MALTA

TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
PHILIP MANDUCA**

Seduta tal-11 ta' Dicembru, 2003

Talba Numru. 1115/2002/1

Montaldo Insurance Agency Limited, bhala agenti u in rappresentanza tas-socjeta' estera American Home Assurance Company kif surrogat fid-drittijiet tal-assigurat tieghu Wilfred Kenelly u l-istess Wilfred Kenelly

Vs

Kevin Vella

It-Tribunal

Ra l-Avviz li fih l-atturi talbu li l-konvenut ihallas Lm777.95c (seba' mija u sebgha u sebghin lira Maltin u hamsa u disghin centezmu) rappresentanti danni wara incident tat-traffiku kif spjegat fl-Avviz.

Ra r-Risposta tal-konvenut li qal li mhux responsabbli ghall-incident.

Sema’ x-xhieda u ra d-dokumenti esebiti.

Ikkunsidra li meta kelmu lil Pulizija ezatt wara l-incident il-partijiet qalu:
L-attur: “stated that he was emerging towards Naxxar Road and was driving to cross the road towards the car park when the other car emerged from his right and both collided”.

Il-konvenut: “stated that he was driving in Naxxar Road and was turning to the left towards Triq il-Kuccard when the other car emerged from his left and both collided. Driver also stated that there was another car parked at the corner but it had drove off.”

Fix-xhieda tieghu l-attur qal li kien hemm stop sign qabel ma tohrog minn Triq il-Kuccard ghal fuq Naxxar Road u l-habta saret qabel ma wasal fuq l-istop sign.

Kennely ma qabilx mal-iskizz u qal li kien aktar lura. Luciano Borg qal ukoll li l-attur kien aktar lura milli kif jidher fl-iskizz.

Il-konvenut qal li kien hemm karozza pparkjata fuq ix-xellug tieghu u ghalhekk ma setghx izomm ezatt max-xellug tat-triq.

Illi mill-iskizz jirrisulta li fil-fatt l-attur kien hareg ftit fuq il-main road.

Hemm diversi artikoli tal-Highway Code li ghandhom jigu kkunsidrati.

a) artikolu 97 tal-Highway Code “traffic must keep to the left hand side of the road”.

b) 191 sewwieq ghandu l-obbligu sabiex “look out for vehicles emerging from junctions…”.

c) 197 “before changing direction to the left, keep as much as possible to the left-hand kerb well in advance of turning”.

d) 213 “at an intersection or junction of a major road and a minor road, traffic on the latter should give way to traffic on or coming off the major road”.

M’hemmx dubju li Naxxar Road huwa “the major road”.

L-attur kellu l-obbligu li qabel ma johrog fuq Naxxar Road li jara jekk hemm vetturi fil-main road. Mill-iskizz jirrisulta li l-attur kien hareg ftit fuq il-main road. Jidher ghalhekk li l-konvenut ma kienx responsabbli ghall-incident u dan billi l-attur kellu l-obligu li jaghti precedenza ghat-traffiku li kien se jitlaq minn “major road”; kellu l-obbligu li jara dawk il-vetturi fuq il-major road u johrog biss meta setgha jaghmel hekk minghajr ma jostakola vetturi ohra. (Ara Attard Vs Zammit PA 16/4/1993 u Bianchi Vs Patinott PA 18/5/1995 u Fogg Vs Vella (Appell 2141/95).

Fil-kawza Fogg Vs Vella (ibid) gie ddikjarat li d-driver li hiereg fuq il-main road ma jistax juza bhala skuza li dak fuq il-main road kien “wrong side” jew ghan-nofs it-triq.

Illi huwa maghruf li f’kawzi civili l-attur li jallega li xi haga gratlu b’tort tal-konvenut irid jipprova huwa a sodisfazzjoni tal-Qorti li l-konvenut kellu tort. Jekk l-attur ma jgibx dina l-prova l-azzjoni tieghu ma jistax ikollha ezitu favorevoli, anke jekk il-konvenut ma jipprovax – ghaliex legalment mhux obbligat li jipprova – li l-incident ikun gara tort tal-attur. Dan mhux ghaliex it-tort ghall-incident ikun tal-attur imma sempliciment ghaliex ma jkunx irnexxielu jipprova li allega bhala bazi tal-azzjoni tieghu (Mallia noe Vs Anastasi PA 3/10/1996).

Ghaldaqstant, jichad it-talba tal-atturi bl-ispejjez kontra taghhom.

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