s-sewwieq tal-mutur sorpassanti kien responsabbli ghal terz tal-incident filwaqt illi s-sewwieqa tal-karozza kienet responsabbli kwantu ghal zewg terzi.

F'kaz iehor,⁴ l-attur, waqt li kien qiegħed isur il-karozza tieghu fi Triq Borg Olivier, Mellieha, u kien qiegħed jissorpassa karozza misjuqa minn Colin Arthur Greening, dan tal-ahhar, bla ebda preavviz, qabad u dar lejn il-lemin

² Formosa vs Psaila, Prim'Awla, Onor. Victor Borg Costanzi 18.08.1987

³ Onor Ray C Pace, Citazz Nru 611/96, riportata f'*In-Nazzjon*, 5 ta' Novembru 2001

⁴ Onor Geoffrey Valenzia, Prim'Awla, 03.07.1995 Alexander Zammit vs David Debono noe

u konsekwentement habat fl-attur. Il-Qorti qasmet ir-responsabilita' ghall-incident terz lill-attur u zewg terzi lil Greening.

F'kaz iehor, ⁵ Joseph Attard kien qed isuq il-karozza tieghu tul Naxxar Road, San Gwann. Qal li xeghel l-indicator biex juri li kien sejjer jikser lejn il-lemin, fejn kien hemm junction. Billi ma ra lil hadd, huwa beda l-manuvra tieghu meta l-konvenut Debono baqa' diehel go fih biz-ziemel u l-karettun. Debono qal li Attard kien waqaf u dar f'daqqa bla ma tah l-opportunita' li jieqaf. Il-Qorti qalet li Debono kien qed jigri, jekk mhux ukoll itellaq, iz-ziemel tul it-triq. Ir-responsabbilita' giet apporzjonata zewg terzi lill-attur, u terz lill-konvenut.

Skond sentenza tal-Qorti tal-Kassazzjoni penali fl-Italja, sez. IV, 30.05.1989 : *in tema di circolazione stradale, il conducente che si accinga ad eseguire manovra di svolta a sinistra in area di crocevia, ha obbligo di ispezionare la strada retrostante, onde rendersi conto della eseguibilita' della manovra "de qua" senza creare pericoli nei riguardi di altri utenti ancorche' versanti in situazione di illegittimita'* (sottolinear tat-Tribunal) *quale quella di chi esegue un sorpasso in prossimita' di crocevia. Tale obbligo di prudenziale ispezione dello spazio retrostante, sussiste, a maggior ragione nel caso in cui il veicolo svoltante riprende la Marcia partendo da posizione di quiete, pur se determinate da necessita' di traffico, come la concessione di precedenza ad altri veicoli (fattispecie di infortunio verificatosi in prossimita' di crocevia, a causa dell'urto di un motociclista contro un automobile il cui conducente, dopo essersi fermato per accordare la precedenza ai veicoli provenienti dalla sua destra, riprese la marcia svoltando a sinistra senza avvedersi, per non avere ispezionato la strada retrostante, del sopraggiungere della veloce motocicletta che, imprudentemente eseguiva il sorpasso. La Corte ha ritenuto legittimo l'addebitamento di concorso di causa e di colpa ai danni dell'automobilista).*

⁵ Onor Geoffrey Valenzia, Prim'Awla, Hugh P Zammit noe vs Raymond Debono 16.10.1995, The Times, Monday, Nov 20,1995

Fis-sentenza taghha, il-Qorti tal-Kassazzjoni, akkordat ir-responsabilita' nofs bin-nofs bejn il-partijiet.

L-opra ta' massima awtorita' Ngliza Il-Bingham and Berryman's Motor Claims Cases, ippublikat minn Butterworths, 2000, Il-hdax-il Edizzjoni jikkwota s-sewgenti sentenzi f'sitwazzjonijiet simili:

(para 9.1, pagna 334) *Holdack v Bullock Bros (Electrical) Ltd (1964)*

In daylight on a straight road a motor scooter was overtaking a motor van when the van swerved to the offside (cioe' lejn in-naha tal-lemin) and the scooter collided with the offside front wing of the van. The van driver had not seen the scooter in spite of having two outside mirrors and an interior mirror. The judge held the van driver was negligent in changing course without warning when it was extremely dangerous to do so, but held the scooter rider one-third to blame for having failed to hoot to show his intention to overtake. The scooter rider appealed.

HELD: there was no ground on which the Court of Appeal should interfere. In the ordinary way if a motor scooter was overtaking another vehicle which was going straight along a road there was no need for the scooter to hoot before overtaking if the scooter was giving reasonable clearance. In this case the judge must have come to the conclusion that the movement of the van was such as to put the scooter rider on enquiry as to what the van was going to do.

(para 9.4, pagna 335) *Hillman v Tompkins (22 February 1995)*

The defendant was driving her Ford Sierra in a slow moving line of traffic held up by temporary traffic signals. The plaintiff was riding a motorcycle in the same direction, overtaking the slow moving traffic. The defendant reached Godwin Way, a junction to her offside, into which

she wished to turn. She signaled her intention, failed to see the motorcyclist approaching from her rear, turned and the collision occurred.

The defendant's case was that she was positioned at the crown of the road, clear of the line of traffic and visible to the plaintiff. The plaintiff alleged that the defendant commenced her turn from within the line of traffic and so was unable to see her indicator until the turn had commenced.

In the face of this and other conflicting witness accounts the judge found the defendant's vehicle had not moved into a position clear of the line of traffic or otherwise to enable the motorcyclist to see her flashing indicator before she commenced the turn. The plaintiff was probably travelling between 30-40 mph at or near the center of the opposite carriageway in the overtaking position. The judge held both parties equally to blame. The defendant appealed.

HELD: There was no reason to interfere with the judge's findings. The defendant was negligent for failing to see the plaintiff's approach: 'undesirable as it may be, motorcyclists do and can be expected to overtake in circumstances of this kind and in my judgement the defendant was negligent in failing to see the plaintiff as he approached'. The plaintiff was approaching a road junction overtaking slow moving and stationary traffic. In the circumstances he increased the standard of care required by him. The speed which he was doing was too fast to discharge that standard of care. Appeal dismissed.

Ghalhekk f'kazijiet bhal dak quddiem dan it-Tribunal l-apporzonament tal-htija jiddependi hafna mic-cirkostanzai partikolari tal-kaz.

Fic-cirkostanzi tal-kaz prezenti, jidher li l-kjamat fil-kawza u l-attur kienu ugwalment responsabbli ghall-incident.

Ma jidhirx li kien hemm kontestazzjoni dwar il-*quantum* tad-danni.

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Ghaldaqstant dan it-Tribunal jaqta' u jiddeciedi billi jiddikjara lill-attur responsabbli kwantu ghal nofs tal-incident; il-kjamat fil-kawza huwa responsabbli ghan-nofs l-iehor filwaqt li l-konvenuta ma hix responsabbli ghall-incident; u ghalhekk jilqa' in parte t-talba attrici billi jikkundanna lill-kjamat fil-kawza jhallas lill-attur is-somma ta' LM78.50c; bl-imghax legali mid-data ta' din id-decizjoni sad-data tal-hlas effettiv. L-ispejjez, inkluzi dawk taz-zewg ittri interpellatorji u l-ittra ufficcjali indikati fl-avviz tat-talba, jigu maqsuma nofs bin-nofs bejn il-partijiet.

< Sentenza Finali >

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