



TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
GRAZIO MERCIECA**

Seduta tas-17 ta' Dicembru, 2003

Talba Numru. 119/2003

Peter Paul Azzopardi

vs

Anthony Cauchi

It-Tribunal;

Ra l-avviz tat-talba li jghid hekk:

“Tikkundanna lill-konvenut Anthony Cauchi ihallas is-somma ta' elf erba' mija u hamsa u tletin lira Maltin (Lm1435) dovuti bhala danni sofferti mill-attur per konsegwenza ta' incident awtomobilistiku li sehh fil-hamsa (5) ta' Awissu tas-sena elfejn u tlieta (2003) fi Triq Hamrija, Xewkija, Ghawdex bejn il-vettura tal-marka Mitsubishi Lancer bin-numru tar-registrazzjoni CBC 949 appartenenti lill-attur u misjuqa minn Margaret Azzopardi u l-vettura tal-marka Peugeot 306 u bin-numru tar-registrazzjoni AGY 062 appartenenti lil Carmelo Mercieca

Kopja Informali ta' Sentenza

u misjuqa mill-konvenut Anthony Cauchi, u ta' liema incident inti konvenut kont unikament responsabbli minhabba imperizji, sewqan eccessiv, traskuragni u nuqqas ta' tharis tar-regolamenti tat-traffiku.

Bl-imghaxijiet legali u bl-ispejjes komprizi dawk ta' l-ittra interpellatorja mibghuta fis-17 ta' Settembru 2003 u ta' l-ittra ufficjali mibghuta kontestwalment ma' dan l-avviz lis-socjeta' assikuratrici tal-konvenut.

Bl-ingunzjoni tal-konvenut ghas-subizzjoni.”

Ra r-risposta tal-konvenut:

“Illi d-domandi attrici huma nfondati fid-dritt u fil-fatt stante illi l-incident de quo sehh minhabba inperizja, traskuragni u non osservanza tar-regolamenti tat-traffiku da parti ta' Margaret Azzopardi li b'manuvra azzardata imblukkat il-karreggjata tal-konvenut. Salvi eccezzjonijiet ulterjuri. Bl-ispejjes u bl-ingunzjoni tal-attur minn issa ghas-subizzjoni.”

Sema' l-provi;

Ikkunsidra:

Illi jirrizulta mill-atti processwali li z-zewg sewwieqa kienu telghin fid-direzzjoni ta' Sannat fi Triq il-Hamrija, Xewkija. Mart l-attur kienet issuq quddiem filwaqt li l-konvenut kien warajha. Fin-nofs tat-triq kien hemm linja bajda diskontinwa. Hekk kif Azzopardi waslet magemb Triq Widnet il-Bahar, li hija triq laterali in-naha tal-lemin tas-sewwieqa, hija bdiet iddur biex tidhol fiha; filwaqt illi l-konvenut li kien warajha ghamel manuvra ta' sorpass u sehhet il-habta.

Azzopardi qalet li xehlet l-indicator; Cauchi jaqbel li xeghlitu izda skond hu ghamlet dan fl-ahhar mumentu qabel daret. Skond Cauchi Azzopardi bdiet iddur, waqfet momentarjament, imbaghad komplet iddur. Billi huwa ppretenda li ma kinitx sejra tibqa' ddur, huwa ssorpassaha min-naha tal-lemin taghha.

Azzopardi, minkejja li *ex admissis* warajha kellha triq dritta u vizwali fit-tul, ma ratx lil Cauchi gejj fuqha.

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 bizzzejjed 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 raguni l-ghala l-attur ma kellux jarah jekk verament hares fil-mirja u kien jaf x'kien qieghed jaghmel. *Il-Qorti ssib li dan is-sewqan ta' Emmanuel Galea ferm perikoluz u negligenti u ghandu jerfa' r-responsabbilita' 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 taghna u l-awturi esperti in materja li l-uzu tal-indicator ma jaghtix dritt lil dak is-sewwieq li juzah li jaghmel kif jidhirlu minghajr ma jiehu in konsiderazzjoni traffiku iehor li jkun juza l-istess parti tat-triq. Irid jassikura li s-sewwieqa l-ohra jifhmu l-intenzjoni tieghu u li meta tigi esegwita l-manuvra ghandha 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.*

Buchanan¹ jghid a propozitu: *In cases of collision between an overtaking motorist and a right-turning motorist, it is*

¹ Liability in Motor Cases, page 29

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.

Fid-dawl tal-principji appena citati ma hemmx dubbju li Azzopardi kienet ferm negligent i fis-sewqan taghha u ma kinitx qieghdha zzomm *a proper look-out* – kieku ghamlet hekk kienet tinduna bil-konvenut gej warajha b'certa velocita'. Apparti minn dan Azzopardi kienet indeciza fil-manuvra taghha tant li skond il-verzjoni tal-konvenut mhux kontradetta hija bdiet iddur, waqfet momentarjament, imbaghad komplet bil-manuvra taghha.

Illi l-Qrati taghna² stabbilew diversi drabi illi l-manuvra ta' overtaking jew surpass hija wahda perikoluza u li wiehed m'ghandux jaghmilha jekk mhux wara li jjehu 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.

² 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

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Il-konvenut zbalja u kien ferm negligent i fil-manuvra ta' surpass illi ghamel, speċjalment meta kien jaf li kien qiegħed joqrob lejn punt fejn kien hemm side-street li l-vettura ta' quddiemu setgħet tkun sejra tidhol fiha; Infatti l-Highway Code jtkellem 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 għandu jkun zgur, qabel ma jagħmel dik il-manuvra, illi jista' jagħmilha b'sikurezza.*

Il-konvenut halla 30 metru brake-mark li jindikaw li kien qiegħed isuq bis-70 kilometru fis-siegha filwaqt li f'inhawi mibnija bħalma huwa l-post fejn sehh l-incident il-massimu huwa ta' 50 kilometru fis-siegha liema massimu jonqos iktar u iktar hdejn skola. Dan apparti li f'post labirintali bħalma notorjament hija x-Xewkija ikun prudenti li wiehed isuq b'velocita' ferm inqas mil-limiti normalment konsentiti. Għalhekk bla dubbju l-konvenut kien qiegħed isuq b'velocita' oghla minn dik li kellha tigi addotata minn sewwieq prudenti f'dik il-lokalita' u dan ikkontribwixxa biex sehh l-incident għax din il-velocita' ma ppermettietx lill-konvenut jieqaf tempestivament.

Stabbilit għalhekk li z-zewg sewwieqa kienu jahtu għall-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.³

F'sentenza ferm ricenti⁴, 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-sewwieq 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 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-sewwieq tal-karozza kienet responsabbli kwantu ghal zewg terzi.

F'kaz iehor,⁵ l-attur, waqt li kien qieghead isuq il-karozza tieghu fi Triq Borg Olivier, Mellieha, u kien qieghead 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' ghall-incident terz lill-attur u zewg terzi lil Greening.

F'kaz iehor,⁶ 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

³ Formosa vs Psaila, Prim'Awla, Onor. Victor Borg Costanzi 18.08.1987

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

⁵ Onor Geoffrey Valenzia, Prim'Awla, 03.07.1995 Alexander Zammit vs David Debono noe

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

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 quo" 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).*

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 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.

Fil-cirkostanzi tal-kaz prezenti, jidher li l-konvenut kien responsabbli fi grad oghla minn Azzopardi.

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

Ghaldaqstant dan it-Tribunal jaqta' u jiddeciedi billi jiddikjara lil Azzopardi responsabbli kwantu ghal terz tal-incident, filwaqt li l-konvenut huwa responsabbli ghal zewg terzi u ghalhekk jilqa' in parte t-talbiet attrici billi jikkundanna lill-konvenut ihallas lil-attur is-somma ta' LM956; bl-imghax legali mid-data ta' din id-decizjoni sad-data tal-hlas effettiv. Spejjez inkluzi dawk tal-ittra interpellatorja tas-17.09.03 u tal-ittra ufficcjali mibghuta kontestwalent mal-avviz terz a kariku tal-attur u zewg terzi a kariku tal-konvenut.

< Sentenza Finali >

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