MALTA

QORTI CIVILI
PRIM' AWLA

ONOR. IMHALLEF
GEOFFREY VALENZIA

Seduta tal-31 ta' Mejju, 2004

Citazzjoni Numru. 445/1997/1

Fiona Pirotta

Vs

George Johnson

Il-Qorti.

Preliminari

Rat **l-att tac-citazzjoni** li permezz taghha gie premess illi fit-30 ta' Ottubru, 1994, filwaqt illi l-imsemmija attrici Fiona Pirotta kienet qieghdha fit-triq hdejn il-karozza, li dak il-hin kienet ipparkjata, tal-habiba taghha, l-konvenut illi f'dak il-hin kien qieghed isuq il-vettura tal-marka Skoda, numru ta' registrazzjoni C-1784, baqa' diehel bi *speed* qawwi bl-

imsemmija karozza tieghu fuq l-attrici u kkawza ingurji serji lill-istess attrici.

Premess minhabba tali ngurji, l-imsemmija attrici kienet ghal kollox inkapaci illi tahdem ghal perjodu ta’ zmien u di piu’, l-istess attrici baqghet issofri minn dizabilita’ permanenti u dan skond kif giet iccertifikata minn diversi tobba illi ezaminawha.

Premess ghalhekk, l-istess attrici sofriet u qeghda ssofri danni ngenti minhabba l-incident stradali fuq imsemmi.

Premess ghal dan l-incident u ghad-danni konsegwenzjali sofferti mill-attrici huwa responsabbli l-istess konvenut billi l-istess konvenut kien qieghed isuq bi traskuragni, imperizja u nuqqas ta’ osservanza tar-regolamenti tat-traffiku.

Premess illi nterpellat jaghmel tajjeb ghad-danni minnu kkawzati, l-konvenut baqa’ inadempjenti.

Tghid l-attrici ghaliex m’ghandhiex din l-Onorabbli Qorti ghar-ragunijiet premessi:

1. Tiddikjara lill-konvenut unikament responsabbli ghall-incident tat-30 ta’ Ottubru, 1994, fuq imsemmi, u ghad-danni kollha konsegwenzjali sofferti mill-attrici.

2. Tillikwida dawn id-danni sofferti mill-attrici, previa okkorrendo bl-opera ta’ periti u esperti nominandi.

3. Tikkundanna lill-konvenut sabiex ihallas lill-attrici, in linea ta’ danni, dik is-somma illi tigi hekk likwidata minn din l-Onorabbli Qorti.

Bl-ispejjez, komprizi dawk tal-ittri ufficjali tat-18 ta’ Lulju, 1996 u bl-imghax legali sad-data tal-pagament effettiv kontra l-konvenut illi huwa ngunt ghas-subizzjoni.

Rat id-dikjarazzjoni ta’ l-attrici a fol. 3 tal-process;

Rat **in-nota ta’ l-eccezzjonijiet tal-konvenut** a fol. 14 tal-process fejn eccepixxa:

1. Illi fit-30 ta’ Ottubru, 1994 huwa ma kien involut f’ebda incident stradali ma’ l-attrici kif qed jigi allegat minnha.

2. Illi stante li huwa ma kienx involut f’ebda incident, kif ukoll billi jirrizulta li l-attrici mhiex qed tbati minn l-ebda debilta’ ta’ natura permanenti bhala konsegwenza tal-allegat incident, l-ebda ammont ma huwa dovut lill-attrici in linea ta’ danni.

3. Salv eccezzjonijiet ohra.

KONSIDERAZZJONIJIET

Min laqat lill-attrici

Il-konvenut xehed u qed jissottometti li fid-data ta’ l-incident hu ma laqat ebda persuna. Dak in nhar fil-bajja ta’ San Gorg kien hemm hafna nies mexjin fit-triq u vetturi pparkjati fuq iz-zewg nahat tat-triq, ghalhekk hu kellu jsuq bil-mod hafna. Kieku laqat lil xi hadd kien jinduna u kien jieqaf minnufih.

Hu ssottometta li l-ebda persuna li kienet prezenti ma’ l-attrici, u lanqas l-istess attrici, ma raw il-vettura tieghu gejja u tolqot lill-attrici. L-attrici ma gabet l-ebda prova konklussiva li hu kien responsabbli ghall-incident in kwistjoni.

Tikkunsidra

Dwar kif il-pulizija waslu ghall-konvenut, ingabet prova li dak il-hin ta’ l-incident kien hemm certu turist Maag Holiver li ra l-karozza tal-konvenut tolqot lill-attrici u lil Wayne Studley u dan hadlu n-numru u ghaddih lill-Pulizija. Dan gie konfermat mis-Surgent 508 Francis Bezzina. Jidher li kien hemm nuqqas ta’ qbil dwar jekk Raymond Zammit ukoll kienx ghadda n-numru lill-Pulizija, izda jidher li fil-fatt li kien il-Germaniz li ghaddha n-numru

lill-Pulizija. Anke Wayne Studley irnexxilu jiehu n-numru tal-vettura tal-konvenut. Dan u Petra Bonello raw karozza Skoda sejra minn fuq il-post ta' l-incident. Inotre l-konvenut stess ma cahadx li hu kien ghadda mill-bajja dak in nhar f'dak il-hin izda skond hu, laqat biss gebla u mhux persuna. Effettivament hu baqa' sejjer kontra l-*one way* kif rawh in-nies fuq il-post.

Responsabilita'

Il-konvenut bla pregudizzju ghas-sottomissjoni tieghu li ma kienx laqat lill-attrici, ssottometta li anke kieku, l-incident gara tort ta' l-attrici billi dina harget mill-karozza li kienet ipparkjata fejn il-bahar ghalhekk meta harget giet fit-triq u ma hadet l-ebda prekawzjonijiet biex taccerta ruhha li setghet tohrog mill-vettura minghajr ma tikkreja perikolu ghat-traffiku li kien ghaddej fit-triq. Skond hu, l-attrici, li kellha vizwali fit-tul, kellha l-obbligu li thares sewwa qabel tohrog u taccerta ruhha li tista' tohrog minghajr perikolu ghaliha u ghall-utenti tat-triq. Skond il-konvenut l-attrici ma haditx dawn il-prekawzjonijiet meta harget mill-karozza u ntlaqtet appena harget mill-karozza.

Fuq kif gara l-incident xehdet l-attrici u Wayne Studley.

Wayne Studley xehed li: "He was with his back to the car and was going to proceed up the road. He had only taken a step or two from the car from which he alighted. Fiona was behind him when she was hit. He did not see her being hit…. . When he stepped out of the car and the moment he was hit, only a few seconds passed".

Fiona Pirotta xehdet hekk: "I had just stepped out the front passenger seat of the car and had closed the car door. I was standing alongside the car, facing the hill leading towards Paceville, waiting for Miss Bonello and Wayne Studley.. I had my back to traffic approaching from the San Gorg area. I had been in this position for a very short while (approx. a minute) when suddenly I heard the screeching of tyres. The next thing I knew was that I was hit sharply in the back and thrown forward".

Fuq kontroezami wiegbet li: “When she got out of the car, she immediately turned around to close the door. She did not remember seeing the car coming when she came out of the car. There was no traffic when she came out. She heard the screeching of tyres and the accident happened. A couple of seconds had passed and she was hit. She just closed the door of the car and was turning towards Wayne when the car hit her. The car was not hit. She intended walking immediately to safety”.

Tikkunsidra

Illi mill-provi prodotti jirrizulta li l-incident ma garax kif qed jippretendi l-konvenut cjoe appena l-attrici harget mill-karozza, imma hija kienet diga’ lahqet harget mill-karozza, ghalqet il-bieb u bdiet idur jew daret biex tibda miexja lejn Paceville wara Wayne Studley u tidhol fil-gemb biex tevita l-perikolu meta ntlaqtet minn wara mill-karozza tal-konvenut li mbaghad baqa’ sejjer. Kollox gara f’temp ta’ ftit sekondi.

Kif xehed il-konvenut dak in nhar kien hemm hafna karozzi pparkjati u nies mexjin fit-triq u ghalhekk kien dover tieghu li joqghod aktar attent u jsuq bi *speed* baxx hafna.

Kieku l-incident gara kif qed jallega li gara l-konvenut, cjoe li l-attrici harget ghall-gharrieda minghajr prekawzjoni mill-karozza, kieku hu kien l-ewwel jolqot il-bieba tal-karozza u mhux jolqot lill-attrici minn wara.

Il-konvenut kellu vizwali fit-tul u fil-fatt kien qed jara n-nies fit-triq u jekk laqat lill-attrici dan ghamlu ghax ma kienx qed izomm *a proper look out*.

“Ma hemmx dubbju li *pedestrian* huwa ntitolat ghall-ezercizzju ta’ *reasonable care* mill-parti tad-*drivers*, anke meta jinzlu mill-bankina u jkunu fil-*carriageway*, u ghalhekk il-fatt li *pedestrian* kien fil-*carriageway* ma jezonerax lid-*driver* mill-htija, jekk dan id-*driver* ma jkunx uza *reasonable care*”. App Krim P vs C Demicoli Vol 37 p 4 p 1157.

"M'hemmx prezunzjoni li *pedestrian* ghandu dejjem ragun. Imma lanqas m'ghandu jitqies bhala ntruz". App Civ. Bongailas vs Mercieca Vol L1 p 15.

"When pedestrians are walking near the kerb on the near side pavement, a safe margin should be left available in case they suddenly step out into the road". M.V.R No. 63 ; Pul vs Hoare Vol 40 p 1297.

Ghalhekk il-Qorti tikkonkludi li l-incident gara unikament tort tal-konvenut li ma kienx qed izomm *proper look out* u ghadda vicin wisq mal-karozzi pparkjati fuq ix-xellug tieghu u n-nies li kien hemm magemb dawn il-karozzi.

Danni pretizi mill-attrici

Permanent Disability

Skond l-attrici *she is suffering from spinal complaints stemming from a suspected hairline neck fracture and a severe whiplash injury. This has left her with a permanent disability and is still affecting all areas of her life. Her medical condition has hardly improved. This disability has affected her work and her lifestyle.*

Rapporti medici

L-attrici pprezentat rapport mediku ta' Dr.A.Galea Debono (fol. 83) u Dr. Charles Grixti. (Dok. B a fol. 8) u t-tnejn tawha 8% permanent disability billi hija sofriet "a whiplash injury and a head injury… Her symptoms are expected to remain permanent, in view of their duration as well as lack of response to medical treatment" (fol. 84).

Il-konvenut ipprezenta rapport mediku *ex parte* minn Dr.Fredrick Zammit Maempel li ezamina wkoll lill-attrici u sab li "there is no objective clinical or radiological evidence of disability. Mrs.Pirotta's symptoms should settle in time. In my opinion, she has suffered no permanent disability as a result of the accident in

question”. (fol. 18). Ara wkoll l-ispjegazzjoni li tah tar-rapport tieghu a fol. 370 *et seq*.

Il-Qorti kienet innominat lil Dr.Anthony Bernard (ara fol. 68). Dan ipprezenta r-rapport tieghu a fol. 137 fejn sab li “Ms Pirotta suffered musculo-ligamentous injury to her neck and back following the road accident in October 1994. This may have induced some degree of soft tissue scarring and persistent stiffness experienced by the patient, although there is minimal objective evidence of significant derangement in the musculo-skeletal system. I therefore rate her permanent disability at 2%”.

L-attrici kienet talbet in-nomina ta’ periti addizzjonali (fol. 144), li gew nominati (ara fol. 145) u pprezentaw ir-rapport taghhom a fol. 156. Huma kkonkludew li l-attrici “obectively, there were certain deficiencies eg. stiffness and pain in neck and back movements, left scapulo-thoracic crepitus and decreased sensation on L4/5 dermatones in the left leg. There was also slight winging of the left scapula. Not very gross but present….Since 7 years have passed from the date of the accident, she will probably have a residual disability. Time does not seem to have healed her”.

Il-Periti addizzjonali xehdu li waslu ghall-konkluzzjoni li jaghtuha 10% fuq kriterji soggettivi u anke kriterji oggettivi. Huma mxew fuq kriterju ta’ ezami kliniku u fuq is-sintomi tal-pazjenta u x’gara minn hajjitha.

Tikkunsidra

L-artikolu 681 tal Kap. 12 jistabilixxi li l-Qorti mhix marbuta li taccetta l-konkluzzjonijiet tar-rapporti tal-periti kontra l-konvinzjoni taghha nfisha. Gie stabilit ukoll mill-Qrati taghna li “r-rapport tekniku huwa kontrollabbli mill-gudikant bhal kull prova ohra” N.Ellul vs Mary Caruana P.A. 28.2.2002.

Il-Qorti ezaminat ir-rapport ezibiti, u rat ix-xhieda ta’ Dr.F.Zammit Maempel a fol. 370 *et seq* fejn dan spjega ghaliex hu kien ta’ lill-attrici 0% disability, u fejn ma jaqbilx

mar-rapport tal-periti addizzjonali. Dr.Zammit Maempel spjega li skond l-X Rays li hu ezamina, (kif ezaminawhom il-Periti addizzjonali) fit-30 ta' Ottubru, 1994, l-attrici wriet ftit spazmu, u jumejn wara meta hadu l-*flexion extension views* hemm *full range of flexion extension*. Meta mbaghad giet ezaminata xi sentejn wara l-incident minnu sab li kien hemm *restriction tan neck movement*. Ghalih ma kienx hemm *objective evidence* biex jissustanzja dana. Semma wkoll li ma kienx hemm *objective evidence* ghal nuqqas ta' *sensation* fil-*lower limb*, kif ukoll li l-attrici wara l-incident ma kinitx hadet *treatment* ghal spallitha. Inoltre l-periti addizzjonali sabu li kien hemm bhal artrite f'rukkell minnhom, sabu li dan kien antik, izda fl-istess hin ghaddewh bhala *disability*.

Il-Qorti minhabba l-punti validi sollevati mit-tabib Zammit Maempel u minhabba d-divergenza mhiex zghira li hemm bejn id-dizabilita li nghatat mid-diversi tobba - 0-2-8-10, kif ukoll minhabba l-fatt li l-konkluzzjoni tal-periti addizzjonali fuq *findings* oggettivi hija bazata fuq fatturi kemm oggettivi kif wkoll soggettivi, tasal ghall-konkluzzjoni li fic-cirkostanzi l-Qorti m'ghandiex tiehu l-massimu ta' percentagg moghti mill-perit addizzjonali ta' 10%, imma 8%.

Damnum emergens

L-attrici qed tippretendi LM 22,848.00 bhala *damnum emergens*. Dawn huma maghmula hekk:

Lm543.53 - Dok FP3 fol. 90 sa 105 ghall-medicini u medikamenti.

Lm586.53 - Dok FFP3 fol. 174 sa 237 ricevuti ulterjuri ghall-istess.

Lm 280.00 - Telf ta' xoghol minhabba waqfien FFP6 a fol. 220.

Lm862.50 - Xoghol fid-dar ghat-twittija ta' tarag FFP9 a fol. 225.

Lm795.00 u Lm200.00 - - Materjal ortopediku specjali ghall-kundizzjoni ta’ l-attrici FFP10 a fol. 226.

Lm280.86 - Ricevuti ohra.

Lm19,300.00 - Spejjez ghall- medicini u *treatment* kalkolati fuq 20 sena cjoe Lm965 x 20. Id-Lm965 huma komposti minn Lm265.90 fis-sena ghall-medicinali u Lm700 ghal treatment.

Tikkunsidra

Dwar il-*kwantum*, hu principju li “in tema ta’ kompensazzjoni ta’ danni l-attur ghandu kemm jista’ jkun jigi mqieghed fil-pozizzjoni li hu kien ikollu kieku ma gietx kagjonata l-hsara” (“John Tufigno –vs- Joseph Micallef noe”, Appell Civili, 23 ta’ April 1965).

“Il-kwestjoni ta’ x’inhu ragjonevoli li jaghmel id-danneggjat biex jimmitiga l-hsara hi kwestjoni ta’ fatt li ghandha tigi konsidrata fic-cirkostanzi ta’ kull kaz partikolari u l-oneru tal-prova f’dan ir-rigward specifiku jaqa’ fuq il-konvenut” – “Joseph Aquilina –vs- Emmanuele Schembri”, Appell Civili, 24 ta’ Jannar, 1969.

“It is the duty of the plaintiff to mitigate the damages, by doing whatever is reasonable to keep down the loss as far as he can. The Plaintiff cannot recover damages for an aggravation or prolongation of his injuries which is due to his own willful act or neglect”. (Munkman’s Damages for personal injuries and death).

Tikkunsidra

Il-Qorti qed taccetta l-kontijiet u ricevuti ghall-medicini u *treatment* li l-attrici hadet. Billi l-attrici xtrat il-post wara l-incident il-Qorti hi tal-fehma li l-ammont ta’ Lm862.50 ghal xogholijiet fid-dar ghat-twittija tat-tarag mhux accettabili, billi l-attrici kienet taf x’sejra tixtri u messha xtrat dak li kien addattat ghaliha. Lanqas ma tista taccetta l-ispejjez kollha ghall-materjal ortopediku li hija xtrat. Kif xehed

Dr.Sciberras mhux kull materjal ortopediku hu neccessarju u ndispensabbili f'kazijiet bhal dawn. *Arbitrio boni viri* l-Qorti qed takkorda lill-attrici l-ammont ta' Lm250 biss. (Bhala persuna b'dizabilita' ara fol. 348 - inghatat Lm500 *subsidy on special bed*). Finalment ghal dak li jirrigwarda l-ammont ta' Lm19,300, lanqas dana mhu accettabli bhala *damnum emergens*. Ma giex pruvat li l-attrici ser ikollha bzonn kura regolari kull sena ghal ghoxrin sena u taghmel dawk l-ispejjez kollha.

Lucrum Cessans

Bhala lucrum cessans l-attrici qed tippretendi s-somma ta' Lm45,000 mahduma hekk.

Qliegh		Multiplier		Dizabilita'	Total
Lm15,000	x	30 sena	x	10%	Lm45,000

Dwar l-ammont ta' qliegh l-attrici hadmet fuq paga ta' Lm15,000 fis-sena biex jirrispekkja l-fatt li hi bhala kwalifikata biex tahdem l-Ingilterra. Skond l-attrici l-qliegh ghandu jirrispekkja dana u jigi kalkolat fuq salarju fl-Ingilterra. Il-Qorti pero' ma taqbilx ma dana r-ragunament ghax kieku minn Mejju 2004 'l quddiem kull cittadin Malti, ghax jista' jmur jahdem barra, jista' jibbaza l-paga tieghu fuq paga Ewropeja. Inoltre fil-kaz in ezami mhemmx prova li l-attrici qatt hadmet bi qliegh barra. Il-Qorti ghalhekk ser tahdem il-qliegh ta' l-attrici fuq salarju li kienet qed taqla' hawn Malta.

Skond id-dokumenti FFP4 u FFP5 (fol. 218 u 219) is-salarju fl-2001 ta' l-attrici kien ta' Lm6,731.62. Jekk jigi meqjus l-gholi tal-hajja u z-zidiet li jinghataw minn sena ghal ohra s-salarju ghandhu jigi kalkolat fuq medja ta' Lm7,000 fis-sena.

Dwar dizabilita' il-Qorti diga' esprimiet il-fehma li ghandha tkun 8%.

Kwantu ghal tnaqqis ghall *lump sum payment* il-Qorti taqbel ma l-attrici li minhabba t-trapass taz-zmien (1994

incident - 2004 sentenza prima istanza) m'ghandu jkun hemm l-ebda tnaqqis. Fil-kawza Caruana vs Camilleri PA JSP 5/10/93 u PA Desira vs Cassar 13/1/95 l-persentagg ta' 20% ghall-*lump sum payment* kien gie ridott b'rata ta' 2% kull sena mid-data ta' l-incident.

L-attrici hadmet fuq *multiplier* ta' 30 sena. Hi twieldet fl-1967 u ghalhekk fid-data tal-incident hija kellha 26 sena. *Multiplier* jigi aggustat sabiex jirrifletti r-realta' odjerna, u aspettativa iktar ekwa u konformi mal-gustizzja effettiva, tenut kont dejjem tac-cirkostanzi kollha tal-kaz in partikolari inkluz ic-*changes* and *chances* tal-hajja b'dan li l-Qorti ma tkunx marbuta ma xi massimu prestabbilit. Fil-kaz in ezami l-Qorti ser tahdem fuq *multiplier* ta' 25 sena.

Qliegh		Multiplier		Dizabilita'	Total
Lm7,000	x	25 sena	x	8%	
Lm14,000					

Damnum Emergens	Lm 1,940.92
Lucrum Cessan	Lm14,000.00
Total	**Lm15,940.92**

DECIZJONI

Ghal dawn il-motivi;
il-Qorti tiddeciedi
billi tiddikjara lill-konvenut unikament responsabbli ghall-incident tat-30 ta' Ottubru, 1994, fuq imsemmi, u ghad-danni kollha konsegwenzjali sofferti mill-attrici;

Tillikwida dawn id-danni sofferti mill-attrici fl-ammont ta' hmistax il-elf, disa' mija u erbghin lira Maltin u tnejn u disghin centezmi (Lm15,940.92)

Tikkundanna lill-konvenut sabiex ihallas lill-attrici, in linea ta' danni, din is-somma hekk likwidata.

Bl-imghax mid-data tas-sentenza

Spejjez tlett kwarti ghall- konvenut u kwart ghall-attrici.

< Sentenza Finali >

---------------------------------TMIEM---------------------------------