Kopja Informali ta' Sentenza

MALTA

TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
PHILIP MANDUCA**

Seduta ta' l-4 ta' April, 2005

Talba Numru. 1805/2004

Michael Cassar (I.D. Nru: 80580(M))

Vs

Frankie Darmanin

It-Tribunal

Ra l-Avviz li fih l-attur talab il-hlas ta' disa' mija w erbgha w erbghin lira Maltin u hamsa u tletin centezmu (Lm944.35c) rapprezentanti danni f'incident awtomobilistiku ghal liema ncident il-konvenut kien unikament responsabbli minhabba mprudenza, mperizja, negligenza u inosservanza tar-regolamenti.

Ra r-Risposta fejn il-konvenut qal li mhux responsabbli ta' dan l-incident.

Ra d-dokumenti esebiti.
Ra r-*Road Accident Report* fejn il-konvenut qal:

Qrati tal-Gustizzja

"Was proceeding along Triq Hal Tarxien, Gudja towards Gudja. In front of him there was an unknown vehicle and in front of the unknown vehicle there was vehicle number LCB 691. When he came near the place of the accident, he tried to overtake the unknown vehicle and at that moment the Suzuki put on the indicator to turn on the right. In doing so, the collision occurred."

L-attur qal:

"On the front, when he came near Ta' Imsaqfa Lane he wanted to turn on the right. He put the indicator on and the vehicle behind him stopped. While he was turning on the right, vehicle number LAI 912 came from behind, hit him on the front right mudguard. Due to the collision the vehicle turned on the left and finished overturned on the left side."

Ra x-xhieda ta' PS 1386 Anthony Agius fejn jikkonferma r-*Road Accident Report* u l-iskizz. Jikkonferma li m'hemmx *brake marks*.

Ra x-xhieda ta' l-attur fejn jikkonferma li qal fir-*Road Accident Report*. Jghid illi d-daqqa tieghu kienet fuq il-lemin bejn il-*mudguard* u l-bieba filwaqt il-hsara fuq il-vettura tal-konvenut kienet fuq ix-xellug quddiem. Jichad li ra lill-konvenut jaqbez xi karozza wieqfa. Izda jghid ukoll illi qabel l-incident ma rahx lill-konvenut.
Cassar jghid li kif saret il-habta kien diga' dar. Jikkonferma li xeghel l-*indicator* qabel ma ra li ma kien gej hadd mil-*lane* opposta u ghalhekk baqa' jdur.

Ra x-xhieda tal-konvenut fejn jghid illi l-vettura ta' quddiemu (Daewoo) ghamlet l-*indicator* sabiex tidhol fis-*side street* fuq ix-xellug taghha. Jghid illi kien diga' qabez din il-vettura meta sab lill-attur ma' wiccu.

Jichad illi mar *wrong side*. Jaqbel ma' l-iskizz.

Darmanin jghid li kien ghaddej bi *speed* ta' bejn erbghin u hamsin kilometru fis-siegha.

Jikkonferma li hekk kif qabez il-vettura ta' quddiemu sab lill-attur idur fuq il-lemin. Jghid illi ma setax jara l-vettura ta' Cassar minhabba li kien hemm id-Daewoo quddiemu.

L-**Artikolu 183** tal-Highway Code jipprovdi:

"Before overtaking give the appropriate signal, make certain that the vehicle you intend to overtake is aware of your intention."

L-**Artikolu 191** jipprovdi:

"Never overtake unless you are sure that you can do so without danger to yourself or to others."
Illi fil-kawza **Zammit Cutajar Vs Formosa (Appell Civili 26/6/1961)** gie ddikjarat li:

"Id-driver ta' karozza li jigi biex jissorpassa karozza ohra ghandu jkun zgur, qabel ma jaghmel dik il-manuvra, illi jista' jaghmilha b'sikurezza."

Min-naha l-ohra kien id-dover ta' l-attur li ried idur lejn il-lemin u jidhol fi Sqaq ta' Imsaqfa li jara li m'hemmx traffiku fuq il-lemin tieghu. Is-sewwieq li jkun se jdur fuq il-lemin ghandu d-dover:

"To ensure that there will be no traffic in the process of overtaking him as he makes his turn."

Dan gie kkonfermat f'diversi sentenzi – **Clarke Vs Aquilina 6/12/1977**; **Sciberras Vs Zammit 13/7/1978**; **Azzopardi Vs McCarthy 20/9/1978**; **Deguara Vs Mallia 25/1/1983**; **Gendrex Vs Vassallo 15/1/1988** u **T. Duca Vs E. Mifsud 15/6/1988** kollha tal-Prim' Awla tal-Qorti Civili.

It-Tribunal jaghmel referenza wkoll ghall-**Artikolu 85** tal-Highway Code li jikkonferma d-dover tas-sewwieq li:

"*Well before you turn at a junction, take full account of the position and movement of the following traffic. Signal*

your intention and, when safe to do so, take the appropriate position. Wait until there is a safe gap between you and any approaching vehicles before you complete a right turn…when changing direction you must invariably signal your intention to turn well in advance and make sure that it is safe to do so by looking in your mirror."

Ara wkoll **Buchanan (Liability in Motor Cases)** pagna 29:

"It became the duty of the driver to keep a look-out both in front and behind. He no longer complies with his duty unless, after giving the turning signal, he takes reasonable steps to satisfy himself that the following traffic has both seen and reacted to his signal, which if is submitted boils down to taking reasonable steps to ensure that there will be no traffic in the process of overtaking him as he makes his turn."

Illi l-attur qal li meta hares warajh ra karozza wieqfa. L-attur ma kienx ra l-vettura tal-konvenut qabel il-habta.

Illi f'dawn ic-cirkostanzi dan it-Tribunal se jsegwi s-sentenza fil-kawza **Dobler Vs Caruana (Appell 5/10/1998)** u jirritjeni li r-responsabbilta' ghall-incident mertu tal-kawza ghandha tigi allokata kwantu ghal zewg terzi (2/3) fuq il-konvenut u kwantu ghal terz (1/3) fuq l-attur.

Illi d-danni ma gewx ikkontestati.

Ghaldaqstant it-Tribunal jiddikjara li l-attur ghandu jbati terz (1/3) mill-ispejjez waqt li l-konvenut ghandu jbati z-zewg terzi (2/3) l-ohra u cjoe' l-ammont ta' sitt mija u disgha u ghoxrin lira Maltin u sebgha u hamsin centezmu (Lm629.57c) ghas-saldu tal-pretensjoni tieghu. L-ispejjez tal-kawza ghandhom jigu ssoportati kwantu ghal zewg terzi (2/3) mill-konvenut u terz (1/3) mill-attur. Jiddekorri l-imghax fuq l-ammont b'din is-sentenza kanonizzat mil-lum sad-data ta' l-effettiv pagament.

< Sentenza Finali >

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