

**TRIBUNAL GHAL TALBIET ZGHAR  
(GHAWDEX)**

**GUDIKATUR Dr Grazio Mercieca LL.D.**

**Seduta ta' nhar il-Gimgha 28 ta' Dicembru 2001**

Fl-atti ta' l-Avviz  
numru 63/01  
Fl-ismijiet:

Francis Cassar

-vs-

Marija Borg

**It-Tribunal;**

Ra l-avviz tat-talba li permezz tieghu l-attur talab li l-konvenuta Marija Borg tigi kkundannata thallas is-somma ta' tliet mija u tmienja u ghoxrin lira Maltin (Lm328) dovuti bhala danni sofferti mill-attur per konsegwenza ta' incident awtomobilistiku li sehh fl-erbgha u ghoxrin (24) ta' Frar tas-sena elfejn (2000) fi Triq l-Imgarr, Ghajnsielem, Ghawdex bejn il-vettura tal-marka Proton u bin-numru tar-registrazzjoni IAW 502 misjuqa u appartenenti lill-attur u l-vettura tal-marka Ford u bin-numru tar-registrazzjoni HAB 897 misjuqa mill-konvenuta Matrija Borg u appartenenti lil John Borg, u ta' liema incident l-konvenuta kienet unikament responsabbli minhabba imperizji, sewqan eccessiv, traskuragni u nuqqas ta' tharis tar-regolamenti tat-traffiku.

Bl-imghaxijiet legali u bl-ispejjez komprizi dawk ta' l-ittra interpellatorja mibghuta fil-11 ta' Mejju 2001 u ta' l-ittra ufficjali mibghuta kontestwalment ma' dan l-avviz lis-socjeta' assikuratrici tal-konvenuta.

Ra r-risposta tal-konvenuta fejn eccepjet illi l-incident stradali meritu ta' dan l-avviz gara almenu in parti sostanzjali tort u htija ta' l-attur Francis Cassar illi kien qiegheed isuq il-vettura tieghu b'manjiera perikoluza u b'velocita eccessiva, u ittenta jissorpassa vettura illi kienet qeghdha tikser ghal fuq il-lemin taghha f'parti tat-triq fejn huwa espressament konsentit illi jsir dan; u f'parti tat-triq fejn fil-

karreggjata hemm indikat car u tond illi l-vetturi ghandhom jaghzlu l-karreggjata tagghom.

Illi infatti l-konvenuta biddlet il-karreggjata taghha mil-lane ta' gewwa fejn solitament wiehed suppost isuq ghal fuq il-lane estern proprju meta qabad is-sinjali *choose your lane* fil-karreggjata, u wara li accertat ruhha illi setghet taghmel dan minghajr perikolu. Li ma hasbitx ghalih kienet il-velocita' eccessiva illi biha kien niezel l-attur fil-karreggjata ta' barra.

Illi jekk il-konventua seta' ghall-grazzja ta' l-argument kellha xi responsabilita' ghall-incident certament illi r-responsabilita ta' l-attur kienet akbar.

Ghaldaqstant it-talbiet attrici jimmeritaw illi jigu michuda.

Salvi eccezzjonijiet ulterjuri fid-dritt u fil-fatt.

Ra r-risposta tal-konvenuta fejn eccepiet illi l-incident stradali meritu ta' dan l-avviz gara almenu in parti sostanzjali tort u htija ta' l-attur Francis Cassar illi kien qieghead isuq il-vettura tieghu b'manjiera perikoluza u b'velocita' eccessiva, u ittenta jissorpassa vettura illi kienet qeghdha tikser ghal fuq il-lemin taghha f'parti tat-triq fejn huwa espressament konsentit illi jsir dan; u f'parti tat-triq fejn fil-karreggjata hemm indikat car u tond illi l-vetturi ghandhom jaghzlu l-karreggjata tagghom.

Illi infatti l-konvenuta biddlet il-karreggjata taghha mil-lane ta' gewwa fejn solitament wiehed suppost isuq ghal fuq il-lane estern proprju meta qabad is-sinjali *choose your lane* fil-karreggjata, u wara li accertat ruhha illi setghet taghmel dan minghajr perikolu. Li ma hasbitx ghalih kienet il-velocita' eccessiva illi biha kien niezel l-attur fil-karreggjata ta' barra.

Illi jekk il-konventua seta' ghall-grazzja ta' l-argument kellha xi responsabilita' ghall-incident certament illi r-responsabilita ta' l-attur kienet akbar.

Ghaldaqstant it-talbiet attrici jimmeritaw illi jigu michuda.

Salvi eccezzjonijiet ulterjuri fid-dritt u fil-fatt.

Ra l-kontrotalba tal-konvenut fejn ippremetta illi l-incident stradali meritu ta' dan l-avviz gara almenu in parti sostanzjali tort u htija ta' l-attur Francis Cassar illi kien qieghead isuq il-vettura tieghu b'manjiera perikoluza u b'velocita' eccessiva, u ittenta jissorpassa vettura illi

kienet qeghda tikser ghal fuq il-lemin taghha f'parti tat-triq fejn huwa espressament konsentit illi jsir dan; u parti tat-triq fejn fil-karreggjata hemm indikat car u tond illi l-vetturi ghandhom jaghzlu l-karreggjata taghhom.

Sema' l-provi u ra d-dokumenti esibiti

Ikkunsidra

Illi l-incident sehh fi Triq l-Imgarr, Ghajnsielem, Ghawdex. Iz-zewg vetturi misjuqin mill-partijiet kontendenti kienu qeghdin jigu misjuqa fl-istess direzzjoni u cioe' 'l isfel fid-direzzjoni tal-port tal-Imgarr. It-triq hija maqsuma f'zewg partijiet divizi fizikament minn centre-strip li fil-punt fejn sehh is-sinistru hija interrotta u fin-nofs tal-interruzzjoni hemm *roundabout*. Fil-parti tat-triq fejn kienu l-partijiet kontendenti, hemm zewg karreggjati ugwali divizi permezz ta' *dotted white line* li ghalhekk jikkonsentixxi vettura f'kull karreggjata biex tinsel fid-direzzjoni tal-port tal-Imgarr. L-incident sehh fejn l-imsemmija *roundabout*, li qieghdha hemm biex tipprovd i access ghall-vetturi li jkunu jridu jduru 'l fuq fid-direzzjoni tax-Xewkija jew jidhlu ghall-forti *Chambray*. Il-konvenuta kienet qieghdha taghmel proprju din il-manuvra meta sehh is-sinistru. F'din il-parti tat-triq m'hemmx bini. L-attur halla 20.4 metri brake-marks dritti u kontinwi precizament fin-nofs tal-karreggjata tal-lemin li, fejn hemm l-interruzzjoni fic-centre strip fuq imsemmija, iduru lejn il-lemin fid-direzzjoni ta' din l-interruzzjoni u jintemmu fejn sehhet il-habta. Dan ifisser li kien qieghed isuq b'velocita' ta' 60 kilometru fis-siegha.

Illi l-partijiet qeghdin jaghtu verzonijiet differenti ta' kif sehh l-incident:

Skond kif l-attur qal lis-surgent, huwa kien qieghed isuq bi speed moderat u fuq it-top gear; mentri quddiem it-Tribunal xehed li kien ghaddej "bit-tletin" (mil fis-siegha) u fuq it-third gear. L-attur xehed quddiem it-Tribunal li l-konvenuta kienet "ghoxrin pass" quddiemu izda fuq il-karreggjata tax-xellug, miexja bl-istess speed tieghu, u li kif rat ir-roundabout, kisret mill-ewwel ghal fuq il-karreggjata tal-lemin.

Skond kif nizzel li qaltlu l-konvenuta s-surgent a tempo vergine, hija kienet fuq il-karreggjata tax-xellug, xeghlet l-indicator tal-lemin kif telqet l-ahhar bini li kien hemm fit-triq, rat lill-attur gej mill-mera, ikkalkolat li setghet taqsam lejn il-lemin biex iddur mar-*roundabout* izda l-attur lahaqha u sehhet il-habta.

Meta xehdet quddiem it-Tribunal, il-konvenuta cahdet li tat il-verzjoni kif immazzla mis-surgent, u sostniet li x'hin sehhet il-habta hija kienet niezla 'l isfel fuq il-karreggjata tal-lemin, li fiha kienet dahlet appena kisret il-liwja li qieghdha iktar 'il fuq proprju fejn hemm l-Istitut ta' San Guzepp u fejn press'a poco jintemm il-bini, u kienet qieghdha ddawwar lejn il-lemin biex iddur mar-roundabout.

Issa l-parti tal-verzjoni tal-attur fejn jghid li z-zewg vetturi kienu ghaddejnin bl-istess speed, ghoxrin pass (cioe' madwar ghoxrin pied) il boghod minn xulxin ma tistax tigi accettata, ghax kieku ma hemmx madwar 70 pied brake-marks wara l-vettura tal-attur. Ghalhekk l-attur kien certament qieghed jaghmel manuvra ta' sorpass u, meta iddecieda li jaghfas il-brejk, huwa kien mill-inqas 30 metru 'l boghod mill-vettura tal-konvenuta.

It-tieni verzjoni tal-attrici fis-sens li kienet niezla mill-karreggjata leminija hija wahda difficli biex tigi accettata fid-dawl tad-dinamika tal-incident. Il-hsara fil-vettura tal-konvenuta hija wahda li saret bi sbrixx fuq il-gemb lemini. Id-daqqa tibda' minn fuq ir-rotta ta' wara, taqbez il-bieba ta' wara (li baqghet prattikament intatta) u tkompli forma ta' girfa tul il-bieba tas-sewwieq. Kieku kienet tabilhaqq niezla fuq il-karreggjata tal-lemin, id-daqqa kienet tkun fuq wara, jew almenu, kemm-il darba l-konvenuta kienet diga' angolat il-vettura taghha biex tidhol fir-roundabout, u jitqies li l-attur ukoll dawwar il-karozza biex jevita kollizzjoni head-on, il-habta kienet tkun ferm iktar ippronunzjata fuq in-naha tar-rotta ta' wara tal-konvenuta. Di piu', skond it-tieni verzjoni tghha, il-konvenuta ssostni li kienet niezla mhaxkna mal-hajt tas-centre-strip b'mod li ma setghetx tghaddi karozza bejnha u bejn il-hajt. Dan mhux kompatibbli mal-iskizz, li juri li l-vettura tal-attur kienet proprju fin-nofs tal-karreggjata, u ghalhekk kieku kellha titwemmen din l-ahhar parti tal-verzjoni tal-konvenuta, kien jolqotha jew fuq wara, jew fuq in-naha tax-xellug taghha, imma certament mhux fuq in-naha tal-lemin, li kienet tkun vicin il-hajt. Huwa ferm iktar kompatibbli mal-evidenza fisika tal-incident illi l-konvenuta kisret mill-karreggjata tax-xellug, giet quddiem il-vettura tal-attur, li applika l-brejk u, x'hin gie biex jahbat mal-vettura tal-konvenuta, l-attur dawwar il-vettura tieghu lejn il-lemin u b'hekk "giref" in-naha leminija tal-vettura tal-konvenuta bil-front left corner tal-karozza tieghu. Hawnhekk ghandu jinghad li tajjeb ghamel l-attur meta dawwar l-isteering lejn il-lemin, ghax b'dan il-mod evita li jikkawza hsarat akbar lill-vettura tal-konvenuta u probabilmment kienu wkoll iwegghu it-tfal li kellha rikbin maghha fuq wara.

Il-konvenuta, kif ukoll ir-ragel taghha, li sema' parti mill-konversazzjoni, jichdu li hija tat il-verzjoni kif rapportata mis-surgent

fir-road accident report. Jista' jkun illi s-surgent ma kienx preciz, kif l-anqas kien preciz meta indika lill-passiggier li kien riekeb mal-attur bhala ibnu, mentri fil-fatt ma jigi minnu xejn izda l-attur kien sejjer jgbor lil ibnu minn fuq il-vapur. Pero' t-Tribunal m'ghandu l-ebda indizju li s-surgent biddel il-verzjoni moghtija mill-konvenuta a tempo vergine b'xi mod sostanzjali.

F'din il-verzjoni moghtija a tempo vergine, il-konvenuta qalet illi xeghlet l-indicators tan-naha tal-lemin ftit wara li telqet l-ahhar bini li kien hemm fit-triq. Dan ifisser li l-konvenuta xeghlet il-lights hin sostanzjali qabel qalbet il-karreggjata, u li l-attur kellu kull opportunita' li jigi avzat b'dan is-sinjal. L-attur u l-passiggier li kien hemm riekeb mieghu qalu li ma raw l-ebda lights, imma din il-verzjoni mhix attendibbli kif mhix attendibbli l-verzjoni taghhom li kienu mexjin xi ghoxrin pied wara l-vettura tal-konvenuta bl-istess speed meta l-konvenuta biddlet id-direzzjoni.

Il-konvenuta qalet ukoll illi rat il-vettura tal-attur gejjja ghal fuqha mill-mera, izda qasmet il-karreggjata xorta wahda milli kkalkulat li kienet ghadha 'l boghod.

It-Tribunal jaghmel riferenza ghas-segweni sentenzi:

- (i) Qorti tal-Appell fl-ismijiet *Mark Sammut vs Meryse fGermaine de la Parque*, fejn inghad li f'cirkostanzi simili ghal dawk li kienet fihom il-konvenuta, ghandha tintuza grad ta' diligenza l-iktar gholi u vigilanza l-ikar qawwija.
- (ii) *Joseph Camilleri vs Joseph Dimech (27.07.1981)* fejn intqal li s-sewwieq ghandu l-obbligu li jespora tajjeb it-triq li jkun ser johrog fiha, qabel ma johrog ghandu l-obbligu li jimxi dead slow u sahsitra jieqaf biex u sakemm jaccerta ruhu li jista' johrog bla hsara.
- (iii) *Emmanuel Galea vs Paul Galea (04.11.1997 – Qorti tal-Magistrati (Ghawdex) Superjuri)* fejn intqal li mhuiwix bizzejjed li wiehed jixghel l-indicator, u li dan m'huiwix 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 jgri 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.*
- (iv) *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 jiehu 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.*

Buchanan<sup>1</sup> jgjid a propo\itu: *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-prin`ipji [ew addottati mill-Qrati tag]na<sup>2</sup>

Illi gie stabbilit diversi drabi illi l-manuvra li kien qed taghmel l-attur fil-mument tal-incident u cioe' dik ta' overtaking jew surpass hija wahda perikoluza u li wiehed m'ghandux jaghmelha 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*

---

<sup>1</sup> Liability in Motor Cases, page 29

<sup>2</sup> 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 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

*driver is entitled to assume he can overtake without danger if what he is overtaking gives not the slightest sign of any unexpected manoeuvre.*

L-attur zbalja u kien ferm negligenti fil-manuvra ta' surpass illi ghamel, speċjalment meta kien jaf li kien qiegħed joqrob lejn *roundabout* kif ukoll filwaqt li kien jaf, jew messu kien jaf, bl-indicators li kienet xegħlet il-konvenuta. 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

L-attur naqas serjament meta ma tax kaz tal-indicator lights tal-konvenuta, u ma mexiex bi speed tali li seta' jwaqqaf tempestivament il-vettura tieghu fejn l-istess *roundabout*.

Is-segweni 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 għandu jkun zgur, qabel ma jagħmel dik il-manuvra, illi jista' jagħmilha b'sikurezza.*

Stabbilit għalhekk li z-zewg sewwieqa kienu jahtu għall-incident, jonqos jigi stabbilit f'liema proporzjon kienu hekk kontribwenti. Kif gie stabbilit, f'sitwazzjoni bħal din, it-Tribunal, biex jikkwantifika d-danni jrid jiddermina l-proporzjon li fih kull wieħed mis-sewwieqa kien ikkontribwixxa għall-accident.<sup>3</sup>

F'sentenza ferm ri`enti<sup>4</sup>, it-triq kienet maqsuma b'linja bajda kontinwa li e[att fil-punt fejn se]]et il-]abta, il-linja bajda kienet maqsuma biex tindika d-d]ul g]all-istabbiliment li hemm fin-na]a tal-lemin. Is-sewwieq tal-karozza xehdet li xehlet l-indicator, bdiet tikser lejn il-lemin tag]ha biex tid]ol fl-istabbiliment imsemmi, meta [iet investita mill-mutur. Is-sewwieqa tal-karozza i]da ammettiet li ndunat bis-

<sup>3</sup> Formosa vs Psaila, Prim'Awla, Onor. Victor Borg Costanzi 18.08.1987

<sup>4</sup> Onor Ray C Pace, Citazz Nru 611/96, riportata f'*In-Nazzjon, 5 ta' Novembru 2001*

sewwieq tal-mutur biss meta j-abtu. Hija ammettiet li ma j-arsitx lura, imma qag]det attenta biss g]at-traffiku li seta' kien [ej mid-direzzjoni opposta, g]ax ippretendiet li vehikolu sorpoassanti seta' jaqla' min-na]a tax-xellug tag]ha. Il-qorti wi\net ir-responsabilitajiet u dde`idiet li s-sewwieq tal-mutur kien responsabbli g]al terz tal-in`ident filwaqt illi s-sewwieqa tal-karozza kienet responsabbli kwantu g]al \ew[ terzi.

F'ka\ ie]or,<sup>5</sup> l-attur, waqt li kien qieg]ed isur il-karozza tieg]u fi Triq Borg Olivier, Mellie]a, u kien qieg]ed jissorpassa karozza misjuqa minn Colin Arthur Greening, dan tal-a]]ar, bla ebda preavvi\, qabad u dar lejn il-lemin u konsegwentement j-abat fl-attur. Il-Qorti qasmet ir-responsabilita' g]all-in`ident terz lill-attur u \ew[ terzi lil Greening.

F'ka\ ie]or,<sup>6</sup> Joseph Attard kien qed isuq il-karozza tieg]u tul Naxxar Road, San {wann. Qal li xeg]el l-indicator biex juri li kien sejjer jikser lejn il-lemin, fejn kien hemm junction. Billi ma ra lil j-add, huwa beda l-manuvra tieg]u meta l-konvenut Debono baqa' die]el [o fih bi\-\iemel 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 ji]ri, jekk mhux ukoll itellaq, I\-\iemel tul it-triq. Ir-responsabilita' [iet apporzjonata \ew[ 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).*

---

<sup>5</sup> Onor Geoffrey Valenzia, Prim'Awla, 03.07.1995 Alexander Zammit vs David Debono noe

<sup>6</sup> Onor Geoffrey Valenzia, Prim'Awla, Hugh P Zammit noe vs Raymond Debono 16.10.1995, The Times, Monday, Nov 20,1995

Fis-sentenza taghha, il-Qorti tal-Kassazzjoni, akkordat ir-responsabilita' nofs bin-nofs bejn il-partijiet.

L-opra ta' massima awtorita' Ngli\ a Il-Bingham and Berryman's Motor Claims Cases, ippubblikat minn Butterworths, 2000, Il-}dax-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-na]a 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, pa[na 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.*

Ghaldaqstant dan it-Tribunal jaqta' u jiddeciedi billi jiddikjara lill-attur responsabbli kwantu ghal terz tal-incident, filwaqt li l-konvenuta hija responsabbli ghal zewg terzi u ghalhekk tikkundanna lill-konvenuta thallas lill-attur is-somma ta' LM132; l-ispejjez kemm tal-avviz tat-talba kif ukoll dawk tal-kontro-talba ghandhom jinqasmu zewg terzi lill-konvenuta u terz lill-attur.