MALTA

# QORTI CIVILI
# PRIM' AWLA

## ONOR. IMHALLEF
## GEOFFREY VALENZIA

Seduta tas-7 ta' Ottubru, 2005

Citazzjoni Numru. 1327/2000/1

**Rolando Cusimano**

**VS**

**Luke Gauchi f'isem in rapprezentanza ta' Wembley Ice Cream Factory Ltd u Alfio  Leotta**

**Il-Qorti**

**Preliminari**

Rat **l-att tac-cittazzjoni** li permezz taghha l-attur ippremetta illi:

Peress illi fis-26 ta' Ottubru 1999, l-esponenti waqt li kien qed isuq il-vettura Fiat Punto numru registrazzjoni DBD 986, fi Triq Abate Rigourd, fl-Imsida ghall-habta ta'

nofsinhar, huwa kien involut f'incident awtomobilistiku mal-konvenut Alfio Leotta li kien qed isuq il-vettura Fiat Panda numru ta' registrazzjoni 1AV971, u soffra danni ingenti fiil-vettura tieghu.

Peress illi dan l-incident kien sehh minhabba negligenza fis-sewqan, traskuragni, sewqan eccessiv, u non osservanza tar-regolamenti tat-traffiku, minn naha tal-konvenut Alfio Leotta.

Peress illi l-konvenut Leotta kien qed jagixxi bhala impjegat tal-konvenuta ditta Wembley Ice Cream Factory Ltd. u kkawza l-incident fil-hinijiet u waqt li huwa kien ghax-xoghol mad-ditta konvenuta, u ghaldaqstant il-konvenut Luke Gauci nomine huwa responsabbli ghad-danni sofferti mill-attur.

Peress illi minkejja li huwa kien interpella lill-konvenuti biex jersqu ghal-likwidazzjoni u hlas tad-danni sofferti minnu, kemm ufficjalment fil-25 ta' Jannar tas-sena 2000 u bonarjament fid-19 ta' Frar 2000, dawna kienu baqghu inadempjenti.

Ghaldaqstant jghid il-konvenuti il-ghaliex ma ghandhiex dina l-Onorabbli Qorti:

1) tiddikjara lill-konvenuti unikament responsabbli ghall-incident li sehh li jinghad kif jinghad fis-26 ta' Ottubru tal-2000;

2) tillikwida d-danni hekk sofferti mill-attur okkorrendo permezz ta' periti nominanda;

3) tikkundanna lill-konvenuti/ jew min minnhom jhallas id-danni hekk likwidati, lill-atturi.

Bl-ispejjez kontra l-konvenuti, inkluzi dawk tal-ittra bonarja tad-19 ta' Frar tal-2000 u dik ufficjali tal-25 ta' Jannar 2000, kontra l-konvenuti minn issa ngunti in subizzjoni.

Rat in-**nota ta' l-eccezzjonijiet ta' Gwido Bonello Ghio ghan-nom u in rappresentanza ta' Wembley Ice Cream Factory Limited** a fol.12 tal-process fejn gie premess:

Illi t-talbiet attrici fil-konfront ta' tal-eccipjent Luke Gauci noe huma lkoll infondanti fil-fatt u fid-dritt u ghalhekk ghandhom jigu respinti fl-intier taghhom bl-ispejjes kontra l-attur, ghas-segwenti ragunijiet;
1. Il-konvenut Luke Gauci noe ma jafx lill-attur, u hadd mill impjegati tieghu ma kienu involut fl-incident imsemmi fis-26 ta' Ottubru 1999;

2. Il-konvenut Alfio Leotta qatt ma kien impjegat tal-eccipjent nomine u l-ewwel darba li l-eccipjent sema dan l-isem kien propju meta beda jircievi l-korrispendenza imsemmija mill-attur fic-citazzjonii. Qabel la kien jafu u lanqas qatt ma rah.

3. Il-karozza Fiat Panda IAV 971 hija vettura tal-konvenut eccipjent, biss dak inhar tal-incident u precizament minn xi jiem qabel sa diversi granet wara, din il-vettura kienet ittiehdet ghand mecchanic ghal xi tiswijiet;

4 Salv eccezzjonijiet ulterjuri permessi skond il-Ligi

Rat **in-nota ta' l-eccezzjonijiet ta' Alfio Leotta a fol.21 tal-process:**

1. illi t-talbiet attrici huma infondati fil fatt u fid-dritt peress illi l-incident tas-26 ta' Ottubru 1999 gara biss minhabba traskuragni, non osservanza tar-regolamenti tat-traffiku u sewqan eccessiv da parti ta' l-attur u dan kif jirruzulta f'aktar dettal waqt it-trattazzjoni tal-kawza.

Salv eccezzjonijiet ohra.

Rat l-atti kollha tal-kawza u d-dokumenti ezibiti;

Semghet ix-xhieda bil-gurament;

Rat il-verbal a fol 86 u nota a fol 87 li biha l-attur ceda l-atti tal-kawza kontra Luke Gauci f'isem u in

rappresentanza ta' Wembley Ice Cream Factory Ltd stante ftehim waqt li jzomm ferm it-talbiet fil-konfront ta' Alfio Leotta;

Rat in-nota a fol 91;

Rat li ma saret ebda talba ghas-sospensjoni tal-prolazzjoni tas-sentenza;

**TALBA U KONTESTAZZJONI**

L-attur qed jitlob dikjarazzjoni li l-konvenut Leotta kien responsabbili ghall-incident li gara l-Imsida fis-26 ta'Ottubru 1999. Il-konvenut Leotta rrisponda li hu ma kienx responsabbili ghall-incident imma kien l-attur stess responsabbili minhabba traskuragni u sewqan eccessiv.

**PROVI**

L-attur ipprezenta affidavit fejn xehed bl-Ingliz u sostanzjalment qal li *he was driving his car in Abate Rigord Street, going in the direction of Msida. Leotta who was infront of him, all of a sudden, without making any sign, turned to his right. He tried to avoid him by also turning to the right, but hit a pole because he lost control of the car. Leotta did not stop immediately but drove to the side of the street and parked on the left side of the street. Plaintiff's car was a total loss, it had damage on its left side, as well as in front where he hit the pole. His car was brand new and he had purchased it about eight months before. He uses his car for work and is now hiring one at LM 5 per day. He is also paying Lm3 daily for keeping the damaged car in a garage.*

P.S. 1373 Joe Micallef xehed li ma rrizultalux fejn saret il-habta billi l-vetturi baqghu jinstaqu wara l-habta. Skond l-okkorrenza l-attur qallu li *whilst car IAV971 was entering into Triq il-Halg without indicators. I veered sideways to avoid hitting it and accidentally drove over the pavement and the collision occurred*. Il-konvenut Leotta qal li *whilst*

*driving from Gzira along Abate Rigord Street, stopped to enter into Triq il-Halg and the collision occurred*.

Guido Bonello Ghio xehed li huma kienu baghtu l-karozza IAV971 ghand il-konvenut Leotta ghas service. Wara xi zmien saru jafu li dina l-karozza kienet involuta f'kollizzjoni. Meta n-segwitu kellem lill Leotta dana qallu li kien involut f'incident izda ma kellu hsara ta' xejn. Qallu wkoll li kien tort ta' l-iehor li kien gej sparat. Leotta kien gabilhom il-karozza lura ma kien fiha ebda hsara.

Il-konvenut Leotta ghalkemm gie ingunt diversi drabi biex jixhed qatt ma deher.

**KONSIDERAZZJONIJIET TA' DRITT**

**Turning to the right**

F'dan il-kaz hemm il-manuvra ta' ksur lejn il-lemin u bil-konsegwenti hbit mal-vettura li gejja minn wara.

Il-Qorti irriteniet diversi drabi illi f'kazijiet bhal dawn in ezami il-preponderanza ta' probabilita' hija illi s-sewwieq li kien qed jikser lejn il-lemin ikun qasam ir-rotta (cut across the path) tas-sewwieq li jkun gej warajh li ser jew qed jissorpassah minghajr ma jkun tah "adequate warning".

*Early decisions tended to consider that all the 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 of following traffic became stricter, 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, <u>after</u> 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 to <u>ensure that there will be no traffic in the process of overtaking him as he makes his turn</u>.*<u>"</u> Dawn il-principji gew affermati f'ghadd ta' sentenzi moghtija mill-Prim Awla tal-Qorti Civili, fosthom:- F. Clarke

vs C. Aquilina 6.12.77; A. Sciberras vs C. Zammit 13.7.78; E. Azzopardi vs L. McCarthy 20.9.78; E. Deguara vs J. Mallia 25.1.83; C. Gendrex vs J. Vassallo 15.1.88; T. Duca vs E. Mifsud 15.6.88.

Dana kollu, fil-fatt ma huwa xejn hlief estensjoni tar-regola generali ta' "proper look-out" li jrid izomm sewwieq.

Artikolu 77 tal Highway Code (Edizzjoni antika) u Artikolu 85 tal Edizzjoni Gdid ighid:

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

Nru: 79 *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.*

**KONSIDERAZZJONIJIET**

**Responsabilita'**

Fil-kaz in ezami jirrizulta mix-xhieda ta' l-attur, konfermata fl-okkorrenza ezibita mis-surgent, li l-konvenut Leotta kien qed jittanta jikser fuq il-lemin tieghu biex jidhol go Tril il-Halg u dana bla ebda preavviz u bla sinjal u sab fi triqtu l-karozza misjuqa mill-attur li rinfaccjat b'dina l-emergenza subitaneja kellu jisswervja fuq il-lemin tieghu biex jevita l-incident, minflok pero' tilef il-kontrol tal-vettura tieghu u spicca fuq arblu li kien hemm fejn il-bankina. L-allegazzjoni tal-konvenut li l-attur kien gej bi speed qawwi ma tirrizultax u ma gietx pruvata. Illi ghalhekk jidher li l-konvenut (li qatt ma deher biex jixhed ghalkemm l-attur harrku diversi drabi) kien principalment responsabbili ghall incident in kwistjoni li kiser fuq il-lemin tieghu bla pre-avviz.

**Danni**

Dwar danni l-attur xehed li *his car was a total loss, it had damage on its left side, as well as in front where he hit the pole. His car was brand new and he had purchased it about eight months before. He uses his car for work and is now hiring one at Lm5 per day. He is also paying Lm3 daily for keeping the damaged car in a garage.*

Illi mill-process ma jirrizultax li l-attur pprezenta xi kontijiet jew ircevuti biex jissostanzja t-talba tieghu ghall danni ghalhekk dina l-Qorti mhiex f'posizzjoni li tillikwida xejn.

**DECIZJONI**

Ghal dawn il-motivi
Il-Qorti tiddeciedi
Billi tilqa' l-ewwel talba ta' l-attur
U tastjeni milli tiehu aktar konjizzjoni tat-talbiet l-ohra stante li ngabux provi fuqhom.

Spejjez ghall konvenut Leotta.

**< Sentenza Finali >**

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