

**COURT OF MAGISTRATES (MALTA)**  
**AS A COURT OF CRIMINAL JUDICATURE**

MAGISTRATE:

DR JOSEPH CASSAR B.A., LL.D.

**The Police**

(Inspector Pio Pisani)

**vs**

**John Michael Hughes**

Today 27<sup>th</sup> March 2001.

The Court,

After having seen the charges brought against the accused John Michael Hughes 61 years, son of John and Hilda nee` Hind born in the United Kingdom on the 8<sup>th</sup> of August 1939, and residing at 19 G.T. Court, Resort Street, Qawra St Paul`s Bay, holder of passport number 10035937.for having in these Islands, on the 7th October 2000 and during the preceding years:

Having seen the Attorney General`s consent in writing to the case being dealt with summarily.

Having seen that accused did not object to his case being summarily dealt with.

Having heard the evidence tendered on oath, including accused`s.

Having seen the exhibited documents and the acts of the case.

Having considered,

1. That on Sunday Morning, 11<sup>th</sup> March 2001 at about 9.45a.m accused, who has a flat in St. Paul`s Bay and who for twenty five(25) years has been a frequent visitor to Malta, was driving his car Peugeot CAK636 from Triq il-Makku, St. Paul`s Bay, to Triq il-Mosta. Carmel Tabone was driving a motor cycle, registration number FBG359 along Triq il-Mosta, Going to Armier. A collision occurred. Tabone fell from his vehicle and crashed into a parkedroute bus EBY471. Immediately after the collision accused moved his car but was told by witness Mohammed Rioli, inspector of the above mentioned route bus to put it back in its place. Tabone was injured and was hospitalized.

2. Evidence shows that accused did not put his car back in this exact place of the collision. His version about the spot of impact cannot be accepted and this was the main issue of the case. This results quite clearly from the sketch exhibited by the prosecution, the evidence given by

Tabone, Antoine Spiteri, and Mohammed Rioli. After all as the prosecution submitted accused`s intention was to park his car well beyond the centre strip.

3. Accused explains the precautions undertaken while he was driving his car from Triq il-Makku which he refers to as “like an alley” to cross both sides of Mosta Road which is a main road, a road of heavy traffic. There is a stop sign for vehicles crossing from Triq il-Makku to Triq il-Mosta. Accused stated: “The traffic lights on the pedestrian crossing down the road came on, the traffic all stopped up to the point of my front, the car that was following in the line of traffic stopped to leave me enough room to come through, he waved me through, I went slowly forward because at that point of the road there is a very slight bend and when you look left back down to the crossing, it`s sort of a corner, so I went through very carefully and stopped, checked that there was no coming up from the crossing, because that`s where the immediate danger was, from coming up ... there`s no traffic coming up and before I could move this motor like went past in front of the corner, taken the number plate off went straight over the road, hit this kerb and went into the bus...”

4. Even if this version were to be accepted accused did not exercise proper diligence whilst he was crossing a major road, which obviously he knows quite well. He

relies on the behaviour of one driver when the responsibility to keep a proper look out was only his. His diligence had to increase since there was what he calls a 'bend' or 'corner'. A driver crossing from a lane, with the intention of crossing the whole width of a major road on Sunday morning must be extremely careful. Perhaps he could have reached the place where he wanted to park in a roundabout way. He chose his line of action and had to bear the consequences. The Court cannot accept defence's submission that accused "was taking the necessary due precautions".

5. From the evidence there results no contributory negligence on the part of Tabone. He was driving on a major road and he was a prudent driver. He and his friends, were not racing as 'hited' by defence. Tabone cannot be held responsible for the negligence of the accused. A driver of a motor cycle has very little physical 'support' to hold on to defence submits that he was drivind at a high speed. This submission cannot be accepted. The reference made by defence to an 'eventual civil case' is completely irrelevant.

6. During the sittings the defence conceded, without prejudice to guilt of the accused, and solely for these criminal proceedings and further without prejudice to any eventual civil action that the bodily harm sustained by

Tabone is grievous per durata in terms of section 226 D of Chapter 9 – harm lasting for thirty days (30) or more.

#### 7. According to case – law

“Wiehed irid jiddistingwi bejn is-sewqan b`nuqqas ta` kont, is-sewqan traskurat u s-sewqan perikoluz imsemmija fil-paragrafu (a) tas-subartikolu (1) tal-art tal-Ordinanza dwar ir-Regolamenti tat-Traffiku (Kap 65). (‘Reckless driving’, ‘negligent driving’ u ‘dangerous driving’ fit-test Ingliz). Sewqan traskurat (“negligent driving”) hu kwalsiasi forma ta` sewqan li jiddipartixxi minn, jew li ma jilhaqx il-livell ta` sewqan mistenni minn sewwieq ragjonevoli, prudenti, kompetenti u ta` esperjenza. Bhala regolar, l-Ksur tar-regolamenti tat-traffiku kif ukoll in-nonosservanza tad-dispozizzjonijiet tal-‘Highway code’ li jincedu fuq il-mod jew il-kwalita` ta` sewqan ta` dak li jkun, jammonta ukoll ghal sewqan traskurat. Sewqan bla kont hu deskritt fis-subartikolu (2) tal-imsemmi art 15 bhala sewqan “bi traskuragni kbira”. Din it-tieni ipotesi, jigifieri ta` sewqan bla kont, tikkontempla s-sitwazzjoni fejn il-grad ta` traskuragni tkun kbira, u tinkludi l-kazijiet fejn wiehed deliberatament jiehu riskji fis-sewqan li m`ghandux jiehu minhabba l-probabilita` ta` hsara li tista` tirrizulta lil terzi, kif ukoll kazijiet fejn wiehed ikun indifferenti ghal tale riskji. Sewqan perikoluz(dangerous driving)jirrikjedi li fil-kaz partikolari is-sewqan kien ta` periklu ghal terzi jew

ghall-proprejta` tagghom. Biex wiehed jiddeciedi jekk kienx hemm dana l-perikolu, wiehed irid jara c-cirkostanzi kollha tal-kaz, inkluzi l-hin u l-lokalita` tal-incident u l-prezenza o meno ta` traffiku iehor jew ta` nies ghaddejjin bir-rigel. Naturalment sewqan f`kaz partikolari jista` jaqa` taht tnejn jew aktar minn dawn it-tlett forom ta` sewqan, f`liema kaz japplikaw id-dispozizzjonijiet tal-ligi u d-dottrina in materja ta` konkors ta` reati. Ghall-finijiet ta` piena l-legislatur pogga s-sewqan bla kont u s-sewqan perikoluz fl-istess keffa. Ir-reat ta` sewqan traskurat hu kompriz u involut f`dak ta` sewqan bla kont u f`dak ta` sewqan perikoluz. (ara “The Police vs Chamberlain” App. Kri 21/5/96 u App. Kri Il-Pulizija vs Alfred Mifsud 6/5/95).

**8.** The Court decides that accused was guilty of negligent driving and caused greivous body harm – per durate – to Carmel Tabone

Having seen section 15 (1) (a) of Chapter 65 and section 226(1) (b) of Chapter 9 and section 17 of the said Chapter 9 condemns accused two hundred Malta Pounds fine (multa)

Dr. Joseph Cassar BA. LL.D.  
MAGISTRATE.