



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.
JACQUELINE PADOVANI**

Sitting of the 5th November, 2003

Number. 844/2002

**POLICE
INSPECTOR PIO PISANI
VS
MEYER QUENTIN MORTIMER**

The Court,

Having seen the charges brought against the accused Meyer Quentin Mortimer son of Joop Meyer and Louise Cameron born in Holland on the 17th February 1971 and residing at Santa Marija, Flat 1, Triq il-Mosta, St Paul's Bay Passport No 66649544 dutch and charging him with having on the 12th of October 2002 at 10.00hrs in Mistra street l/o St Paul's Bay driven vehicle DAI 943 in a negligent and careless manner, further more caused slight injuries on Larlyn Hiott, Helen Julie Ball and Richard Ian Ball as certified by Dr Stefan Muscat of St Lukes Hospital.

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Caused grievous on the person of Vanessa Attard and Noel Attard as certified by Dr Rose Mary Cassar of St Lukes Hospital

Caused damages to DAI 943 to the detriment of the owner Colsto Upton and LCA 834 to the detriment of Noel Attard.

Having heard the evidence tendered on oath;

Having seen the record of the proceedings;

Having seen the articles of law upon which this Court may pronounce guilt;

Having seen the note in the records of the proceedings wherein the accused registered no objection in being adjudicated by the Court of Magistrates.

Having heard the oral submissions of the parties;

Considers:-

The case concerns injuries and damages incurred in a traffic accident which took place in Mistra St Paul's Bay – a winding steep road between St Paul's Bay and Mellieha. The vehicle in question was driven by the accused, and passengers Hiott, Julie and Richard Ball were travelling in the same vehicle as the accused, suffered minor injuries. Vanessa Attard in car No LCA 834 suffered grievous injuries and extensive damages to her vehicle. Weather conditions on the date of the accident were wet.

Philip Hiott (see pg 7 et seq) testified that he was a passenger in a car driven by the accused which was travelling from Cirkewwa towards St Paul's Bay. Hiott stated that after they had been travelling down a hill whose surface had been etched, the van started to slide, he heard the driver swear and the word of "oil", then heard a bang, then another bang and then the vehicle struck a tree. Hiott stated that there were six passengers in the van.

Hiott insists that the accused was driving at 20-25 miles per hour and that the road was so slippery that when he got out of the van he “would not walk on the road properly.” (pg 11)

Hiott stated that when he got out of the van he noticed “long stripes” of oil and petrol on the road surface so much so that the police called in a lorry which spread sand on the road surface.

Hiott stated that when the Landrover (Defender) of the accused skidded, it went into a slow moving slide and not a sudden movement and that this occurred mid way through the bend.

Richard Bell (pg 17 et seq) was another passenger being driven by the accused. He confirms that the car was travelling for Cirkewwa to St Paul’s Bay. He adds that he was dozing on in the car when he heard the driver swear and say something about “oil” and then there was a crash. He remembered that they were travelling down a winding hill and that the road was very very wet.

Ball stated that when the car skidded it went into a slow skid in a straight line. Ball stated that he suffered minor injuries and a few scratches and he reiterated that he did not want to press criminal charges against the accused (pg 23).

Marilyn Hiott confirmed the evidence given by her husband and corroborated the reaction of the driver, his exclamation on the presence of the oil, the skidding movement of the car in one direction, and the collision. She also confirmed that when she got out of the car, she saw an extensive patch of oil on the road and that it had rained just before the incident. She testified that the accused was driving at a speed of 20-25 miles per hour. She stated that she was not pressing charges against the accused as far as her injuries were concerned (pg 28).

Helen Ball , another passenger in the accused car, confirmed the evidence given by the other passenger on all the salient features including the speed (“conservative” – 20miles per hour), the slow skidding movement of the car in one direction, the exclamation on the presence of oil by the driver and the collision (pg 29 et seq). Ball did not wish to press charges against the accused (pg 33).

Michael Upton (fol 34) owner of the Landrover and employer of the accused was on the site after the accident occurred. He stated that the road conditions were very bad because it had been raining and because of the fact that there was oil on the road. He said he could see the red and blue coloration on the surface of the road. In fact the Civil protection was called in to pour sand over it. Upton testified that he did not want to press charges against the accused with respect to the damages sustained to his vehicle (fol 36).

Dr Mary Rose Cassar (pg 40 et seq) had examined Vanessa Attard at Casualty and found that she had a fractured rib, severe pain in the abdomen and scratches mark on left chest and stomach.

She stated that a fractured rib heals after six weeks. She confirmed the medical certificate Dok MRC that she had issued.

Vanessa Attard (pg 44 et seq) testified that she was a front passenger in a car driven by her husband while her daughter was seated in the back. They were going to Mellieha. All of a sudden they saw a Landrover losing control and had a head-on crash with their car. Attard testified that she had a fractured rib and was admitted to hospital for five days because the doctors thought that she had an internal haemorrhage.

Noel Attard (pg 48) testified that he was taking his family to Gozo and as they were travelling up the hill toward Mellieha, a Landrover from the opposite traffic came straight onto them. Attard stated that the car was not skidding but rather it seemed that he had no brakes. He

heard however no scratched of braking tyres. Attard stated that he tried to avoid him but in so doing the Landrover hit heavily on his wife's side. Attard stated that the car was a write off and that he had just been paid by the insurance. He did not wish to press charges against the accused as far as his minor injuries were concerned.

Vanessa Attard (pg 68 et seq) in her second testimony stated that she started to feel better during early March 2003 though she still complained of irregular pain in her ribs and back. She stated that she spent a week in hospital and after that had to go and live at her mother's house for a further three weeks because she could hardly move. She stated that after this time she did not go back to her doctor's to see if her rib had healed satisfactory.

Dr Mary Rose Cassar (pg 73) confirmed that a fractured rib healed in about six weeks.

Meyer Quentin Mortimer, diving instructor, (pg 76) stated that he had taken six clients on a diving site and was traveling back towards St Paul's Bay in a Landrover. Mortimer states that it had rained heavily so the road conditions were wet and slippery. He said that he was therefore driving slowly and as he was driving in a bend "the jeep just went sideways" (pg 78) and collided into a car traveling in the opposite direction. Mortimer states that as he was approaching the bend he saw a patch of oil and that he indicated this to the police.

He stated that after the collision he ensured that his passengers were fine and phoned Upton, and called for an ambulance and the police. He stated that he was travelling at 20-25 miles per hour and when he saw the oil he tried to apply the brakes.

On being asked whether he geared down, accused stated that he had been driving on second gear anyway when the accident happened. He confirmed that the oil on the road made it so slippery that one could not even walk on the road.

Considers:-

The Court notes at the very outset, that the first charge of causing slight injuries on Hiott, Helen and Richard Ball has been dropped. Furthermore second charge as it relates to Noel Attard, had also been reduced to one of causing minor injuries and has in fact been duly waived according to law.

In the same manner Upton has waived all criminal charges with regard to involuntary damages to his car DAI 943. The Court therefore is in duty and to examine the charges of

- (1) negligent and careless driving
- (2) causing involuntary grievous injuries to Vanessa Attard
- (3) causing involuntary damages to car LCA 834 to the detriment of Noel Attard.

The above mentioned three charges depend entirely on the manner in which the accused was driving and whether in view of all the circumstances of the case, any negligence or careless way be imputed to him.

The evidence adduced by the prosecution has uncovered no carelessness or recklessness in the manner in which the accused was driving. This has been concluded after taking into consideration several factors.

It is pertinent to note that the accused was not driving alone. He in fact had no less than six passengers, some of whom were injured in the incident. None of these passengers – (inspite of the fact that they had a personal interest to safe guard) – stated that the accused was driving at an excessive speed. Indeed they all confirmed a speed of 20-25mph. They retained that no one was talking to the driverhim or disturbing him in any way; and they ala recalled his exclamations on discovering the presence of oil on the road surface.

It has to be remembered that the oil patch occurred after the bend in the winding hill – which fact created a sudden emergency for the driver.

Now Article 225 of the Criminal Code states:-

“Whosoever, through imprudence, carelessness, unskillfulness in his art or profession, of non observance of regulations, causes the death of any person, shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine (multa) not exceeding two thousand liri.”

The establishment of a sudden emergency may however this is neither automatic nor applicable in all cases.

Indeed in the case “Police vs Joseph Borg decided by Judge Harding on the 23rd of August 1941” it was stated:-
“il-fatt li sewwieq ta’ vettura jigi rinfaccat b’emergenza subitanea ma jfissirx necessarjament u f’kull kaz illi hu jkun esenti mir-responsabbilita ghas-sinistru li jsegwi.....
Hemm bzonn biex din id-difiza tirnexxi illi id-driver ma jkunx bi htija tieghu ta’ lok ghal xi cirkostanzi li minhabba fihom, ma setghax jipprovdi kontra l-emergenza.”

This principal was applied and confirmed in the case “Police vs David Borg, Criminal Appeal decided on the 15th of September 2000 per Judge Degaetano” who found that the driver’s speed, together with the fact that the bus was being driven on neutral gear made it impossible or much more difficult for him to react to the sudden emergency.

In this case the Court can find no contributory negligence on the part of the accused that impeded him from reacting expeditiously to the sudden emergency.

The accused was driving at 20 miles per hour in wet conditions down a winding hill. He was in second gear and on perceiving the oil slick, he applied the brakes, this was not effected in an abrupt fashion. Indeed the passengers on board his vehicle spoke of a slow, sideways, slipping movement in one direction. None of

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the witnesses stated that the car zig zagged in any way – which might have thrown doubt on the manner in which the accused responded to the skid.

In view of all this the Court find the accused not guilty of the charges brought against him and acquits him of the same.

< Final Judgement >

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