



CIVIL COURT FIRST ROOM

HONORABLE JUDGE
DR FRANCESCO DEPASQUALE LL.D.
LL.M. (FILL OUT)

Tuesday session
Fourteenth (14) of March 2023

Appeal Number 191/2013 FDP

In the names

Frederick Catania (K.I. 536081M)

Vs

Of Matthew Fish Farms Limited (C 38207)

The Court:-

1. Saw the application dated 26 February 2013, through which the applicant requested the following:

1. *That the claimant is employed by the respondent company as a diver, and used to work under the sea on the fish farms owned by the respondent company or managed by it;*
2. *That during the time that the claimant has been employed by the respondent company, he was given instructions to carry out work under the sea in conditions for which adequate equipment and devices were not provided, and the equipment that was being provided by the respondent company to the claimant was not suitable for the work that the claimant was ordered to perform, and in particular for the premises in which the claimant was ordered to go down.*
3. *That the claimant's work in these dangerous conditions and in this unsafe working environment continued for a long time, as a consequence of which the damage to the claimant's health began to accumulate, and with the consequence that on 6 April 2012 the claimant's strength gave up when he had just finished a dive, and he suffered from a spinal*

decompression syndrome with the consequent debilitation of a permanent nature on his person - all this according to what appears from the medical certificate that is being attached and marked as Document A.

- 4. That also when the episode of 6 April 2012 took place, none of the employees and managers of the respondent company were trained to provide first-aid in an emergency, and effectively no one provided appropriate first-aid to -applicant; that also none of the employees and managers of the respondent company were trained to call the necessary help in an emergency, and in fact no one called the necessary help in this case; and the respondent company did not even provide the essential equipment to give the claimant the necessary first-aid,*
- 5. That the respondent company is responsible for the permanent weakness suffered by the claimant on his person, which occurred solely through its fault and guilt due to a lack of diligence, prudence and thought, through negligence and impertinence , and because of unsafe working practices and because a safe working environment/safe system of work was not provided on its part (of the respondent company), which also did not observe the obligations it has according to the law towards its employees as an operating entity.*
- 6. That the respondent company was asked to approach for liquidation and payment of all the damages suffered by the claimant on his person as a consequence of the aforementioned, but remained in default, and therefore this case had to be made .*
- 7. That there is also remuneration due to the claimant regarding his employment which has not yet been paid to him, even though the respondent company has been interrogated in order to arrange for the payment of the same.*

The respondent company therefore says why for the reasons stated this Honorable Court should not:

- 1. It declares that the respondent company is responsible, for the reasons stated above, for the physical and permanent weakness that the claimant is suffering from on his person.*
- 2. Liquidate the damages suffered by the claimant due to this physical weakness, and this occurred with the work of nominated architects.*
- 3. Condemns the respondent company to pay the claimant all damages thus liquidated.*
- 4. Declare that the respondent company must pay remuneration to the claimant about his employment.*
- 5. It orders the respondent company to pay this remuneration to the claimant, with interest from the date of the filing of this case until the date of actual payment.*

With the costs and interests against the respondent company which is sued for subjugation.

2. Saw that on 2 April 2013 the respondent company responded to what was requested by raising the following defences:

1. That the exponent agrees with the facts as stated in the first paragraph of the plaintiff's statement. He adds that the actor is a licensed 'diver' and has been employed with Ta' Mattew Fishfarms since 2007.

2. That the facts stated in the second paragraph of the plaintiff's statement are all contested because they are completely false. The Company used to provide only the oxygen tank that was used by the 'divers' which tanks are of the best quality and maintained according to the best standards. Frederick Catania was bound by the contract to provide the rest of the equipment for his diving and he was given a monthly allowance to maintain his equipment. This was also necessary because Frederick Catania as a 'licensed diver' has his own equipment and used to dive even in his spare time.

Frederick Catania always guaranteed that his crewing was good. At the same time the company has no control over what he does in his spare time.

3. That the facts stated in the third paragraph of the plaintiff's statement are all contested because they are completely false. Actually there is nothing dangerous or unsafe in the work that was given by Ta' Mattew Fishfarms. In any case, at the time of the incident, he had gone against the express orders of his supervisor by going down very deep to fish, something he knew he should not have done.

4. That the facts stated in the fourth paragraph of the plaintiff's statement are all contested because they are completely false. It turns out that the company had sent some employees and supervisors a first aid course specialized in a particular way to deal with bends. In fact, Fredrick Catania was assisted at first by Mark Bugeja, who was in charge of operations that day and who gave him oxygen immediately as soon as he got on the boat. Subsequently, as soon as Frederick Catania felt that he was not quiet, he was immediately given help and a boat was sent that was very fast to collect him and take him to where an ambulance was supposed to come.

On the boat that was sent there was another worker who had a license to administer aid in these situations. It is also said for completeness that the ambulance was called immediately but it arrived in Marsaxlokk exactly when the boat arrived with Frederick Catania on it. It is therefore absolutely not true that there were any deficiencies in the help that was given to Frederick and that it was given in a timely manner.

5. That the facts stated in the fifth paragraph of the plaintiff's statement are all contested because the plaintiff company does not claim for infirmity

that Frederick Catania suffered and this will be explained further and in detail during the hearing of the case.

6. *That the facts stated in the sixth paragraph of the plaintiff's statement are contested for the reasons it was brought.*
7. *That regarding the remuneration it is said that Frederick Catania not only paid everything he was entitled to be paid according to the law but was even given some bon gratia donations from the directors of the company not because he deserved to be given such donations but simply as a form of charity because of the needs of his family,*

EXCEPTIONS

Of Matthew Fishfarms therefore rejects that;

1. *That the respondent company is not responsible for the incident complained of by the claimant and for the damages claimed by him, which incident and damages occurred solely through the fault of the claimant.*
2. *That the claimant did not suffer permanent damage and/or damages to the extent by him advertised.*
3. *That the claims of the claimant should therefore be rejected with costs against the same claimant and Ta' Mattew Fishfarms Limited reserves from now on to seek the claimant for the damages caused to it by the issuance of the attachment mandate which damages include defamation.*
4. *Save further exceptions if the case.*

Provi:

3. Saw the affidavit of **Frederick Catania** presented on 27 September 2013 (fol 18).
4. She saw the testimony of **Dr. Stephen Muscat** of November 6, 2013 (fol 29).
5. She saw the documents exhibited by Dr. Stephen Muscat Doc S1 and S2 (fol 54 and 55).
6. Saw the document exhibited on Diving Injuries and the Decompression Sickness (fol 76).
7. She saw the testimony of **Dr. Norbert Vella** of June 12, 2014 (fol 89).
8. She saw the testimony of **Dr. John Mifsud** of 12 June 2014 (fol 92).
9. She saw the testimony of **Dr. Stephen Zammit** of February 4, 2015 (fol 107).
10. Saw the testimony of **Roderick Camilleri** of 12 May 2015 (fol 114).
11. Saw the testimony of **Joseph Cini** of 12 May 2015 (fol 118).

12. Saw the report of the Medical Architects **Dr. Anton Grech** and **Dr. Josanne Aquilina** filed November 13, 2014 (fol 131).
13. She saw the testimony of **Dr. Josanne Aquilina** of June 18, 2015 (fol 133).
14. She saw the testimony of **Dr. Anton Grech** of November 5, 2015 (fol 136).
15. Saw that on 5 November 2015 the claimant declared that he had no more evidence.
16. Saw the note exhibited w marked Doc FC on 1 March 2016 containing a photocopy of the applicant's diving passport (for 142).
17. Saw the testimony in cross examination of Fredrick Catania of 1 March 2016 (fol 152).
18. Saw the testimony of **Joseph Curmi** of 12 May 2016 (fol 159).
19. Saw the affidavit of **Roderick Camilleri** presented on February 8, 2017 (fol 164).
20. Saw the affidavit of Joseph Curmi filed on February 8, 2017 (fol 166).
21. Saw the testimony of **Mark Bugeja** of 8 March 2017 (fol 168).
22. Saw the testimony of **Raymond Bugeja** of November 2, 2017 (fol 175).
23. Saw the documents exhibited by Raymond Bugeja on 2 November 2017, Doc RB1 and Doc RB2 (fol 178 *et sequitur*).
24. Heard the testimony of **Raymond Bugeja** in cross-examination of December 16, 2020 (fol 235).
25. Heard the testimony of **Mark Bugeja** in cross-examination on 6 May 2021 (fol 268).
26. Heard the testimony of **Roderick Camilleri** in cross-examination of 14 July 2012 (fol 326).
27. Heard the testimony of **Joseph Cini** in cross-examination of 16 December 2021 (fol 346).
28. Saw the documents Doc JR1 exhibited by Joseph Cini presented on 16 December 2021 (fol 360).
29. Saw that on January 20, 2022, the case was left for final submissions after the evidence of the parties was closed.
30. Saw the applicant's submissions note of March 16, 2022 (fol 363).
31. Saw the note of the submissions of Ta' Matthew Fish Farms Limited presented in 1 August 2022 (fol 381).

Facts of the case

32. It turns out that the claimant was employed by the respondent company as a professional diver, and his job was to feed the tuna in the cages and check the nets.

33. It turns out that the claimant's accident happened on April 6, 2012 and before the accident happened, the claimant had eight years of experience as a diver.
34. It follows from the explanation in the applicant's testimony, that the distinction between the previous work with Elbros and the work with the respondent society, was that the volume of 'dives' requested by the respondent *society*, were more frequent. It also turns out that the claimant was given instructions for 'deep diving' often and the work had to be done at a great depth.
35. When he came up *from the 'dive'* on the day of the accident, he was given oxygen on the barge, and was subsequently taken to the Hyperbaric Unit of the Hospital, but this journey took time and lasted an hour and a half until you deliver and be taken there.
36. It turns out that the claimant was provided with the oxygen cylinder but not with the 'tri-max', which contains more 'helium' than 'nitrogen'. In fact, it appears from the testimony of Dr. Stephen Muscat that the 'tri-max' was required for '*deep dives*', because it appears that the claimant would even go down to the bottom in order to carry out his work.

Considered

37. It appears, from the premises and from the evidence produced, that the claimant is, through the present action, requesting material and personal damages of the type *damnum emergens* and *lucrum cessans*, after damages suffered in the incident that *occurred on the 6th April 2012*. In fact, the claimant is claiming that as a consequence of the lack of a *safe system of work* on his job, he is suffering current and future damages, as well as permanent disability on the -his person.
38. It appears, on the other hand, that the respondent company rejected the claims of the claimant by excluding that the claims of the claimant are unfounded in fact and in law. In addition, it was also objected that the claimant was bound by the contract to provide the rest of the equipment for his diving, and that there was nothing dangerous in the work that was given to the claimant, and that the company respondent did not claim for the claimant's permanent disability, therefore there are no damages to be liquidated.

Considerations - Liability

39. The claimant insists that the respondent company is solely responsible for the accident, where he was paralyzed from both legs down, after he climbed out of the sea unable to cope with symptoms of 'Bends', Neurological Decompression Sickness, and this after a '*dive*' in his work assignment.
40. On the other hand, the respondent company, denies this, rather claims, that the claimant did not suffer permanent debilitation as a consequence of the work assignment given by the respondent company, because he used to do 'dives' as a hobby too.
41. The Court observes, in the first place, that it is an established principle that whoever alleges must prove it. In fact, it is a general rule, that the burden of proof is on the one who asserts a fact, *onus probandi incumbit ei qui dicit non ei qui negat* (See **Joseph Zammit vs. Joseph Hili**, Vol. XXXVII-I-578.)

42. The claimant claimed that there was no *'safe system of work'* on the work site. He explained how he used to be hired to do *'deep dives'* which required him to go down more than fifty (50) meters, he used to do this because he was only provided with an oxygen cylinder. In this case, the claimant is claiming that he should also have been provided with a *'tri-max'* which is in order to execute *the 'deep dives'* he had to do in his work assignment. Roderick Camilleri who was also a *'diver'* with the respondent society confirmed in his testimony, that they would have had to go down more than thirty (30) and forty (40) meters deep. He also confirmed that sometimes there were even damages in the cages.
43. It turns out that, on the other hand, Mark Bugeja, employed by the respondent company, says in his testimony that *the 'divers'* were told to go down to 40 meters deep and not that much further down to the bottom. This fact, however, is contradicted by what was declared under oath in the testimony of Dr. Stephen Muscat, a person certainly not a party to the case and an expert doctor in his field who works at the Mater Dei hospital, where he stressed that when he received a phone call from the barge on the day of the accident, on 6 April 2012, it was said to him that the applicant had just come up from a ***'seventy one meter dive'***.
44. It is said that this fact which results from the testimony of Dr. Muscat that on the day that the incident occurred the applicant Dr. Muscat was clear and claimed that in the phone call he received to inform him about the incident he was informed that the claimant had just come up from a 71 meter *'dive'*. Therefore, this Court cannot rely on the testimony of Raymond Bugeja who claimed that the cages were 50 meters deep and that the claimant was not required to make *'dives'* in *depth*.
45. Regarding the logs exhibited by the respondent society fol 178 of the process, it appears that these logs were filled by the respondent society itself and therefore the information recorded there cannot be considered reliable. In fact, with regard to the applicant, it appears from the logs that in March he woke up 5 times and in April until the date of the accident he woke up twice. The Court that such logs do not reduce anything from the obligation of the respondent company to ensure the safety of its workers at the workplace.
46. Accordingly in the light of the significant and very important testimony of Dr. Stephen Muscat given on 6 November 2013, this Court considers that, as claimed by the same claimant, he was tasked and required to do *'deep dives'* and, on the day of the claimant's accident, he was *in* 71 meter *dive*. It is also said that Dr. Stephen Muscat confirmed that whoever called him on the day of the accident to inform him that Frederick was suffering from *'bends'* symptoms had informed him on the phone that he had come up from a *'dive'* of 71 meter.
47. In the case under examination, the testimony of Dr. Stephen Muscat is of great relevance, where he explained the cylinder and oxygen issue very well.

"We call it oxygen that is bad in the cylinder there is compressed air air like we are taking out here we were saying that when a person dives with air the recommendation is that a person does not exceed 50 meters. I'm not saying that I've never jumped, you know for example or that many 'divers' don't skip it but you have to take a lot more precautions, it's like in Maltese when you're a person giving advice to a person who drives at fifty miles an hour and a person can drive at seventy but you have to be more careful because you have more risks. You may not use the air

to be safer. In fact, those who dive deeper, for example those who want to do a 'dive' of 100m or 80 meters or 70 to be more lucid there are those who use the 'tri-max' it contains more helium instead of nitrogen why is nitrogen when falling at that depth has the effect as soon as you exceed thirty meters the nitrogen comes as if you took narcotic alcohol, many gases make it so you if you have a 'diver' who is reasoning on the surface at the bottom it may be that he is not reasoning perfectly there is something obvious that he does not reason and he can make mistakes

Now at thirty meters and at 40 meters an experienced 'diver' like me and like Frederick will one hundred percent be able to adapt to it even at 50 meters he will be reasoning quite well but one will only be that deep the body the mind slows down.....

We were saying why those who go down deep use the 'tri-max' the main reason why they use it is that we are saying that the mind reasons much more lucidly because then it has its disadvantages as well ie it gets colder with it for example. But the fact that the mind reasons more is good and very important, that is to say, it is enough for the user to still have his own risks.

I mean you can have decompression sickness still the fact that you are using it minimizes other types of accidents but you can still have it meaning you have to do the "decompression stops."

48. Dr. Stephen Muscat also explained, in his testimony, that there is a difference between a 'sports dive' and a 'dive' at work, because when a person is diving for work, even if shallow, he introduces more nitrogen into the air system .
49. Dr Muscat also claimed that, referring to the 'stops' that one is supposed to make while diving, even if on the day that the accident occurred in a 71 meter 'dive' he did not make the necessary stops, in his medical opinion the claimant should still not go up paralyzed. Therefore Dr. Stephen Muscat concluded that the applicant suffered the fact that he had 'hits' from previous 'dives' . Dana contradicts the allegation of the respondent society where it is trying to blame the claimant by claiming that the accident occurred as a consequence of his negligence by saying that he did not make the necessary stops.
50. In addition, the respondent society is claiming that the claimant also used to do 'sport dive' as a hobby. However, Dr Muscat testified about the distinction between 'sport dive' and 'dive' at work where he explains that in a 'dive' at work, a person has to introduce more nitrogen into his air system.
51. It is imperative to consider what was said by Dr. Stephen Spiteri in his testimony, where he explained that there must be a structure in the work, where a person is monitoring that everything is being done properly. In this regard Dr. Stephen Muscat confirmed this:

"The recommendation is 50 meters in sport diving. Now when a person is working, not sports diving, that is work, that is to say, there is supposed to be a different set of rules when a person is working, you are supposed to have a structure to protect him, I understand..... .."

If you are working you need someone who is monitoring that you are doing things right number 1!!!.....

I mean everywhere outside Malta and even certain places here in Malta, there is what they call a 'diving supervisor'. 'Diving supervisor' what is his job? The supervisor logs the 'dives' and sees that you did where you went down, how deep you went down, and that you left time between a 'dive' and another that does not exceed the number of 'dives' in a day that is work of diving supervisor.....

No one spoke to me as a diving supervisor and it was never mentioned to me but I was not at work."

52. It follows from the testimony of Dr. Stephen Muscat, who works in the Hyperbaric Unit, who confirmed that there was an exaggerated delay until the claimant arrived at the Hyperbaric Unit, when he always insists that it is very important that in such cases the patient arrives at the Hyperbaric unit from the faster. In fact he confirmed that from 11.30am when he received the phone call from the barge until the patient arrived at the hospital in the Hyperbaric Unit at 1.00pm In his testimony Dr. Stephen Muscat said this:

"Because the more time passes when he is already paralyzed it is already almost very late but the more time passes the more the situation may not heal him, to understand. I mean, these cases are always an emergency, in fact my staff whenever I call them I always pretend that they will come in in ten minutes, they have the beckon on the roof, they have a siren, if you ever see a car driving by ' some green beckon on it because all these are serious emergency. More and more in a case like this and I remember that from the swimming pool I went straight to the hospital, I was only a few minutes, three minutes four minutes, I was waiting for him and when half an hour passed and still he does not come. They told me we are coming back by barge and I took it very seriously, have they ever been coming by barge a case like that!! I told them I am pretending that they are already on the road by car so far and I found out that they were about 8 miles out as they told me that I remember and in fact that is what I wrote here, and anyway, not to delay the patient has arrived from 11.30am. it came to me at one o'clock (1.00pm)..... I know I made a plan but I'm big on it that as much as possible they invent an urgent transport system because those are urgent cases aren't they but I was I already made it clear to them in the first phone call."

53. From this testimony of Dr. Stephen Muscat, it appears that when the claimant came back from diving with symptoms that he could not cope with, there was no 'safe system of work' that protects the claimant as an employee of the respondent company. It also turns out that there was no 'standard' structure and system designed so that in the event of an emergency there would be an expedient and safe route to the hospital. In fact, it turns out, that in the case in question, the journey back to land was made on a barge and not by boat, so it seems that there was no safe structure organized and intended for emergency cases like this.

54. Furthermore, it appears that when the claimant came *up from the 'dive'* with the symptoms he had, he was not given oxygen immediately and properly. This is because he had to be administered pure oxygen and not the oxygen that was given by those on the barge. This fact was also explained in the testimony of Dr. Muscat as a medical expert in this sector.
Therefore, from the factual results, it appears that there was a lack of observance of *'first aid'* rules and structures for these particular circumstances, in an incident like that of the applicant. It also emerges, from the evidence, that the respondent society did not have other essential equipment to provide for the health of the employees in such incidents.
55. From the report of the medical experts appointed by the Court, it appears that, as a consequence of the accident suffered by the claimant on the sixth (6) of April 2012, he remained paralyzed and suffered Neurological Decompression Sickness which affected his movement of both his legs. From the experts' report it emerged that the claimant has a permanent physical disability of 75% and does not have a psychological disability.
56. **Article 1045(1) of Chapter 16** of the Laws of Malta provides:
- "The damage that the responsible person must answer for...is the effective loss that his actions will bring directly to the party that suffers the damage, the costs that this party may have had to incur due to the damage, the loss of wages or other current earnings, and the loss of earnings that will suffer in the future due to permanent incapacity, total or partial, that that act could bring."*
57. From this provision of the law, it is clear, that it requires a connection of cause and effect with the act or omission and the direct effect on the person who is advertising damages suffered.
58. The applicant refers to this *ness* between cause and effect by referring, even in the preamble, that he is suffering from permanent disability as a consequence of the accident that occurred at the workplace on April 6 2012, where he was performing his work as a diver with the respondent company.
59. This Court, after considering all the evidence produced, considers that the *ness* of cause and effect described has been well proven to the satisfaction of this Court. In fact, it turns out well proven that it was only on the day of the sixth (6) of April 2012, while the applicant was doing his job for the respondent company, that he was paralyzed as a result of a *'dive'* of 71 meter in his job assignment.
60. The respondent company tries to defend itself by saying that it was the claimant's obligation according to his employment contract to provide the same oxygen and what he requires for the execution of his work. For this purpose, the Court claimed that the respondent company presents some kind of contract to corroborate what it declared. However, even though the case took ten years to reach a final judgment, the respondent company NEVER produced any employment contract of this kind that stipulates that the diver had to provide the equipment and cylinders of 'the oxygen is'.
Therefore, the argument of the respondent society does not prevail, and this even in view of the fact that it is precisely the employer's obligation to ensure that the workplace is a safe place and that there is a structure of 'safe system of work'.

61. It should be said that the claimant, in his affidavit, confirmed that he was employed by the respondent company, which company was responsible for providing all the divers, i.e. both him and the other divers, with the oxygen cylinders, as well as taking care of providing the filling of the same cylinders. The claimant insists that this was done at the expense of the same respondent society.
62. The Court here points out that it connected Dr. Josanne Aquilina and Dr. Anton Grech as its Experts, in order to examine the claimant's physical and psychiatric situation and verify if he actually suffered from a permanent disability, and if so, establish how much.
63. It appears that in their report, that the able medical experts concluded that Frederick Catania is suffering from a permanent physical disability of seventy-five percent (75%) and the following observations were made under the title Clinical Diagnosis :

"From the history taken by Mister Catania and from the documents of the Mater Dei hospital it appears that Mister Catania suffered from Neurological Decompression Sickness of the thoracic spine between levels T2-T5 and that left Mister Catania paralyzed in his legs -two (spastic paraplegia) he suffers from reactive sadness to his difficult situation but he does not have a serious or permanent psychiatric illness."

Evaluation of the rate of permanent disability

"Mister Catania's disability rate is:

Spastic paraplegia: 75% (reference to the book Amendments to the Law on Civil Damages issued by the Minister of Justice and Interior (2010) page 20).

He does not have a permanent psychiatric disability."

64. This Court considers that it does not see any reason why it does not rely on the conclusions of its able experts, and therefore concludes that the permanent disability of Frederick Catania, as a result of the incident that happened on the 6 April 2012, it is seventy-five percent (75%).

damage

65. It turns out that the claimant is claiming compensation for damages suffered, which damages must be liquidated by this Court, where the claimant is advertising *damnum emergens* regarding the five months he was hospitalized there in the hospital after the - the incident in question. In fact, after this incident and after these months in hospital, it was confirmed by the doctors that the claimant cannot go back to work.
66. It is clear that the liquidation of damages should take place on two tracks; the damages actually suffered ('*damnum emergens*') and those damages due to the incapacity caused '*lucrum cessans*' as provided by Article 1045 of Chapter 16.

67. Considered, that the period of five months in the hospital, which the claimant did after the accident occurred in the year 2012, will be computed in the calculation of *lucrum cessans* in the computation of the pay that he used to perceive .

68. Therefore, this Court will proceed with the computation of *lucrum cessans damages*.

Cessation of Profit

69. It turns out, as was said in the sentence **Emmeline Cini vs Antoine Cachia**, decided by the First Chamber of the Civil Court on 18 February 2013, the Court has the obligation to examine the loss of future earnings due to the incapacity , the loss of wages or other actual earnings suffered by the person who suffered the loss. Such quantification of damages is always at the judge's discretion but is regulated by certain principles, although not absolute.

70. In the case of **Malcolm Cumbo vs Malta Freeport Terminals Ltd** decided by the Prime Chamber on 30 June 2016, the Court established:

"That as far as the lucrum cessans is concerned, the Court considers it appropriate to say that in designing the ascertainment of the claimed damage, it must comply with what the law specifies. In this case, the criteria are mentioned in article 1045 of the Civil Code. In the case before it, this compensation must be made on the loss of earnings that the plaintiff may have already suffered from the day of the accident until today, and also what he will have to suffer in the future due to the permanent incapacity that he suffered in the accident merits the case."

71. It also emerges that in the case **Paul Debono vs Malta Drydocks** decided by the First Chamber on 27 April 2015 it was held:

"The determination of the quantum of compensation is certainly in our legal system inspired by the rule established in article 1045 of the Civil Code. In relation to lucrum cessans this involves loss of future earnings due to incapacity. The law then leaves it to the discretion of the Court to, validly the circumstances of the case, the type and degree of incapacity, and the condition of the injured party to establish the reparative sum.

Undeniably, however, the method of this assessment of the damage to a person has always constituted the most thorny problem, as it results from a simple comparison of the various decisions in matter."

Revenue Entity:

72. It turns out that the claimant was thirty-one (31) years old when the accident occurred, and was works with Ta' Mattew Fish Farms Limited.

73. It appears that in the year 2009, the claimant earned an income of €25,317.44 as confirmed by the claimant himself in his affidavit. In his affidavit, the claimant continued to refer to an income that he would perceive subsequently, indicating that it was higher than that mentioned above, where he refers to a note presented by him in the acts of the application number 201/12 FS for the revocation of Attachment Mandate number 270/13. Such acts are not known to this Court, and therefore this Court will rely on the evidence in these

the acts, provided that these acts for the revocation of a Mandate are not attached and exhibited in these acts

74. Accordingly, the Court will consider the income of Frederick Catania in the amount of € 25,317.44 per year.

75. Regarding considerations on the cost of living, it appears that in the case of **Stephen Cardona vs. John Mary Fenech** decided by the First Court on 9 February 2012, it was decided that:

"The Court is also agreeing an increase of €300 per year, the relationship with a pay increase for the cost of living."

76. This Court agrees that such an amount of €300 per year should also be considered for the cost of living in the present case.

Multiplier

77. In the case of **Joseph Zammit vs. Joseph Bonello**, decided by the First Chamber Civil Court on 25 February 2016, principles were established that the Court feels it should base on when it comes to liquidating the damages to be paid in similar circumstances as of the present case:

"That such rules were supplemented and interpreted with the principles established in the main case 'Michael Butler vs Peter Christopher Heard' (Appeal 22.12.1967), which gave origin to the so-called 'multiplier system', which however was adjusted to the recent times since, as was said in the case 'Salvatore Mifsud vs Carlo Camilleri et' (Appeal 16.11.1983) 'the circumstances of life even in our island have changed considerably and an amount that is being done on very different criteria from those that were take place ten or twenty years ago. Therefore, Our Courts have maintained that they have the discretion to be more flexible or less rigorous in applying the guidelines established in Butler vs. Heard. This is how it was deemed that they should use the prudential discretion of the Court, within the limits established by law - 'Savona vs Asphar', Appeal (23.06.1952); and that 'it should be used as a basis also in this case with the difference that the number of years should be taken for all the years of the working life of the corrupt' (Emmanuel Mizzi vs Carmel Attard, 13.05.2003), and that there should always be a certain elasticity of criteria since the pronouncement in the liquidation in question is one of probability. In addition, the injured person is given a capital sum only once, when it is given by a sentence it is no longer subject to any review. Therefore, this capital sum must correspond as much as possible with reality (Francis Sultana vs John Micallef et noe et, Appeal 20.07.1994).

78. In the judgment in the names **Paul Vassallo et noe vs. Carmelo Pace** decided by the Court of Appeal on 5 March 1986 the following was said:

"The number of years adopted as a multiplier should not be based on the life expectancy in general of the injured person but on the expectation of the

his working life and therefore the chances and changes of life are taken into consideration.

In addition to this, the trend of thinking behind judgments of recent years in this area is leaning towards the removal of rigid schemes that can hinder the provision of well-deserved and appropriate compensation for the circumstances. One of these developments is in the maximum of the multiplier, where for a large number of years it is not considered that it could exceed twenty (20). For the reasons that the Court should seek before anything else to reintegrate as much as possible to the one who has suffered damage, and to put such a person back as much as possible in the state that was before the accident. Today it is accepted and approved by our highest Courts that the multiplier matches well with the age of the victim and not with arbitrary criteria."

79. It turns out, that in the case under examination, the claimant Frederick Catania was thirty-one (31) years old when he suffered the accident, and a person stops with the pension of sixty-one (61) years.

80. Accordingly, it is fair and plausible that twenty-five years (25) is a fair period which should be applicable as a multiplier.

Final calculation

81. Considering all the calculations and considerations made above, he should it results:

- a. Frederick Catania's income amounts to approximately €25,317.44
- b. The cost of living should be €300 per year.
- c. The multiplier must be 25 years.

82. It follows therefore, that the amount that should be considered for *lucrum cessans* should be the average calculated on the claimant's income in the year 2009, i.e. €25,317.44 and on the predicted income for another twenty-five years, with - an increase in the cost of living of €300 per year, which increase totals to €7,500, which together with the income of 2009 makes a total of €32,817.44, which average is therefore €29,067.44 , ie $\text{€}25,317.44 + \text{€}32,817.44$ divided in half.

83. It turns out, therefore, that the average income should be considered to be €29.067.44.

Reduction

84. In the case **Paul Xuereb noe vs Emanuel Xuereb pro et noe**, decided by the First Chamber Civil Court on 5 October 1995, the Court added:

"Regarding the reduction for lump sum payment the Court...seems that...no reduction should be made in the usual percentage of 20 percent for lump sum payment if more than three years have not passed since the date of presentation of the citation and if this period has passed then a reduction of 2% should be made for each year from that date."

85. In the case **Joseph Agius vs All Services Ltd** decided by the First Chamber on 2 June 2005, it was said as follows:

"In congruent cases, it is customary to make another reduction of 20% for the fact that there will be a lump sum payment to the beneficiaries. If a decision, however, will be given after a certain period of time, it is the practice that the percentage of reduction decreases, and it is a custom of the Courts, that if a case lasts more than two years, the percentage decreases by two points for every other year that the case takes to be decided."

86. Considering this, the Court observes that regarding the reduction in view of the lump sum payment, the Court observes that the case has been pending for ten years since it was presented, it has been eleven years since the date of the incident which took place in 2012. This case was left for judgment on July 6, 2022. Therefore, with the calculation of a reduction for each year that the case lasts more than two years, the reduction should therefore be 2%.

Amount due

87. Considering the facts as discussed above, the sum as liquidated as *lucrum cessans* is:

- €29.067.44 x 25 years -	= €726,686
€726,686 x 75% disability -	= €545,014.50
€545,014.50 x 2% reduction as lump sum payment - €545,014.50 less	= €10,900.29 =
€10,900.29	€534,114.21

The Court will round such amount to six hundred and three thousand Euros €534,114 for practicality purposes.

88. Therefore, the total sum due to the claimant as damages is €534,114.

Conclusion

The Court,

After having seen all the procedural acts and all the evidence produced presented before it;

Proceed to hear and decide the present dispute by:

It rejects the exceptions in the response of the respondent company.

It grants the applicants' claims as follows:

1. Declare that the respondent company Ta' Matthew Fish Farms Limited is solely responsible for the claimant's physical weakness after the incident that occurred on 6 April 2012.

2. Liquidate the damages suffered by the claimant, both those requested in the second request and also those requested in the fourth request, in the overall amount of five hundred and thirty-four thousand, one hundred and fourteen Euros (€534,114)
3. Order the respondent company to pay the claimant the amount of **five hundred and four _____ and thirty thousand, one hundred and fourteen Euros (€534,114).**

Regarding Interest, since it is not fair that the claimant is not paid interest on the sum owed to him as a result of a delay caused by the respondent company, the interest due must be that which is decorable from 5 November 2015, i.e. d - the date when the claimant closed the stage of his evidence, until the date of the effective payment.

The costs for the present procedure shall be borne by the respondent company.

Francesco Depasquale LL.D. LL.M. (FILL OUT)
Judge

Rita Sciberras
Deputy Registrar