MALTA

TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR DR.
PHILIP MANDUCA

Seduta tal-5 ta' Mejju, 2005

Talba Numru. 1854/2003

A.I.L. Limited
Numru tar-Registrazzjoni C-11156

Vs

Dionysius Tanti
Karta ta' l-Identita' bin-Numru 0660451(M)

It-Tribunal

Ra l-Avviz li bih is-socjeta' attrici talbet il-hlas ta' disa' mija u tlieta u sebghin lira Maltin (Lm973) rapprezentanti danni f'incident awtomobilistiku nkluz *loss of use* 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:

"Kont sejjer lejn San Pawl, il-coach ta' quddiemi kien qed isuq bil-mod hafna, ma rajtx vetturi ohra sejrin min-naha l-ohra, mort biex naqilghu u huwa kiser fuqi f'daqqa wahda, pruvajt nevitah izda xorta hbatna, kif ukoll nixtieq nghid li l-coach ma kellux indicator mixghul."

Marco Axisa bil-vettura JCY 868 qal:

"Kont hdejn is-St Peter's Garage, xghelt l-indicator biex nikser ghal Sqaq tax-Xama, rajt li mhux gejjin karozzi min-naha opposta u x'hin ksirt il-vettura baqghet diehla go fija."

Ra x-xhieda ta' PC 210 Salvatore Lagrasta fejn jikkonferma r-*Road Accident Report* u l-iskizz. Jikkonferma li l-vettura tal-konvenut hija kompletament *wrong side*.

Ra x-xhieda ta' Marco Axisa fejn jikkonferma li qal fir-*Road Accident Report*.

Ra x-xhieda ta' Leo Grech li huwa d-direttur tas-socjeta' attrici fejn jghid li kien mar fuq il-post ta' l-incident dakinhar u ha xi ritratti li huma esebiti. Jikkonferma li l-hsara fil-coach kienet mir-rota ta' quddiem lura f'nofsu. Jghid li s-socjeta' attrici ghamlet it-tiswija u Bonnici Insurance ghamel is-*survey* t'erbat ijiem *loss of use*. Jikkonferma li s-socjeta' attrici tikkalkula l-*loss of use* b'mija u hmistax-il lira Maltin (Lm115) kuljum, li jikkonsisti per ezempju f'diesel u paga tad-driver.

Ra x-xhieda ta' Dionysius Tanti fejn jghid illi dakinhar ta' l-incident kien hemm il-vettura JCY 868 miexja bil-mod. Jghid li meta ra l-coach tersaq lejn il-bankina fuq ix-xellug taghha, ra li mid-direzzjoni opposta ma kienx gej traffiku u

ghalhekk ghamel l-indicator u ghamel is-surpass tieghu. Tanti jghid li f'daqqa wahda l-coach kisret ghal fuq il-lemin tieghu u sar l-impatt. Tanti jghid ukoll illi ma kienx qed isuq b'velocita' qawwija kif fil-fatt jidher li m'hemmx *brake marks*.

Jaqbel ma' l-iskizz.

Jaqbel li meta ghamel il-manuvra ta' surpass kien aktar 'il barra min-nofs it-triq u ghalhekk kien *wrong side*. Jghid li dakinhar ta' l-incident kien sejjer dritt, fid-direzzjoni tal-Mellieha u mhux lejn Sqaq ix-Xama.

Tanti jghid li beda l-manuvra ta' surpass bicca sewwa qabel il-*junction*.

Jghid li meta grat il-habta, x-xarabank baqghet miexja xi ftit u ghalhekk b'rizultat ta' dan il-vettura tieghu giet imcaqalqa.

Ra li l-konvenut ammetta li mar *wrong side*.

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 s-sewwieq ta' karozza li jigi biex jissurpassa karozza ohra ghandu jkun zgur, qabel ma jaghmel dik il-manuvra, illi jista' jaghmilha b'sikurezza. Il-konvenut kellu josserva r-regolamenti qabel ma jaghmel u waqt li kien qed jaghmel din il-manuvra. Illi inoltre l-konvenut kellu joqghod ferm attent billi kien qieghed jaghmel manuvra ta' surpass vicin *junction* (Ara **Zammit Vs Sammut 1749/99NC 14/10/2003 PA**).

Min-naha l-ohra ezatt wara l-habta s-sewwieq tax-xarabank qal li xeghel l-indicator, ra li ma kienux gejjin karozzi min-naha opposta u dar lejn il-lemin. Illi m'hemmx dubju li billi tixghel l-indicator u thares fid-direzzjoni opposta m'huwiex bizzejjed. Is-sewwieq tax-xarabank kellu d-dmir li jhares fuq il-lemin u warajh qabel ma jdur lejn il-lemin.

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 13/7/78**; **Azzopardi Vs McCarthy 20/9/78**; **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."

L-**Artikolu 76 tal-Highway Code** jipprovdi:

"Before changing direction, reduce speed and keep a watch on the traffic behind you by glancing in your mirror."

Fix-xhieda tieghu s-sewwieq tal-coach qal li hares jekk kienux gejjin karozzi minn wara u seta' jara fit-tul warajh. Jekk gara hekk missu nduna bil-karozza tal-konvenut.

(Ara wkoll **Elmo Vs Spiteri Tribunal Ghal Talbiet Zghar 9/12/2003 EG**).

Ghaldaqstant it-Tribunal jiddikjara li l-kontendenti kienu t-tnejn responsabbli ghall-incident stradali mertu tal-kawza fil-grad ta' zewg terzi (2/3) ghall-attur u terz (1/3) ghall-konvenut u kwindi jghaddi biex filwaqt li jilqa' t-talba attrici limitatament ghas-somma ta' tlett mija w erbgha u ghoxrin lira Maltin u tlieta u tletin centezmu (Lm324.33c), jilqa' in parti l-eccezzjoni tal-konvenut u jikkundanna lill-konvenut sabiex ihallas lis-socjeta' attrici s-somma ta' tlett mija w erbgha u ghoxrin lira Maltin u tlieta u tletin centezmu (Lm324.33c) bl-imghax mill-21 ta' Novembru, 2003.

L-ispejjez jinqasmu in kwantu ghal zewg terzi (2/3) ghas-socjeta' attrici u terz (1/3) ghall-konvenut.

< Sentenza Finali >

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