



TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
GRAZIO MERCIECA**

Seduta ta' l-14 ta' Lulju, 2005

Talba Numru. 22/2005

It-Tribunal;

Ra l-avviz tat-talba li jghid hekk:

“ Peress illi fis-sittax (16) ta’ Dicembru 2003, l-attrici Theresa sive Tessie Vella kienet qiegħda issuq vettura tat-tip Diahatsu Terrios (numru tar-registrazzjoni KBC 636) fi Triq it-Tabib Anton Tabone, Rabat, Ghawdex neta sfat investita mill-konvenut, Josef Bugeja li kien qiegħed issuq truck tat-tip “Isuzu” (numru tar-registrazzjoni BBI 727) b’traskuragni, grassa, imperizia u non-osservanza tar-regolamenti tat-traffiku;

Peress illi għal dan l-incident jahti unikament il-konvenut li għalkemm gie interpellat ufficjalment baqa’ ma hallas id-danni minnha ikkagonati.

Jghid għalhekk l-istess konvenut għaliex dan it-Tribunal m’għandux;

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1. Jiddikjarah unikament responsabbli ghal incident stradali in kwistjoni

2. Tikkundannah ihallas lill-atturi s-somma ta' tlett mija u disa' liri u hamsin centezmi (Lm309.50c.0m.) u dan in kwantu ghas-somma ta' mitejn u tlieta u disghin lira u hamsin centezmi (Lm293.50c.0m.) spejjez tal-panel beating u spray painting u sittax- il lira (Lm16) taxxa tal-VAT. Bl-ispejjez bil-imghaxijiet skond il-ligi, inkluzi dawk tal-ittra ufficjali tal-11 ta' Jannar 2005 u bl-ingunzjoni tal-istess konvenut ghas-subizzjoni li ghailha huwa mharrek."

Ra r-risposta tal-konvenut li tghid hekk:

"Illi l-pretensjonijiet tal-atturi huwa totalment infondati fil-fatt u fid-dritt u dan peress illi r-responsabbilita' ghal-incident li sehh fis-16 ta' Dicembru 2003 bejn il-vettura KBC 636 propjeta' u misjuqa mill-attrici Theresa Vella u l-vettura l-ohra BBI 727 misjuqa mill-esponenti kien unikament tort u htija tal-attrici Theresa sive Tessie Vella minhabba illi meta hija kienet qeghda isuq il-vettura taghha tad-dritt fid-direzzjoni ta' Enriku Mizzi Street fi Triq Anton Tabone Street, fir-Rabat, Ghawdex, minghjr ma ghamlet l-ebda sinjal jew xeghlet xi indicators, kif ukoll gibdet fuq ix-xellug qabel ma daret mas-central strip li tinsab fuq il-lemin taghha, b;konsegwenza illi l-esponenti habat mal-vettura mal-istess attrici. Ghalhekk l-attrici hija unikament responsabbli ghal dan l-incident stante illi hija saqet b'negligenza, traskuragni u nuqqas ta' zamma ta' proper look-out kif sejjer jigi aktar dettaljatament pruvat fit-trattazzjoni tal-kawza.

Salv eccezzjonijiet ohra.

Bl-ispejjez."

Ra ukoll l-atti tal-kawza;

Ikkunsidra

Illi mhux ikkontestat illi z-zewg sewwieqa kienu jsuqu fid-direzzjoni ta' Victoria, Ghawdex fi Triq it-Tabib Anton

Tabone, Victoria, Ghawdex. L-attrici kienet issuq quddiem filwaqt illi l-konvenut kien warajha. Fin-nofs tat-triq kien hemm linja bajda diskontinwa. Il-konvenut ittanta jissorpassa lill-attrici, meta din daret lejn il-lemin u sehhet il-habta. Kienet niezla x-xita u l-konvenut li kellu habib tieghu passiggier mieghu kien qieghed jitkellem fuq il-*mobile phone* huwa u jaghmel il-manuvra tas-sorpass.

Illi pero', l-partijiet ma jaqblux dwar cirkostanzi ohrajn konkommittanti mal-kollizzjoni:

Fir-road accident report hemm irraportat li l-attrici stqarret li hija xeghlet l-indicators tal-lemin peress li riedet iddur mas-*central strip* sabiex tmur ghan-naha l-ohra tat-triq sabiex tipparkja quddiem id-dar t'ommha. Il-konvenut qabel mal-verzjoni tal-attrici, hlief li zied li huwa ma rax *indicators* mixghulin, kif ukoll li qabel ma bdietr iddur mas-*central strip* l-attrici l-ewwel gibdet lejn ix-xellug qabel daret lejn il-lemin. Kien x'hin l-attrici kienet qieghdha taghmel din il-manuvra li l-konvenut ittanta l-manuvra tieghu ta' sorpass (ara fol 15).

Il-konvenut stqarr bil-miktub lis-socjeta' assikuratrici tieghu stess, erba' xhur u nofs wara li kien sehh l-incident (fol 13) li l-attrici kellha l-*indicator* mixhul izda li ma rahx, li kienet ix-xita, u li kien jitkellem fuq il-*mobile phone*.

Fis-seduti quddiem it-Tribunal, filwaqt li l-attrici tenniet dak li kienet qalet fl-istqarrija inizjali taghha, il-konvenut qal li ra lill-attrici taghmel l-*indicator* lejn il-lemin izda fl-istess waqt dawwret il-vettura taghha lejn ix-xellug.

Il-konvenut filwaqt li kien konsistenti dwar certi aspetti tal-incident, biddel il-verzjoni tieghu xejn inqas minn tlett darbiet fuq aspetti ohrajn: lis-surgent qallu li l-attrici daret lejn ix-xellug qabel daret lejn il-lemin ma rax l-*indicator* u li ; fl-istqarrija lid-ditta assikuratrici qal li l-attrici xehlet l-*indicator* izda hu ma rahx; quddiem it-Tribunal qal li ra l-*indicator*, imma billi l-vettura tal-attrici daret lejn ix-xellug qabel daret lejn il-lemin, huwa assumma li kienet xehlet l-*indicator* hazin.

L-attrici fl-ebda punt ma cahdet jew ippruvat tmieri lill-konvenut meta gie kkontro-ezaminat mill-abbli konsulent legali taghha rigward il-manuvra taghha u cioe' li daret ftit lejn ix-xellug qabel daret lejn il-lemin. Huwa verosimili hafna li hija setghet ghamlet manuvra bhal din biex tkun tista' ddu bil-kumdata mas-central strip. Biex jaccerta ruhu minn dan, il-gudikatur acceda wahdu fuq il-post. Dan jispjega l-ghala hija xehlet l-indicator tal-lemin izda fl-istess waqt, inizjalment daret ftit lejn ix-xellug taghha.

It-Tribunal jinnota wkoll illi l-attrici fl-ebda hin ma qalet li rat lill-konvenut gej warajha; illi l-habta sehhet fil-gemb lemini, fuq in-naha ta' quddiem, filwaqt illi l-vettura tal-konvenut anke wara l-habta ma qabzix is-*central strip*; u fl-ahharnett illi l-karreggjata wiesa' biss biex tippermetti zewg karozi biswit xulxin, kif kellu wkoll okkazjoni jikkonstata l-Gudikatur sedenti waqt l-access illi ghamel, u dan biex jikkumplimenta l-iskizz a fol 13 li gie maghmul mill-attrici u ghalhekk huwa approssimattiv, ghalkemm xorta wahda tajjeb hafna. Dan juri li waqt li l-konvenut kien wasal magemb l-attrici, din kienet miexja ghad-dritt jew miksura lejn ix-xellug; u kien biss meta l-vetturi gew ras-imbras illi l-attrici dawwret il-vettura lejn il-lemin.

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 bizzejjed 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 raguna 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-responsabilita' 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 jjehu 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.

Dawn il-principji gew addottati mill-Qrati taghna² li stabbilew diversi drabi illi l-manuvra li kien qed taghmel l-

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

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attur fil-mument tal-incident u cioe' dik 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 overtake without danger if what he is overtaking gives not the slightest sign of any unexpected maneovre.

L-attur zbalja u kien ferm negligenti 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 setgħhet tkun sejra tidhol fiha; Infatti l-Highway Code jtkellem 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-segwent i 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 ghandu jkun zgur, qabel ma jaghmel dik il-manuvra, illi jista' jaghmilha b'sikurezza.*

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

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-accident.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 xehlet 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-na]ja tax-xellug tag]ha. Il-qorti wirtet 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 qiegħed isur il-karozza tieg]u fi Triq Borg Olivier, Mellieha, u kien qiegħed jissorpasa 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' għall-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 tieghu meta l-konvenut Debono baqa' diehel go fih biz-

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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ziemel u l-karettun. Debono qal li Attard kien waqaf u dar f'daqqa bla ma ta' 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 qua" 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, pa[na 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, paġna 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.

Fic-cirkostanzi tal-kaz prezenti, kellu jkun car ghall-konvenut, li kieku l-attenzjoni tieghu kienet iffukata fuq it-triq u mhux fuq il-*mobile phone* – haga pprojbita mir-regolamenti tat-traffiku proprju sabiex tkun assicurata din l-attenzjoni – li l-attrici kienet se taghmel il-manuvra li fil-fatt ghamlet, jew almenu li kien hemm il-probabilita' li din kienet sejra taghmilha. Anke fid-dubbju, huwa kellu jbaxxi l-ispeed biex jippermettilha tlesti l-manuvra taghha, u mhux jittanta jissorpassaha. Min-naha l-ohra, l-attrici kellha toqghod attenta anke ghal min kien gej warajha – jigi ripetut li dwar dan ma qalet xejn – ; li ma tbiddilx id-direzzjoni tas-sewqa minghajr ma tkun certa li manuvra bhal din ma kinitx sejra tfixkel l-utenti l-ohrajn tat-triq, inkluz min seta' kien isuq warajha; u li ma tibghatx sinjali ekwivoci dwar f'liema direzzjoni kienet sejra tmur.

Ikkunsidrati c-cirkostanzi kollha partikolari ta' dan il-kaz, fil-fehma ta' dan it-Tribunal, in-nuqqas tal-konvenut kien oghla minn dak tal-attrici, ghax huwa inghata d-debitu preavviz minnha, sija pure b'mod li seta' kien ekwivoku.

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Dwar il-*quantum* tad-danni ma jidhirx li hemm kontestazzjoni.

Ghaldaqstant it-Tribunal jaqta' u jiddeciedi billi jiddikjara r-responsabilita' ghall-incident ghandha tigi spartita kwantu ghal kwart lill-attrici u tlett kwarti lill-konvenut u konsegwentement jilqa' proporzjonalment it-talba attrici billi jikkundanna lill-konvenut ihallas lill-atturi s-somma ta' LM232. Spejjez, inkluzi dawk tal-ittra ufficcjali msemmija fl-avviz tat-talba, kwart ghall-atturi u tlett kwarti ghall-konvenut.

< Sentenza Finali >

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