



## TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.  
GRAZIO MERCIECA**

Seduta tat-2 ta' Dicembru, 2003

Talba Numru. 93/2003

**Elmo Insurance Agency Limited bhala rapprezentanta  
tas-socjeta' estera 'Royal & Sun Alliance plc', kif  
surrogata bil-polza u bil-ligi fid-drittijiet tal-assikurat  
taghha Joseph Galea; u l-istess Joseph Galea**

**vs**

**Carmel Grech**

It-Tribunal;

Ra l-avviz tat-talba li jghid hekk:

“Ghid inti konvenut ghaliex ma ghandekx tigi dikjarat responsabbli ghall-incident stradali illi gara fil-31 ta' Awissu 2001 fi Triq il-Qala, Ghajnsielem bejn il-vettura ASR 101 misjuqa minnek; u dik TFA 883 misjuqa mill-attur Joseph Galea; u konsegwentement tigi kundannat thallas id-danni kollha sofferti mill-atturi per konsegwenza tal-istess incident.

Kopja Informali ta' Sentenza

Bl-interessi fuq din is-somma b'effett mid-data tan-notifika lilek tal-ittra ufficjali ta' Settembru 2002.

Bl-ispejjez tal-kawza, kif ukoll l-ispejjez tal-ittra ufficjali ta' Settembru 2002, u dik l-ohra prezentata kontestwalment ma' dan l-avviz.

Bl-ingunzjoni ghas-subizzjoni illi ghaliha minn issa inti msejjah.”

Ra r-risposta:

“Nota ta' eccezzjonijiet tal-konvenut:-

1. Illi l-pretensjonijiet attrici huma nfondati fid-dritt u fil-fatt.
2. Illi l-incident imsemmi fl-avviz sehh unikament responsabilita' ta' Joseph Galea, is-sewwieq tal-vettura assikurata mas-socjeta' attrici, minhabba imperizja, traskuragni u ksur ta' regolamenti tat-traffiku da parti tieghu.
3. Illi ghalhekk il-konvenut m'huwa tenut ihallas l-ebda danni konsegwenti ghal dan l-incident.
4. Illi fi kwalunkwe kaz u minghajr pregudizzju qed tigi kkontestat l-ammont li qed jigi reklamat mis-socjeta' attrici bhala l-valur tad-danni subiti.

Salvi eccezzjonijiet ulterjuri fid-dritt u fil-fatt.

Bl-ispejjez.”

Sema' l-provi;

Ikkunsidra:

Illi l-attur, Joseph Galea xehed li waqaf fuq li stop sign li hemm fil-kareggjata laterali int u gej mid-direzzjoni tan-Nadur, esplora Qala Road, ma ra lil hadd gej, u ghalhekk hareg fl-istess triq u saq distanza ta' circa 40 metru ohra

max-xellug tat-triq. Billi mbaghad ried jidhol fi Triq Sant'Antnin li taghti ghal Ghajnsielem, huwa xeghel l-indicator u beda jdawwar il-karozza tieghu lejn il-lemin meta sehhet il-habta. Minkejja li kellu vizwali ta' 'l fuq minn mitt metru, huwa ma rax lill-karozza tal-konvenut gejjja warajh. Qal ukoll illi galadarba ghamel l-indicator, dehrlu li kellu d-dritta.

Illi min-naha tieghu, il-konvenut xehed li kien qieghed isuq f'Qala Road, ghad-dritt, u li ftit metri – ma jafx kemm ezatt – qabel ma gie biswit l-inkrocju fejn hemm li stop-sign, lemah lill-attur wiegaf fuqha. Billi ma basarx li l-attur ser jibda jerga' jimxi, huwa baqa ghaddej izda l-attur hariglu u huwa, biex jevita l-incident, kiser ghan-naha tal-lemin tieghu izda xorta sehhet il-habta.

Ikkunsidra:

Illi l-verzjoni tal-konvenut ma tistax tigi accettata ghax ma taqbilx mad-dinamika tal-incident. Mill-brake-marks jirrizulta li l-konvenut kien miexi bis-sittin kilometru fis-siegha qabel applika l-brejk. L-attur ma setax kien miexi ghajr b'velocita minima billi kif anke jammetti l-konvenut dan kien waqaf fuq li stop sign qabel acceda fi Triq il-Qala. Anke tenut kont li l-attur naqqas il-velocita billi applika l-brejk, galadarba l-konvenut lemah lill-attur stazzjonarju ftit metri biss qabel ma l-konvenut gie biswit li *stop sign* xorta wahda il-karozza tieghu kienet jew tilhaq tghaddi lill-karozza tal-attur, jew tal-inqas il-habta kienet issehh ferm vicin li stop sign, u mhux circa erbghin metru 'l boghod. Ghalhekk hija eskluza l-possibilita' li l-habta sehhet waqt li l-attur kien hierreg mill-karreggjata laterali. Il-habta sehhet kif qal l-attur, waqt li huwa kien diga' qieghed fi Triq il-Qala, kemm kemm miexi sabiex jilwi ghal Triq Sant'Antnin. Jidher ghalhekk li l-incident gara f'inkrocju, meta l-konvenut kien qieghed jaghmel manuvra ta' surpass tal-vettura tal-attur min-naha tal-lemin hekk kif l-attur, min-naha tieghu, kien beda jdur lejn il-lemin.

L-attur dehrlu li galadarba xeghel l-indicator, kien issodisfa l-obbligu tieghu versu l-utenti l-ohra tat-triq: fi

kliemu, kellu *r-right*. Dwar l-uzu tal-indicator, ippronunzjat ruhha diversi drabi l-gurisprudenza:

Hekk per eżempju 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 qiegħed jgri 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 raguni l-ghala l-attur ma kellux jarah jekk verament hares fil-mirja u kien jaf x'kien qiegħed jagħmel. *Il-Qorti ssib li dan is-sewqan ta' Emmanuel Galea ferm perikoluz u negligenti u għandu jerfa' r-responsabilita' shiha ta' dan l-incident.*

Kawza ohra 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 jagħtix dritt lil dak is-sewwieq li juzah li jagħmel kif jidhirlu mingħajr ma jiehu in konsiderazzjoni traffiku iehor li jkun juza l-istess parti tat-triq. Irid jassikura li s-sewwieqa l-ohra jifhmu l-intenzjoni tiegħu u li meta tigi esegwita l-manuvra għandha tigi esegwita bl-iktar heffa possibbli u li b'ebda mod ma tostakola l-passagg liberu ta' vetturi ohra

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.*

Buchanan<sup>1</sup> 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*

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<sup>1</sup> Liability in Motor Cases, page 29

*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.*

L-attur qal li qabel dawwar hares lura izda ma ra lil hadd gejj, ghalkemm kellu vizwali mill-aqwa. Difatti induna bil-konvenut biss meta sema l-brejk. Dan ma jistax ma jurix traskuragni mhux zghira da parti tal-attur li ma kellu l-ebda raguni l-ghala ma kellux jinduna bil-konvenut.

Il-konvenut, min-naha tieghu, kien qieghed jaghmel manuvra ta' surpass. Il-Qrati taghna<sup>2</sup> stabbilew diversi drabi illi l-manuvra li kien qed jaghmel il-konvenut 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-konvenut zbalja u kien ferm negligent i fil-manuvra ta' surpass illi ghamel, speċjalment meta kien jaf li kien qieghed joqrob lejn punt fejn kien hemm side-street li l-vettura ta' quddiemu setgħhet tkun sejra tidhol fiha;

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<sup>2</sup> F Clarke vs- C Aquilina 6.12.1977; Sciberras vs C Zammit 13.7.78; E Azzopardi vs L McCharthy 20.9.1978; E Deguara vs J Mallia 25.1.1983; C Gendrex vs J Vassallo 15.1.1988, T Duca vs E Mifsud 15.6.1988; Hugh P Zammit noe vs Raymond Debono PA 16.10.1995; Alex Zammit vs David Debono noe 3.7.1995

Kopja Informali ta' Sentenza

Infatti I-Highway Code jittellem 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-segwenti 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 jiddermina l-proporzjon li fih kull wiehed mis-sewwieqa kien ikkontribwixxa ghall-accident.<sup>3</sup>

F'sentenza ferm ricenti<sup>4</sup>, 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-sewwieq 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

<sup>3</sup> Formosa vs Psaila, Prim'Awla, Onor. Victor Borg Costanzi 18.08.1987

<sup>4</sup> Onor Ray C Pace, Citazz Nru 611/96, riportata f'*In-Nazzjon*, 5 ta' Novembru 2001

attenta biss ghat-traffiku li seta' kien gej mid-direzzjoni opposta, ghax ippretendiet li vehikolu sorpoassanti 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,<sup>5</sup> 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 u konsegwentement habat fl-attur. Il-Qorti qasmet ir-responsabilita' għall-incident terz lill-attur u zewg[ terzi lil Greening.

F'kaz iehor,<sup>6</sup> Joseph Attard kien qed isuq il-karozza tieghu tul Naxxar Road, San Gwann. Qal li xegħel 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-responsabilita' 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*

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<sup>5</sup> Onor Geoffrey Valenzia, Prim'Awla, 03.07.1995 Alexander Zammit vs David Debono noe

<sup>6</sup> Onor Geoffrey Valenzia, Prim'Awla, Hugh P Zammit noe vs Raymond Debono 16.10.1995, The Times, Monday, Nov 20, 1995

*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).*

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, ippubblikat 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 traveling 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*

Kopja Informali ta' Sentenza

*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.*

L-apporzjonament tar-responsabilita' ghalhekk tiddependi hafna fuq ic-cirkostanzi partikolari tal-kaz. Fil-cirkostanzi tal-kaz prezenti, ma jidhirx li xi parti kellha grad ta' responsabilita' oghla mill-ohra ghall-incident.

Ma tressqux provi mill-konvenut dwar il-*quantum* tad-danni ghalkemm kien hemm eccezzjoni f'dan is-sens.

Ghaldaqstant dan it-Tribunal jaqta' u jiddeciedi billi jiddikjara lill-attur Joseph Galea u lill-konvenut Carmel Grech ugwalmart responsabbli ghall-incident, jilqa' in parte t-talbiet attrici billi jikkundanna lill-konvenut ihallas lis-socjeta' attrici s-somma ta' LM213; bl-imghax legali mid-data tan-notifika tal-ittra ufficcjali ipprezentata f'Settembru 2002 sad-data tal-hlas effettiv, u bl-ispejjez inkluzi dawk taz-zewg ittri ufficcjali msemmija fl-avviz tat-talba.

**< Sentenza Finali >**

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