FIT-TRIBUNAL GHAL TALBIET ZGHAR

Gudikatur: Dr Grazio Mercieca LL.D.

Seduta tat-28 ta’ Dicembru 2001

Fl-atti ta’ l-Avviz numru 60/01

Francis u Mary konjugi Apap

-vs-

Eucharist Tabone

It-Tribunal,

Ra l-avviz tat-talba fejn l-atturi ppremettew illi fis-26 t’Awissu 2001, ghall-habta ta’ nofs inhar neqsin kwart ta’ fil-ghodu (11.45am) l-attur kien involut f’incident awtomobilistu mal-konvenut fit-Triq il-Gonna, Ghasri, Ghawdex - Dok F;

Illi l-konvenut li kien isuq il-vettura, FBF 585 b’traskuragni grassa, imperizja u non osservanza tar-regolit at-traffiku habat ghalhekk mal-vettura BBG582 misjuqa mill-attur u proprjeta’ tieghu bir-rizultat li kkawza l-incident awtomobilistiku hawn fuq imsemmi u li ghalih huwa unikament responsabbli.

Illi minhabba l-incident awtomobilistiku hawn fuq imsemmi, l-atturi sofrew hames mija u disgha u hamsin lira u tnejn u ghoxrin centezmi (Lm559.22) danni kif jirrizulta mill-annessi ricevuti Dok A, B, C, D u liema hsara tirrizulta mis-survey report Dok E.

Illi l-konvenut nonostante li gie interpellat sabiex ihallas dan l-ammont minnu dovut dan baqa’ inadempjetni:

Talbu li l-konvenut jigi dikjarat unikament responsabbli ghal-incident stradali hawn fuq imsemmi.

2. konsegwentement jigi kkundannat ihallas lill-atturi l-ammont ta’ hames mija u disgha u hamsin lira u tnejn u ghoxrin centezmu (Lm529.22) danni minnu kkagunati fl-istess incident stradali hawn fuq imsemmi.

Bl-ispejjez komprizi dawk ta’ l-ittra bonarja tal-hdax (11) ta’ Ottubru 2001 u bl-ingunzjoni ta’ l-istess konvenut ghas-subizzjoni li ghaliha minn issa huwa ingunt.

Bl-imghaxijiet skond il-ligi.

Ra r-risposta tal-konvenut fejn eccepixxa illi l-incident stradali meritu ta' dan l-avviz gara almentu in parti sostanzjali tort u htija ta' l-attur Francis Apap ilil ma kienx qieghed izomm *a proper look out* waqt illi kien qed isuq fi triq fil-kampanja illi min-natura taghha ma tippermettix moghdija ta' zewg vetturi liberament.

Illi mhux veru illi, bhalma qed jallega l-attur, l-esponenti kien qieghed isuq b'rasu baxxuta. Li gara kien illi z-zewg sewwieqa raw lil xulxin meta kien tard wisq sabiex tigi evitata l-habta u f'parti tat-triq illi ma tippermettix illi jghaddu zewg vetturi.

Ghaldaqstant it-talbiet attrici jimmeritaw illi jigu michuda.

Salvi eccezzjonijiet ulterjuri fid-dritt u fil-fatt.

Sema l-provi u ezamina d-dokumenti esibiti

Ikkunsidra

Illi l-habta saret fin-nofs ta' triq fil-kampanja, b'hafna liwjiet fiha u bilkemm wiesa' bizzejjed biex jghaddu zewg karozzi;

Illi z-zewg sewwieqa kellhom fizwali pjuttost limitata

Illi l-attur isostni li appena ra lill-konvenut gej, waqaf filwaqt illi l-konvenut skond hu kien rasu baxxuta. L-attur ma qalx lis-surgent, a tempo vergine, li daqq il-horn biex javvertixxi lill-konvenut; ghalkemm wiegeb fl-affermattiv quddiem it-Tribunal wara li l-avukat tieghu staqsieh direttament jekk daqx il-horn. Issa kif inhuwa maghruf, ix-xhieda moghtija lis-surgent a tempo vergine huwa u jitlob il-verzjoni tal-partijiet fiha iktar pis minn dak li jinghad, wara hafna rifflessjoni, mix-xhud fil-qorti, ossia quddiem it-Tribunal. L-attur qal ukoll li l-konvenut kien gej bi speed ghax halla tlett metri brake-marks ghat-telgha. Dan mhux minnu ghax brake-marks bhal dawn ifissru biss li l-konvenut kien qieghed isuq circa 10 kilometri fis-siegha. Di piu', il-konvenut cahad li l-attur kien wieqaf qabel sehh l-incident.

Illi huwa wkoll sinifikanti li d-daqqa hija fronted fiz-zewg karozzi, izda l-fanal tax-xellug tal-attur baqa' bla mittiefes u ghalhekk mhux il-kaz li l-vettura tal-konvenut kienet miexja fuq ix-xellug tal-attur, imma kienet ghal nofs it-triq li kif inghad mhix wiesa' b'mod uniformi, kellha n-nahat taghha invaduti bill-haxix hazin u bilkemm kienet tippermetti li jghaddu zewg karozzi fil-punt qabel sehhet il-habta, u, biswit il-vettura tal-attur ma tghaddix karozza ohra minhaba l-haxix hazin li kien hemm.

Illi kif osservat il-Prim'Awla tal-Qorti Civili, in re *Aaron Scicluna vs Paul Azzopardi,* 15 ta' Jannar, 1993 – Onor J Said Pullicino, sewwieq fi triq tal-kampanja twila u mserrpa ghandu jsuq b'attenzjoni mill-iktar kbira. Il-Qorti qalet li bit-tidwir li kien fiha t-triq, is-sewwieqa ma setax ikollhom veduta cara tat-traffiku li jkun gej fuqhom. Kellhom

jaghmlu uzu tajjeb mill-horn taghhom. It-triq bilkemm kienet wiesa bizzejjed biex jghaddu zewg karozzi. Il-qorti qalet li ma setghetx tistabbilixxi l-htija billi tiffissa l-linja medjana sal-ahhar millimetru. L-anqas kien possibbli li jigi stabbilit min kien fuq in-naha hazina tat-triq, in vista tal-konfigurazzjoni partikolari u d-djuq tal-istess triq. Ghalhekk, ir-responsabilita' ghall-incident giet spartita mill-qorti nofs bin-nofs.

Illi kif jirraporta c-Charlesworth & Percy, *On Negligence, (Sweet & Maxwell, 1997) para 9-221 – "Collisions in centre of road": When there is a collision between two motor vehicles in the highway and there is no evidence pointing to one driver being any more to blame than the other, the proper inference to be drawn is that they are both to blame (Baker v Market Harborough Industrial Co-operative Soc (1953) 1. WLR 1472, Howard v Bemrose (1973) RTR 32, C.A.) So, when there had been a collision in the centre of crossroads of equal status and, after the accident, the defendant said to a policeman "I was going along the road and we met in the middle" it was held there was a prima facie case that both drivers were to blame (France vs Parkinson (1954) 1 WLR 581). Each driver who was involved in an unwitnessed and inexplicable head-on collision between two vehicles, is likely to be held equally to blame for negligence, even where there is some indication that one of them might have been on his wrong side of the road (Howard v Bemrose (1973) RTR 32, C.A.).*

Illi fl-istanti, m'hemmx dubbju li z-zewg sewwieqa huma responsabbli ghall-incident.

Ghaldaqstant, it-Tribunal jaqta' u jiddeciedi billi jiddikjara lill-attur u lill-konvenut ugwalment responsabbli ghall-incident de quo u ghaldaqstant jikkundanna lill-konvenut ihallas lill-attur is-somma ta' LM279.61.

Spejjez inkluzi d-drittijiet tal-avukati li ppatrocinaw lill-partijiet kontendenti, ghandhom jinqasmu nofs bin-nofs bejn il-partijiet.

(ft.) Grazio Mercieca
Gudikant

(ft.) Maureen Xuereb
D/Registratur

Vera kopja

Ghar-Registratur