



QORTI TA' L-APPELL

**ONOR. IMHALLEF
PHILIP SCIBERRAS**

Seduta ta' l-14 ta' Lulju, 2004

Appell Civili - Ghawdex Numru. 119/2003/1

Peter Paul Azzopardi

vs

Anthony Cauchi

Il-Qorti,

Fis-17 ta' Dicembru, 2003 it-Tribunal ghal Talbiet Zghar (Ghawdex) ippronunzja s-segwentii sentenza fl-ismijiet premissi:-

“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

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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 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 seh 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.

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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 gej fuqha.

Dwar l-uzu tal-indicator, ippronunzjat ruhha diversi drabi l-gurisprudenza:

Hekk per ezempju 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 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 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 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

¹ Liability in Motor Cases, page 29

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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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 qiegħed joqrob lejn punt fejn kien hemm side-street li l-vettura ta' quddiemu setgħet tkun sejra tidhol fiha; Infatti l-Highway Code jikkellem 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-segħenti 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 zgħur, 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 seħħ 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 wieħed 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 seħħ l-incident għax din il-velocita' ma ppermettietx lill-konvenut jieqaf tempestivament.

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-incident.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-sewwieqa 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-sewwieqa tal-karozza kienet responsabbli kwantu ghal zewg terzi.

F'kaz iehor,⁵ l-attur, waqt li kien qieghed isuq il-karozza tieghu fi Triq Borg Olivier, Mellieha, u kien qieghed 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

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

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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 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."

Il-konvenut appella minn din is-sentenza bl-ilment illi t-Tribunal ghamel apprezzament zbaljat tal-provi. Huwa jikkontendi illi l-gudizzju tat-Tribunal gie bazat fuq fatti li

ma jezistux u lanqas jirrizultaw mill-provi. Hekk isostni illi mill-provi mkien ma jirrizulta li hu kien qed jaghmel manuvra ta' sorpass izda kienet il-manuvra inaspettata tal-kontraenti l-ohra li ssorprendietu u hu ttanta jaghmel azzjoni evasiva.

Il-fatti li taw lok ghall-incident awtomobilitsiku f'dan il-kaz jidher li huma sew rikapitulati fis-sentenza appellata u mhux il-kaz li jerghgu jigu mtennija. Dak li jokkorri jigi ezaminat hi l-kondotta tas-sewqan taz-zewg konducenti, inter alia, l-manuvra tas-sewwieqa Margaret Azzopardi meta giet biex tikser fuq il-lemin biex tmur l-iskola tax-Xewkija, u l-ispeed li bih kien qed isuq il-konvenut appellant.

Biex wasal ghar-responsabilita` ghas-sinistru t-Tribunal, fuq il-provi attendibbli, askriviha ghal dawn iz-zewg fatturi:

- (a) Is-sewwieqa Margaret Azzopardi ma zammetx "proper look-out" u kienet indeciza fil-manuvra li ghamlet;
- (b) Kwantu ghall-konvenut, apparti l-konsiderazzjoni tal-ispeed, dan kien negligent fil-manuvra tas-sorpass li ghamel.

Din il-Qorti tistqarr mill-ewwel illi ma tistghax toqghod ghal kollox b'affidament fuq dak ritenut mit-Tribunal fir-rigward tas-sewqan tal-konvenut appellant u lanqas fuq il-mod kif, imbaghad, l-istess Tribunal ghogbu japporzjona l-htija ghall-akkadut.

Mir-rizultanzi processwali din il-Qorti tara li l-kawza prossima tal-incident kienet il-mod inkonsult kif id-driver Margaret Azzopardi ghamlet il-manuvra taghha u invadiet il-passagg ghall-konvenut appellant li kien gej minn warajha ghad-dritt. L-analizi tat-Tribunal illi l-konvenut appellant ittanta, jew kellu l-intenzjoni jaghmel sorpass hi wahda zbaljata u alkwantu azzardata.

Fil-fehma tal-Qorti l-element krucjali li kellu ndubbjament jitqies bhala indikatur qawwi ta' kif avvera ruhu l-incident kienet il-manuvra li Margaret Azzopardi ghamlet meta

indecizament kisret u qasmet orizzontalment il-passagg minn fejn kien gej l-appellant. Manuvra bhal din kienet certament timporta kawtela kbira u attenzjoni massima. Hi kellha tassikura li kienet f'qaghda li l-manuvra tibdiha u titterminaha bla xkiel ghal konducenti ohra li jkunu gejjin minn warajha. Kellha obbligu li mhux biss tippresta attenzjoni izda fuq kollox prudenza biex jekk ikun il-kaz ma tohloq l-ebda ostakolu u taghti precedenza lil min ikun qed isegwiha. Fuq kollox hi kellha l-obbligu, li kieku verament harset kif issostni, li taccerta ruhha mill-intenzjonijiet tal-konvenut.

Sinjifikanti hafna dak li xehdet din is-sewwieqa. “Xeghelt l-indicator biex nikser fuq il-lemin, rajt li ma kien gej hadd minn quddiemi u minn warajja u ksirt. Kif ksirt nisma brake warajja, kemm dort dahal go fija gon-nofs tal-karozza ezatt” (fol 12).

Huwa dezumibbli minn din ix-xhieda illi certament li din is-sewwieqa ma setghetx tapprezza x'kienet l-intenzjoni tal-konvenut ghaliex kif konfessat skjettament minnha hi tiddikjara li ghalkemm harset fid-direzzjoni minn fejn kien gej il-konvenut hi ma ratux u kien ghalhekk li kisret ghal fuq il-lemin taghha.

Issa l-Qorti ma tistax ma tinnotax illi kif ukoll ammess mill-istess Margaret Azzopardi, “warajja t-triq hi dritta u hemm vizwali fit-tul” (fol 38). Zgur allura li l-vizwali taghha kienet diskreta, u diskreta hafna, ghaliex certament kieku harset u harset sew hi ma setghetx ma tarax lill-konvenut gej billi mhux mistenni li l-vettura ta' dan waqghet mill-ajru. Ghall-Qorti, l-fatt li ma ratux ma jistghax hlief ifisser li jew ma harset xejn qabel giet biex iddur, jew jekk harset, ma harsetx kif kellha thares.

Jista' jigi aggunt illi d-daqqiet infushom subiti mill-car misjuqa minn din Margaret Azzopardi huma illustrattivi hafna ta' kif sehhet id-dinamika tal-incident. Kif deskritt mill-attur (fol 11) d-daqqiet sehew fuq in-naha tax-xufier fiz-zewg bibiet, il-pilastru u n-nofs tal-karozza. Kombinat ma' dak rakkontat mill-imsemmija Margaret Azzopardi illi kif kisret sar l-impatt fin-nofs tal-vettura taghha, ghandu

necessarjament ifisser illi l-iskontru sehh proprju fil-mument li din daret. L-ispot of impact indikat mis-surgent John Attard fl-iskizz tieghu (fol 32) huwa ndikattiv bosta ta' din il-kostatazzjoni u konferma ta' kif din is-s-sewwieqa ostakolat il-passagg ghat-traffiku gej minn warajha.

F'dan kollu din il-Qorti ma tara l-ebda tentattivi ta' sorpass da parte tal-appellant izda pjuttost il-krejjazzjoni ta' emergenza subitanea ghalih bil-manuvra tas-sewwieqa Azzopardi li certament issorprendietu. Il-fatt tal-brake marks hu spjegat mill-fatt illi l-appellant intebah li din 'ex abrupto' ser tostakolah u kien ghalhekk li ghafas il-brakes anke jekk b'hekk ma lahaqx evita l-impatt.

Kwantu ghall-fatt tal-indicator sewwa gie ravvizat mit-Tribunal illi dan wahdu ma kienx bizzzejjed biex jiskansa lill-mart l-attur mill-htija. Kif drabi ohra ntqal "min johrog l-indicator, ikun qed jaghti, kif huwa obligat, avviz tat-traffiku ta' warajh u ta' quddiemu, imma ma jistax, sempliciment ghax hareg l-indicator, jaghmel li jrid, jikser il-priorita li jaghtu r-regolamenti u jaqleb ir-rule of the road favur tieghu. Is-sinjal ghall-ewwel ifisser illi tkun l-intenzjoni tad-driver li jaqsam it-triq, izda mhux bizzzejjed biex ikun jista' jaqsam" – "**Il-Pulizija –vs- F. Schembri**", Appell Kriminali, 26 ta' Gunju 1968.

Dan premiss, ir-responsabilita` tal-appellanti ma tirisjedix fil-fatt tas-sorpass stabbilit mit-Tribunal izda invece fl-ispeed, anke forsi mhux eccessiv, li bih kien qed jikkontrolla l-vettura tieghu. Konsiderati c-cirkostanzi konkomitanti tas-sewqan fl-abitat u in partikolari fil-vicinanzi ta' skola kien fid-dmir li jinnewtralizza dak il-'margin of safety' tant mehtieg ghal kull emergenza li tista' tingala`. Il-Qorti tara li f'dan biss hi l-kontributorjeta` ghall-incident da parte tal-appellant.

Hu l-kaz ghalhekk illi din il-Qorti tiddisturba sa certu punt l-apprezzament tal-provi li ghamel it-Tribunal u fuq kollox l-ispartizzjoni tal-htija li saret minnu. Billi kienet il-manuvra inkonsulta tad-driver Margaret Azzopardi l-kawza immedjata tal-incident din ghandha tbatu proporzjon akbar ta' htija minn dik tal-appellanti. Kienet din li holqot stat ta'

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emergenza ghall-appellant li, mbaghad, ikkontribwixxa ghall-iskontru bil-fatt tal-ispeed tieghu fil-kontingenzi fuq infissra. Il-Qorti tara li jkun aktar gust u ekwu illi gjaladarba l-manuvra azzardata tas-sewwieqa Margaret Azzopardi kienet l-element kontributor principali tal-habta, l-apporzonament tad-danni jigi distribwit kwantu ghal tliet kwarti ($\frac{3}{4}$) lis-sewwieqa Margaret Azzopardi u kwantu ghal kwart ($\frac{1}{4}$) lil-konvenut appellant.

Ghal dawn il-motivi din il-Qorti qed tilqa' l-appell interpost izda dan limitatament billi ssib lill-konvenut appellant responsabbli ghall-incident stradali 'de quo' fil-proporzjon tal-kwart ($\frac{1}{4}$) tal-htija. L-ispejjez gudizzjarji taz-zewg istanzi ghandhom jitbataw kwantu ghall-kwartu ($\frac{1}{4}$) mill-konvenut appellant u kwantu ghal tliet kwarti ($\frac{3}{4}$) mill-attur appellat.

Onor. Imhalled Philip Sciberras LL.D.

Deputat Registratur

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