



MALTA

**QORTI TAL-MAGISTRATI  
(GHAWDEX)  
(GURISDIZZJONI SUPERJURI)  
(SEZZJONI GENERALI)  
MAGISTRAT DR.  
JOSETTE DEMICOLI**

Seduta tad-19 ta' Gunju, 2014

Citazzjoni Numru. 55/2012

**Doris Elvira Daly**

**Vs**

**Pauline Vella**

The Court,

By means of this case, plaintiff alleges that she was the victim of a traffic accident which took place on the 28th December 2011 at Capuchine Street, Victoria, Gozo where she was driving her motorcycle. She sustains that defendant's car blocked her carriageway and as a result of which her motorcycle hit the said car with the consequence that she fell and suffered serious injuries. Consequently she alleges that she suffered considerable damages as a result thereof.

Defendant denies being responsible for this incident.

Having seen the report filed by the Medical Expert appointed by this Court.

Having heard witnesses.

Having seen all the acts of the case including the respective note of submissions.

Having seen that this case was adjourned for judgment for today.

### **Considerations**

This case regards plaintiff's allegation that on the 28th December 2011 she suffered permanent disability as a consequence of the traffic accident and defendant is to blame for this incident and thus she is requesting this Court to order defendant to pay the damages she suffered.

Thus the first issue which must be decided upon is who was responsible for this accident and whether it was actually the defendant who should be retained responsible for it as plaintiff alleges. The onus of proof lies on plaintiff since she is the person making the allegation.

As was stated in the case in the names of **Mary Debono et vs Concetta Scerri et**<sup>1</sup> :-

*“Ghal dak li huwa apprezzament tal-provi, il-kriterju determinanti mhuwiex jekk il-gudikant assolutament jemminx dak li jkun gie spjegat lilu, izda jekk dawk l-ispjegazzjonijiet humiex verosmili fic-cirkostanzi svarjati tal-hajja (**“Borg vs Bartolo”** – Appell Inferjuri – 25 ta’ Gunju 1980). Il-grad ta’ prova rikjest fil-kamp civili huwa dak li bizzejjed li jkun inissel certezza morali f’mohh il-gudikant li tkun indotta minn preponderanza ta’ provi meqjusa fuq bilanc ta’ probabilitajiet (**“Caruana vs Laurenti”** – Prim’Awla tal-Qorti Civili – 8 ta’ April 1994 ; **“Borg vs Manager ta’ I-Intrapriza tal-Halib”** – Prim’Awla tal-Qorti Civili – 17 ta’ Lulju 1981; **“Vassallo vs Pace”** – Vol.LXX.II.144 u **“Zammit vs Petrococchino”** – Appell Kummercjali – 25 ta’ Frar 1952).”*

Plaintiff’s version of events of the accident is as follows:

*“It all happened when I was riding my motorcycle (FAU 379 – Honda), uphill Capuchine Street from Marsalforn straight to Victoria, driving at my usual slow speed which did not exceed the thirty kilometres per hour (30k/h). I was near Azzopardi pharmacy, when an overtaking car suddenly took me unawares upon turning abruptly in front of me. I was driving at the side of the road in my carriageway. The car came from behind me and turned into Mary Meilak street, completely blocking my way. The driver of the car acted completely as if I did not exist. My reaction was beeping the motorcycle’s horn and letting out*

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<sup>1</sup> Rik Nru: 571/2008JZM deciza fit-30 ta’ Settembru, 2010

*instantaneous yells. Nonetheless, the car made a swift turn on the left without taking any cognizance of the whereabouts and subsequently hit me. My motorcycle was knocked down, and I found myself lying on my right arm”.*

Defendant did not realise that this accident happened and she proceeded along her way after the collision. It results from the acts of the case that she did not realise that anything happened until three days after the accident occurred, when the police went knocking at her door to investigate whether her car was involved in this accident. In fact the police had found a hubcap on the place of the accident and after investigations carried out it resulted that this hubcap pertained to defendant's car. In the report exhibited<sup>2</sup> defendant's version of events was as follows:

*“Nhar l-Erbgha 28/12/2011 kont shopping il-G&R Supermarket ta' Triq Kapuccini u hragt f'xi 12/15p.m jew hekk. Tlaqt insuq il-karozza AAO807 ghat-telgha u kif avvicinajt il-kantuniera ma' Mary Meilaq Street, xeghelt l-indicator tax-xellug u dort ghal go Triq Mary Meilaq. Quddiemi jew ma' genbi ma rajt ebda m/cycle u t-triq kienet libera biex indur u dort. Naf li kif kont indur smajt hoss qisu il-baskett tas-shopping jinqaleb izda bqajt sejra. It-twieqi tal-karozza aktarx kienu maghluqin kollha u ma smajt ebda mutur jaqa' jew xi hadd ighajjat u bqajt sejra normali. Dort il-fuq lejn Triq Dirjanu Lanzon u imbaghad ilwejt l-isfel lejn il-Gym u bqajt sejra x-Xaghra nigbor it-tifel mill-privat”.*

This Court is convinced that the proximate cause of this accident was defendant's negligence in driving. It is evident that she was not keeping a proper lookout. Defendant blocked plaintiff's way when she was turning into a side road from a main road. Moreover, the fact that she heard a noise she assumed that it was merely a shopping basket falling off and continued driving.

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<sup>2</sup> Dok AS 2 at fol 46 et seq

Thus, the Court must now determine whether plaintiff suffered any damages. As was stated in the case in the names of **Rita Farrugia et vs Carmelo Scicluna et**<sup>3</sup> *il-ligi tipprovdi li l-hsara li l-persuna misjuba responsabbli għall-incident trid twiegeb għaliha hija dik tat-telf effettiv li l-ghemil tagħha jkun gab direttament lill-parti mgarrba, l-ispejjez li l-parti mgarrba kellha tagħmel minhabba l-hsara, it-telf tal-paga jew ta' qligh iehor attwali, u t-telf ta' qligh li l-persuna mgarrba tbat i' quddiem. Fejn il-parti mgarrba titef hajjitha fi jew minhabba dak l-ghamil, il-ligi tagħti lill-verrieta dawk id-danni msemmija flimkien mat-telf u l-ispejjez attwali ikkagunati.*

As regards the expenses incurred by plaintiff that is the *damnum emergens* she is requesting the following:

- (i) Expenses she paid for physiotherapy sessions which in total amount to €2,280<sup>4</sup>. Plaintiff has filed the relative receipts and it has resulted from the acts of the case that she had to go to such sessions to help her recovery.
- (ii) She also claims the amount of €140<sup>5</sup> as fees for professional medical services rendered by Mr Ray Gatt. This amount has thus also been proven.
- (iii) Plaintiff claims also different other expenses some of which have not been sufficiently proven to be related to the accident in question. In the Court's opinion, the expenses which should be reimbursed are €4.44<sup>6</sup>, €5.90<sup>7</sup>, €15.51<sup>8</sup>, €9.76<sup>9</sup>, €32.24<sup>10</sup>, €70<sup>11</sup> totalling €137.85.

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<sup>3</sup> Sworn application number: 543/1998JRM decided on the 31<sup>st</sup> May 2012

<sup>4</sup> Vide Dok MX2 till MX14

<sup>5</sup> Dok MX18

<sup>6</sup> Dok MX17 for surgical ex

<sup>7</sup> Dok MX 19 for pills

<sup>8</sup> Dok MX20

<sup>9</sup> Dok MX21

<sup>10</sup> Dok MX23

<sup>11</sup> Dok MX24

- (iv) Finally, plaintiff exhibited a number of receipts supposedly issued by Marlies Baumgart about trips from Qala to Physiotherapist Frank Xerri in Victoria. Now, the Court is not very much convinced about the authenticity of such receipts particularly when Marlies Baumgart stated in her affidavit submitted on the 31<sup>st</sup> January 2013 that until then she had not been paid any expenses and that she was only expecting expenses related to basic expenses like fuel expenses. Thus €12 per trip is certainly most exaggerated. Moreover, the receipts exhibited attest that plaintiff has been paying her since October 2012 so there is a clear contradiction between these receipts and Baumgart's testimony.

Hence, by way of *damnum emergens* defendant should pay plaintiff the amount of €2557.85.

By way of *lucrum cessans* it must be said that plaintiff was 76 years old when the accident occurred. No proof has been forthcoming as to plaintiff's earnings. Presumably she is a pensioner. As has been said in the case in the names of **Sylvia Rosso vs Etienne Galea**<sup>12</sup> *f'dan ir-rigward jinghad lil-Qrati taghna ilhom zmien jaccettaw li mara mizzewga li ma kellhiex impieg jisthoqqilha tinghata kumpens ghall-griehi mgarrbin minnha f'incident dannuz, ghal dan il-fatt wahdu*<sup>13</sup>. *L-istess jinghad ghall-kaz fejn il-persuna mgarrba tkun qabzet l-eta' tal-pensjoni*<sup>14</sup>.

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<sup>12</sup> Per Imhalef Joseph R. Micallef decided on 3<sup>rd</sup> April 2003

<sup>13</sup> Vide for example, **Carmelo Zammit et vs George Bezzina** Civil Appeal. 19.9.1973; Civil Appeal. 16.1.1984 in the case in the names of **Apap vs Degiorgio**

<sup>14</sup> Vide for example, P.A. NA 29.5.2001 in the case in the names of **Joseph Cini vs George Wells et noe**; and P.A. GV 12.7.2002 in the case in the names of **Saviour Sammut vs Robert Demanuele**

Reference is also made to the case in the names of **Guzeppi Grech et vs Emanuel Sultana et**<sup>15</sup> in which the Court stated:

*Il-gurisprudenza lokali mxiet fid-direzzjoni li tillikwida lucrum cessans anke fejn mill-provi ikun irrizulta li strettament id-danneggjat ma jkunx sofra telf ta' paga jew qligh attwali jew ghal quddiem*<sup>16</sup>. **Fil-kawza Joseph Galea et vs Charles Fenech proprio et nomine et** deciza fis-16 ta' Marzu 2004, gie osservat: "Huwa ben stabbilit fil-gurisprudenza nostrana li kumpensa ghal dizabilita' permanenti huwa dovut anke jekk il-persuna danneggjata ma tiflef xejn mill-introjtu taghha – ara f'dan ir-rigward *George Gatt vs Francis E. Carbone nomine deciza minn din il-qorti diversament komposta fis-7 ta' Lulju 1998 u diversi sentenzi ohra in materja.*".

Sewwa qalet il-Prim'Awla tal-Qorti Civili<sup>17</sup> fil-kawza **Susanne Davis et vs Anthony Galea** deciza fl-10 ta' Ottubru 1997 li "Il-maggior parti tas-sentenzi taghna invece **jistrie hu biss fuq il-fatt ta' disabilita'** minghajr ma jsir ezami profund jekk dik id-dizabilita' hijjex verament sejra tikkaguna telf futur.". Din hi r-realta', minkejja l-fatt li minn qari tal-provvediment jidher li din qeghda tirregola l-effett li hsara ghandha fuq qligh attwali u tal-futur tad-danneggjat. F'dan il-kuntest l-istess Qorti fil-kawza **Joseph Caruana vs Joseph Gafa** deciza fid-29 ta' Mejju 1998 regghet ikkonfermat li: "Fl-izvilupp prezenti tal-gurisprudenza taghna huwa forsi necessarju li l-bzonn ta' certezza u

*nuqqas ta' ambigwita' jimponu teorija li tezigi li kull tip ta' disabilita' permanenti twassal ghat-telf futur fil-proporzjon tal-persentagg taghha.*"<sup>18</sup>

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<sup>15</sup> Sworn application number: 42/2005AE decided on the 24<sup>th</sup> June 2008

<sup>16</sup> The classical example is the case of a housewife where the Courts have argued that housework should be given an economical value for *lucrum cessans* and she should be compensated for injuries sustained.

<sup>17</sup> Per Imhallel Noel Arrigo

<sup>18</sup> In the case in the names of **Joseph Galea et vs Charles Fenech proprio et nomine et**, it was stated "Din il-Qorti lanqas ma tikkondividi s-sottomissjoni tal-appellanti li l-grad baxx ta' dizabilita' ghandu jxejjen il-possibilita' li jigi akkordat kumpens u dan ghaliex il-grad ta' dizabilita' li jigi stabbilit permezz ta' esperti in materja qiegheed hemm mhux biex il-qorti tiddetermina jekk hux jew le dovut

*kumpens, izda pjuttost kemm dak il-kumpens ser ikun.*".

*Proposta li biha jigi rikonoxxut li d-danneggjat jigi kkumpensat irrispettivament dwar jekk fir-realta' l-hsara kellix effett fuq il-qligh attwali u tal-futur tad-danneggjat, u kollox ikun jiddependi mill-grad ta' inkapacita' li jkun soffra.*

The same Court referred to a number of judgments which this Court makes ample reference to amongst which (a) **Joseph Smith vs Peter Grech** decided by the First Hall Civil Court on the 4<sup>th</sup> October 1995<sup>19</sup>; (b) **Francis Farrugia vs David Darmanin**<sup>20</sup>. The victim did not work because he was *boarded out* and was receiving a disability pension. The Court proceeded to liquidate damages by way of *lucrum cessans*. The Court explained that : *“Illi madanakollu huwa ghandu jigi kkumpensat tad-danni li soffra dejjem tenut kont tas-sitwazzjoni rejali tieghu, fejn jidher li l-istess konvenut kien qata' mix-xoghol u anke qabel l-incident ma kienx f'posizzjoni li jahdem.”* The Court liquidated an amount *arbitrio boni viri*. Also in the case (c) **Sylvia Rosso vs Etienne Galea**, on the day when the accident occurred plaintiff was 65 years old. The Court observed: *“Illi l-attrici wriet li, ghalkemm kienet armla, qabel l-incident kienet mara attiva li thobb il-hrug u z-zfin u kienet tivvjagga. Dawn l-attivitajiet naqsu sewwa wara l-incident....Hija bir-ragun kollu tissottometti li bil-ligi jisthoqqilha tinghata kumpens ghall-griehi li garrbet, ukoll jekk qabel ma kinitx tahdem bi qligh, ghall-fatt li hija kienet mara tad-dar u kienet izzomm id-dar hi bil-hidma taghha. Minbarra dan, hija wriet li kienet tgawdi minn stat ta' sahha tajjeb qabel sehh l-incident u ghalhekk kienet mistennija tgawdi minn zmien ta' hajja attiva ghal ghadd ta' snin ohrain, li kieku ma kienx ghalih.”* The Court liquidated an amount of damages. Then (d) in the case **Emanuel Buhagiar vs Kyle Stone et**<sup>21</sup>, plaintiff was 73 years old when the accident happened and he led an independent and active life. After the accident he needed a stick, was depressed and could not lead the same active life as before. The Court liquidated an amount *arbitrio boni viri*.

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<sup>19</sup> per Imhalled Albert Magri

<sup>20</sup> Per imhalled Raymond Pace decided on 21<sup>st</sup> March 2002

<sup>21</sup> Per Imhalled Geoffrey Valenzia decided on the 28<sup>th</sup> February 2007



In the report drawn up by Mr Carmel Sciberras, a consultant orthopaedic surgeon nominated by the Court as its expert, it results that plaintiff's disability is ten per cent (10%). Such report was not contested.

In the circumstances of this case the Court will be proceeding to liquidate damages *arbitrio boni viri* after having considered amongst which plaintiff's age at the time of the accident (76 years); that from the date of the accident nearly three (3) years have passed; the permanent disability she suffers from; the fact that she did not lose any main income and she did not have any prospects of work but most of all the kind of life she had before the incident and the aftermath. It results that plaintiff was an independent person before the accident however after the accident she cannot even drive anymore and she needs help even in the most basic things. Although it must be stated that the medical expert stated that by time things will get a bit better. Hence, the Court opines that the sum which defendant is bound to pay to plaintiff is in the amount of four thousand euro (€4,000)

For the above-mentioned reasons, the Court decides this case, whilst rejecting defendant's pleas, accedes to plaintiff's requests and thus:

- 1) Declares that defendant is to blame for the incident which occurred on the 28<sup>th</sup> December two thousand and eleven (2011) in Capuchins Street, Victoria, Gozo;
- 2) Liquidates the sum of six thousand five hundred fifty-seven Euro and eighty-five cents (€6,557.85) in favour of plaintiff;
- 3) Condemns defendant to pay the sum of six thousand five hundred fifty-seven Euro and eighty-five cents (€6,557.85).

With costs including those related to the judicial letter and with legal interest running from today till the actual payment is effected against defendant.

**< Sentenza Finali >**

-----TMIEM-----