



MALTA

TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
PHILIP MANDUCA**

Seduta tas-7 ta' Dicembru, 2005

Talba Numru. 103/2005

**Fogg Insurance Agencies Limited (C-597) ghan-nom
u in rapprezentanza tas-socjeta' estera Norwich Union
International Insurance Limited kif surrogata fid-
drittijiet ta' l-assigurat taghha Anthony Mizzi abbazi
tal-polza ta' assigurazzjoni tat-tip comprehensive u
tal-
Ligi u l-istess Anthony Mizzi [505447(M)]**

Vs

Valentino Farrugia

It-Tribunal

Ra l-Avviz li fih l-atturi talbu l-hlas ta' hames mija w erbgħa u sittin lira Maltin u hamsa u tmenin centezmu (Lm564.85c) rapprezentanti danni f'incident awtomobilistiku għal liema incident il-konvenut kien unikament responsabbli minhabba imprudenza, imperizja, negligenza u inosservanza tar-regolamenti.

Kopja Informali ta' Sentenza

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

Ra d-dokumenti esebiti.

Ra r-*Road Accident Report* fejn l-attur Anthony Mizzi qal:

“Kont niezel via Zabbar u l-iehor kiser ghal go fija biex idur lemin ghal Triq tal-Galu. Indicator ma kellux. Xeghelna l-hazard lights it-tnejn li ahna. Mieghi ammetta li dahal fija, qalli li ma ranix. Wara li cempel fuq il-mobile kien hemm ragel li hu min hu qal li kellu l-indicator mixghul.”

Bhala hsara kellu *front bumper, front bonnet, mudguard, indicator u headlamp*.

Il-konvenut li kien qed isuq il-vettura EAL 689 qal:

“Kien gej minn Vjal il-Qallanin via Zabbar, isslowjajt, xeghelt l-indicator u kont se ndur, ittawalt warajja, ma rajt lil hadd u kif dort sibtu go fija.”

Bhala hsara l-konvenut kellu *front bumper u mudguard*.

Ra x-xhieda ta' W31 Stephen Cassar fejn jikkonferma r-rapport u l-iskizz esebiti filwaqt li jikkorregi l-istess rapport u jikkonferma li karozza EAL 689 kienet gejjja fil-fatt minn Triq il-Kottoner u mhux minn Vjal il-Qallanin. Jikkonferma wkoll illi l-konvenut kien qallu li ried jikser lejn il-lemin tieghu.

Ra x-xhieda ta' Anthony Mizzi fejn jghid illi kien qiegħed isuq go Vjal il-Kottoner li hija triq wiesgha. Jghid illi hu kien qed izomm mal-linja tan-nofs tat-triq filwaqt li l-konvenut kien qiegħed isuq magenbu. Mizzi jghid illi f'hin minnhom il-konvenut kiser ghal fuqu.

Jikkonferma li l-konvenut kien ammetta t-tort.

Illi mill-pozizzjoni ta' kif spickaw il-karozzi (ara ritratt a fol 14 tal-process) u mill-iskizz a fol 31 tal-process huwa iktar

Kopja Informali ta' Sentenza

verosimili li kien hemm tentattiv ta' surpass milli sewqan normali fuq l-*outer lane*.

Ra x-xhieda tal-konvenut fejn jikkonferma li qal fir-*Road Accident Report*. Jghid ukoll illi l-karozza tieghu spiccat iktar lejn in-nofs milli muri fuq l-iskizz.

Farrugia jghid illi qabel l-incident kien iktar imdawwar lejn il-lemin u b'rizultat tal-habta gie mbuttat ftit lejn ix-xellug. Jghid ukoll illi qabel ma dar ghal-lemin tieghu kien qieghed isuq fuq in-naha ta' barra.

It-Tribunal jaghmel referenza ghall-kawzi **Jurgen W. Dobler Vs Caruana Anthony tal-5 t'Ottubru, 1998 (Appell)** kif ukoll ghall-kawzi **F. Clarke Vs C. Aquilina (6/12/1977)**, **A. Sciberras Vs C. Zammit (13/7/1978)**, **E. Azzopardi Vs L. McCarthy (20/9/1978)**, **E. Deguara Vs J. Mallia (25/1/1983)**, **C. Gendrex Vs J. Vassallo (15/1/1988)** u **T. Duca Vs F. Mifsud (15/6/1988)**.

It-Tribunal ikkunsidra li l-kawza prossima f'dan il-kaz, tinvolvi liz-zewg sewwieqa in kwantu kien is-sewqan negligenti u traskurat taghhom it-tnejn li kkontribwixxa b'mod determinanti ghall-akkadut anki jekk fi grad differenti. Negligenza u traskuragni li mhux biss kienu jimportaw infrazzjonijiet kontravenzjonali imma wkoll kienu materjalment iprovokaw is-sinistru li ma kienx isehh li kieku almenu wiehed miz-zewg sewwieqa aderixxa skrupolozament ma' dak li kien jimponi fuqhom is-sewqan attent u prudenti. Infatti certament l-attur kellu htija meta ttanta jissurpassa dan ghaliex ittanta s-surpass vicin *junction* meta kellu allura jkun prevedibbli ghalih li xi vettura quddiemu li kien intenzjonat li jissurpassa, setghet kellha l-hsieb li tikser lejn il-lemin biex tidhol fis-*side road*.

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

Mill-banda l-ohra l-konvenut kellu htija anki fi grad oghla mill-attur ghas-sinistru ghaliex kien obligat li jkun pjenament a konoxxenza tal-pozizzjoni u tal-moviment tat-traffiku li jkun qed isegwih fil-mument meta jkun ser jittanta l-manuvra li kien intenzjonat li jaghmel. Manuvra li kienet timponi fuqu l-obbligu mhux biss li jirrallenta biex jiehu l-pozizzjoni tieghu biswit il-*junction* imma wkoll li jaccerta ruhu mill-moviment tal-vetturi kollha li jkunu jsegwuh, waqt li jissenjala adegwament x'kienet l-intenzjoni tieghu.

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 it is submitted boils down to taking reasonable steps to ensure that there will

Kopja Informali ta' Sentenza

be no traffic in the process of overtaking him as he makes his turn.”

Ghal dawn il-motivi, t-Tribunal jikkonkludi li r-responsabbilta' ghall-incident ghandha tigi akkollata kwantu ghal zewg terzi (2/3) fuq il-konvenut u kwantu ghal terz (1/3) fuq l-attur.

Illi gew esebiti l-ircevuti u jidhru ragunevoli.

Ghalhekk il-konvenut ghandu jhallas l-ammont ta' tlett mija u sitta u sebghin lira Maltin u sebgha u hamsin centezmu (Lm376.57c). L-ispejjez jinqasmu in kwantu ghal zewg terzi (2/3) ghall-konvenut u terz (1/3) ghall-atturi.

< Sentenza Finali >

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