MALTA

TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR DR.
PHILIP MANDUCA

Seduta tad-29 ta' Settembru, 2004

Talba Numru. 330/2004

Middle Sea Insurance Company Limited u din kif tinsab surrogata fid-drittijiet tal-assikurat taghha United Garage Limited skond il-polza u skond il-ligi u s-socjeta' Laferla Insurance Agency Limited bhala agent tal-istess Middle Sea Insurance Company Limited u dan ghal kull interess li ghandha u l-istess United Garage Limited

Vs

David Ellul

It-Tribunal

Ra l-Avviz li fih l-atturi talbu li l-konvenut ihallas is-somma ta' Lm298.17c (mitejn u tmienja u disghin lira Maltin u sbatax-il centezmu) lis-socjeta' attrici u s-somma ta' Lm72 (tnejn u sebghin lira Maltin) lis-socjeta' United Garage Limited jigifieri s-somma globali ta' Lm370.17c (tlett mija u

sebghin lira Maltin u sbatax-il centezmu) rapprezentanti danni wara ncident tat-traffiku kif spjegat fl-Avviz.

Ra r-Risposta li fiha l-konvenut cahad it-talba tas-socjeta' attrici stante illi l-incident in kwistjoni ma kienx tort tieghu izda gara unikament b'tort ta' terzi.

Ra d-dokumenti esebiti.

Ra r-*Road Accident Report* fejn Stephen Charles Coull id-driver tal-vettura EAK 725 assigurata mis-socjeta' attrici qal:

"While he was driving in Selmun Road Downhill towards St Paul's Bay car number HID 001 which was driving uphill crossed onto my side of the road and the collision occurred."

Fl-istess *Road Accident Report* il-konvenut qal:

"While he was driving in Selmun Hill towards Mellieha when he reached the curve he had to overtake two stationary cars which were involved in a traffic accident and he went onto the right lane and collided into car number EAK 725 which was driving downhill."

Sema' x-xhieda ta' Charles Galea *Claims Manager* mas-socjeta' attrici fejn esebixxa erba' ritratti li kienu mehuda minn Stephen Charles Coull ezatt wara l-incident.
Sema' x-xhieda ta' PS 538 Louis Cordina fejn ikkonferma r-*Road Accident Report*. Ighid illi l-vettura tal-konvenut kienet tressqet biex ighaddi t-traffiku u ghalhekk ma setax jaghmel skizz. Huwa qal li kien ra l-vettura tal-konvenut qabel ma tressqet. Huwa kkonferma li fl-istess gurnata kien hemm kollizjoni ohra ftit aktar 'l isfel minfejn gara dana l-incident. PS 538 Louis Cordina qal ukoll li l-karozza tal-konvenut kienet aktar 'il fuq mill-karozzi mahbutin kif ukoll kien *wrong side*. Ma nstab l-ebda *brake mark*. Ikkonferma li int u niezel ma stajtx tara fejn kienu dawn iz-zewg karozzi mahbutin, izda kien hemm bizzejjed spazju biex ighaddu zewg karozzi f'direzzjonijiet opposti.

Sema' x-xhieda tal-konvenut fejn ikkonferma dak li kien qal fir-*Road Accident Report*. Qal ukoll li kemm hu u kemm l-attur baqghu jsuqu wara l-impatt. Ellul ighid illi kien kwazi dahal fuq il-lane tieghu meta gara l-incident. Ikkonferma li qabel l-incident il-vettura l-ohra kienet il-hin kollu fuq is-side taghha.

Ikkunsidra

Illi d-danni m'humiex ikkontestati.

Illi mill-evidenza migbura minn dan it-Tribunal l-incident sehh meta kif stqarr il-konvenut stess huwa mar *wrong side* biex jissurpassa zewg karozzi li kienu nvoluti f'incident fit-telgha tal-Mellieha.

Illi paragrafu 184 tal-Highway Code jghid:

"Do not overtake at or when approaching a sharp corner or a bend or a brow of a hill."

Illi kif inhu ferm stabbilit fil-ligi u fil-gurisprudenza taghna sewwieq m'ghandux jipprova jissurpassa qabel ma jkun cert illi jista' jibda, jkompli u jtemm dik il-manuvra fiha nfisha perikoluza b'success u bla riskju ghalih u ghall-vetturi ohra. *(Elmo Insurance Services Ltd noe et Vs Edward Said Qorti ta' l-Appell sede Inferjuri 14/01/2004)*.

Il-konvenut kellu l-ostakolu fuq in-naha tieghu tat-triq u ghalhekk kellu l-obbligu li jara li jekk se jmur *wrong side* jara t-traffiku gej min-naha opposta. Illi l-incident gara fuq is-side minfejn kien gej l-assigurat tas-socjeta' attrici.

Illi ghalhekk il-konvenut huwa responsabbli ghall-incident in kwistjoni peress illi huwa kien li ma harisx ir-regoli tas-sewqan u li min-naha l-ohra ma rrizulta l-ebda htija kontributorja min-naha ta' Coull.

Ghaldaqstant it-Tribunal jilqa' t-talba attrici u jikkundanna lill-konvenut ihallas is-somma ta' Lm298.17c (mitejn u tmienja u disghin lira Maltin u sbatax-il centezmu) lis-socjeta' Middle Sea Insurance Company Limited u Lm72

(tnejn u sebghin lira Maltin) lis-socjeta' United Garage Limited, bl-ispejjez kontra tieghu.

< Sentenza Finali >

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