MALTA

# TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
GRAZIO MERCIECA**

Seduta ta' l-14 ta' Mejju, 2004

Talba Numru. 1/2004

**Gasan Mamo Insurance Agency Limited bhala Agenta f'Malta ta' CGU Insurance plc; kif surrogata fid-drittijiet tal-assikurat taghha bil-polza u bil-ligi, u l-assikurat taghha Brian Pace**

**Vs**

**Eugenio Borg**

It-Tribunal;

Ra l-avviz tat-talba li jghid hekk:

"Peress illi f'gurnata tas-7 ta' Frar 2003, l-attur Brian Pace kien qieghed isuq l-vettura tieghu Nissan Micra AUM137 f'Qasam Industrijali, fix-Xewkija, u kien ghaddej fuq in-naha tax-xellug tal-karreggjata tieghu fi Triq il-Biccerija biex jikser ghat-Triq it-Taflija, meta f'daqqa wahda vettura Toyota Hilux bin-numru DBB531 proprjeta' ta' u misjuqa mill-konvenut, li kienet ghaddejja b'velocita' qawwija u

f'nofs it-triq, habtet gol-vettura tal-attur. Filfatt il-konvenut ammetta illi huwa kien ghaddej fin-nofs tat-triq, u cioe' fuq parti kbira tal-karreggjata li minnha kellu jghaddi l-attur.

U peress illi dan l-incident gara unikament tort u htija tieghek Eugenio Borg minhabba illi inti inqast tosserva ir-regolamenti tat-traffiku, u minhabba illi soqt b'manjiera traskurata, u peress illi d-danni sofferti mill-atturi per konsegwenza ta' dan l-incident jammontaw ghal erba' mija u disgha liri Maltin u hamsin centezmu oltre spejjez legali;

Ghid ghalhekk inti konvenut ghaliex ma ghandux ma ghandux dan it-Tribunal;

1. jiddikjarak responsabbli ghall-incident stradali fuq imsemmi;
2. jillikwida l-ammont tad-danni sofferti mill-atturi per konsegwenza tal-incident fuq imsemmi fl-ammont ta' Lm409.50;
3. tikkundannak thallas lill-atturi din is-somma.

Bl-ispejjez, inkluzi dawk tal-ittra interpellatorja ta' Ottubru 2003 kontra tieghek, u bl-ingunzjoni ghas-subizzjoni illi ghaliha minn issa inti ingunt."

Ra r-risposta:

"Nota tal-eccezzjonijiet tal-konvenut Eugenio Borg.

Jeccepixxi bir-rispett:

(1) Illi t-talbiet attrici huma infondati fid-dritt u fil-fatt u dana peress illi l-incident awtomobilistiku hawn fuq imsemmi gara unikament tort u htija ta' Brian Pace is-sewwieq tal-vettura Nissan Micra (numru ta' registrazzjoni: AUM 137).

(2) Salvi eccezzjonijiet ohra fid-dritt u fil-fatt."

Sema' x-xhieda u ra d-dokumenti esibiti.

Ikkunsidra:

Mhux ikkontestat li l-attur hareg minn triq laterali u sekondarja ghal got-triq ewlenija li minnha kien ghaddej il-konvenut. Il-konvenut jghid li qabel il-habta gibed lejn nofs it-triq billi fuq in-naha tax-xellug tieghu kien hemm trakk kbir ipparkjat – haga kkonfermata mill-istess attur ghalkemm dan it-trakk ma giex imnizzel fl-iskizz.

L-attur *a tempo vergine* (fol 39) ma jghidx li waqaf u esplora t-triq ewlenija li kien sejjer johrog fiha: difatti jibda biex jghid *as soon as I turned the corner from Triq il-Biccerija at a slow speed….* B'hafna tlaqliq, fid-deposizzjoni originali tieghu (fol 14) kif ukoll in kontro-ezami (fol 17) qal li huwa waqaf qabel hareg mit-triq laterali, hareg fiz-zewg direzzjonijiet, ma ra lil hadd gej u hareg. Hekk kif beda jdur il-kantuniera, lemah lill-pickup tal-konvenut gejja ghal fuqu u bl-impatt il-karozza tal-konvenut imxiet lura ghall-kantuniera imnejn kien ghadu kif hareg. Qal ukoll li kellu vizwali cara u fit-tul.

Il-konvenut kemm a *tempo vergine (*fol 24) kif ukoll fid-deposizzjoni tieghu quddiem dan it-Tribunal (fol 48) kien konsistenti billi zamm l-istess verzjoni fis-sens li l-vettura tal-attur baqghet hierga mit-triq laterali.

Tenut kont tal-inkonsistenza tal-attur, u l-mod pjuttost legger li bih xehed, tant li f'parti mid-deposizzjoni tax-xhieda tieghu ghal certi domandi li sarulu beda jghid li ma jiftakarx, it-Tribunal ma tantx jaghti affidabilita' lill-verzjoni tax-xhieda tieghu, b'mod partikolari f'dik il-parti taghha fejn dan jghid li waqaf biex jesplora t-triq ewlenija qabel dar. Anke jekk ghall-grazzja tal-argument wiehed jaccetta li l-attur tabilhaqq waqaf qabel dar, xorta wahda jirrizulta li ma zammx *a proper look-out* ghax *ex admissis* ma rax lill-pickup ghaddej fit-triq minkejja li kellu vizwali cara u fit-tul.

Ma jirrizultax li kien ghaddej bi speed eccessiv ghax jekk wiehed jikkunsidra l-inhawi fejn sehh l-incident bhala a *built-up area* l-limitu massimu ta' velocita' hija ta' hamsin kilometru fis-siegha mentri l-konvenut, tenut kont tal-

brake-marks (5 metri) kien qieghed isuq b'mhux iktar minn 30 kilometru fis-siegha.

Il-konvenut xehed li huwa lemah lill-vettura tal-attur hierga meta huwa kien ghadu biswit it-trakk kbir ipparkjat fuq in-naha tax-xellug tieghu, u li applika l-brejk mill-ewwel. Dan huwa kkorroborat jekk wiehed iqabbel ir-ritratti esibiti mal-iskizz. Il-brake-marks jibdew fuq in-naha l-iktar vicina lejn il-kantuniera tat-trakk ipparkjat, u l-konvenut ghafas il-brakes qabel, u cioe' wiehed irid izid hames metri ohra ghat-*thinking distance.* Huwa minnu, kif fil-fatt huwa ammess mill-istess konvenut, li huwa spicca fin-naha l-hazina tat-triq izda meta lemah lill-attur gej u applika l-brejk, il-konvenut kien, jekk wiehed jaghmel prolungazzjoni tal-brake-marks, fuq ix-xellug tieghu tat-triq isuq magemb it-trakk bit-trailer ipparkjat, twil 12-il metru.

F'din il-kawza, jidhol il-punt importanti tad-drittijiet u obbligi rispettivi tal-main road user u tas-side road user, li ta' spiss jifforma argument fil-kitba tal-awturi tal-ligi u l-gurisprudenza; L-awturi (Gibb,Mahaffy & Dodson, u Charlesworth) jiccitaw decizjonijiet tal-Qrati Skoccizi (Court of Session) li huma l-*loci classici* in materja. Ir-riassunt ta' dawn iddecizjonijiet jista' jsir fil-principji segwenti:

*1. A driver approaching a main road from a side road must have his vehicle under such control as to be prepared for any traffic encountered there (Mc Andrew v Tillard). When coming from a side road into a main road, the driver of a vehicle should select such a moment as will allow him to enter the main road with safety (Charlesworth).*

*2. It is the duty of side road traffic to give way to traffic proceeding along the main road (Robertson v Wilson).*

*3. Caution from the main road user is also called for at these junctions.* Ara wkoll Charlesworth li jghid *"But whilst there is this duty on vehicles coming from the side road, it*

*is also the duty of vehicles on the main road approaching a side road to do so with caution".*

*3. The duty of a driver whose course is calculated to disturb the ordinary stream of traffic on a road is of a higher order. The more risky and difficult the manoeuvre is, the greater the duty incumbent on the driver. In the sense, therefore, that turning out of a side-road into a main road is more difficult than continuing a main road, the side-road's driver's responsibility is higher (M'Nair v Glasgow Corporation; u Hutchinson v Leslie).*

*4. The actual precautions called for in any particular situation are a practical question, and depend on the facts of the particular situation (M'Nair v Glasgow Corporation).*

Dawn il-principji huma riflessi fil-ligi Maltija. Skond Regolament numru 76 tar-Regolamenti tal-1994 Dwar il-Vetturi bil-Mutur (A.L. 128 tal-1994): Triq principali hi dik li t-traffiku kollu li jkun ghaddej minnha jkollu d-dritt tal-moghdija u t-traffiku u t-toroq kollha li jaghtu ghaliha ghandhom jaghmlu l-wisa' lil dak tat-triq imsemmija hawn fuq, izda, b'danakollu, id-driver ta' kull vettura bil-mutur sew fi triq principali jew sekondarja ghandu joqghod attent il-hin kollu u ghandu jiehu l-prekawzjonijiet kollha mehtiega f'kull kantuniera. Skond paragrafu 213 tal-Kodici Ghat-Traffiku fit-Triq, 2001:

F'salib it-toroq jew ghaqda ta' triq principali ma' triq sekondarja, it-traffiku fit-triq sekondarja ghandu jaghti ddritta lit-traffiku li jkun ghaddej fi, jew li jkun hiereg mit-triq principali. F'Il-pulizija vs Anthony Galea (Appell Kriminali, 5 ta' Settembru 1953 Vol XXXVII.iv.1137) l-Imhallef William Harding hekk ikkonkluda wara studju *funditus* dwar l-obbligi rispettivi tal-main u side road users:

*Ghalhekk, fis-sistema Malti, is-side road user ghandu l-obbligu li jcedi ghat-traffiku fil-main road, ghandu l-obbligu li jesplora tajjeb il-main road qabel ma johrog fiha, ghandu l-obbligu li jimxi dead slow u sahansitra jwaqqaf biex u*

*sakemm jaccerta ruhu li jista' johrog bla hsara. U l-main road user ukoll ghandu joqghod attent fil-cross roads; imma il-grad ta' diligenza li tinkombi lilu hu ferm inqas, ghax hu ma jkunx qieghed jiddisturba l-kors tat-traffiku, imma jkun miexi fuq triq dritta.*

Fic-cirkostanzi partikolari ta' dan il-kaz, fid-dawl tal-principji dottrinali u gurisprudenzjali suesposti, jidher li l-incident gie pprovokat principalment mill-manuvra tal-attur li kien hiereg minn triq laterali bla ma zamm *a proper look-out* filwaqt li l-konvenut jahti wkoll ghall-incident ghax messu zamm iktar lejn ix-xellug tat-triq huwa u joqrob lejn it-triq laterali, ghalkemm il-htija tal-konvenut hija fi grad ferm inqas minn dik tal-attur. Ir-responsabilita' tal-incident ghandha tigi spartita kwantu ghal 4/5 lill-attur u 1/5 lill-konvenut.

Ghaldaqstant dan it-Tribunal jaqta' u jiddeciedi billi jilqa' t-talba tal-attur kif dedotta fl-avviz tat-talba; limitatament ghas-somma ta' LM81.90c. Spejjez inkluzi dawk tal-ittra interpellatorja t'Ottubru 2003 jigu sopportati 4/5 mill-attur u 1/5 mill-konvenut.

**< Sentenza Finali >**

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