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CIVIL COURT, FIRST HALL

JUDGE

HON. RACHEL MONTEBELLO

Sworn Application No. 456/2021

Roseanne Vella (KI No. 120875(M)

-vs;

Palumbo Malta Shipyard Limited (C 48983)

Joseph Calleja (KI No. 147872(M)

Giorgio Filippi (Italian ID No. AA2349033)

Antonio Palumbo (Italian ID No. AA352991)

Giuseppe Palumbo (Italian KINru. AA163654)

Raffaele Palumbo (Italian ID No. AA09633404)

And

Mark Grech (KINru 436673(M)

Today is October 15, 2026

The Court;

Having seen the Sworn Application of Roseann Vella filed on 10 May 2021

where it was stated and declared:-

1. The exponent is the sole heir of Patrick Joseph Vella;
2. The said deceased Patrick Joseph Vella was a diver who was assigned to perform some underwater work at Palumbo Shipyard on the twenty-eighth (28) of February two thousand and fifteen (2015);

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3. On that day, the same Patrick Joseph Vella lost his life while he was on duty, as a consequence of the carelessness, non-care, negligence, failure to observe regulations, and lack of prudence and diligence on the part of the respondents or any of them, as will be shown during the hearing of this sworn application;

4. In view of this, the exponent is entitled to compensation for damages from the respondents or any of them;

5. Despite the fact that the respondents were called upon to approach the liquidation for the payment of the damages suffered by the exhibitors, the respondents remained in default.

6. Therefore, the respondents are liable for the damages, and are legally obligated to pay them;

7. The applicant, Roseann Vella, is personally aware of all these facts.

It requested this Honourable Court to:-

1. Declares and decides that the respondent or any of them are solely responsible for all damages and other costs suffered by the applicant, as explained above, as a consequence of what happened on the twenty-eighth (28) of February two thousand and fifteen (2015); nomination

2. To liquidate if it deems necessary through appointed arbitrators the damages and expenses suffered by the applicant Roseann Vella in her capacity as heir of Patrick Vella due to the death of her husband as explained above, and in her personal capacity, according to the law, consistent with these also in functional and permanent disability, psychological, psychiatric damages, moral damages, loss of future earnings, and other damages and expenses, in terms of article 1045 and/or 1046 of chapter 16 of the Laws of Malta and/or any other Law that may be in force and/or applicable from time to time;

3. To liquidate, if necessary through nominating experts, the psychiatric damages and expenses suffered by the claimant Roseann Vella due to the death of her husband as explained above, according to law, consistent with these also in functional and permanent disability, psychological damages, moral damages, loss of future earnings, and other damages and expenses, in terms of article 1045 and/or 1046 of chapter 16 of the Laws of Malta and/or any other Law that may be in force and/or applicable from time to time;

4. Order the respondents or any of them to pay the claimant Roseann Vella the damages and costs thus liquidated, together with the legal interest accruable according to law.

With legal interest, from the notification of judicial letters 2311/2016, 471/2018, 352/2019, 690/2020, and with all costs, the respondents are now in a position to submit.

Having seen the defendants' sworn response filed on 4 June 2021 where the following was admitted:-

1. That the plaintiff's claims as interposed against the company Palumbo. Malta Shioyards Limited and against all the other respondents personally are unfounded in fact and in law as may be and the hearing of the case will be tried.

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2. *That the incident of 28 February 2015 occurred solely due to negligence, non-observance of regulations and practices and lack of skill on the part of the same deceased Patrick Joseph Vella who was a professional diver who was engaged and called to carry out an intervention on the door of a dock of the respondent society, among other tasks including but not limited to closing the valves of the dock door as explained to him before he accepted the job and even in situ before he went down into the sea.*

3. *That the deceased was renowned as one of the best professionals and was regularly called upon within the shipyard to carry out specialised work including the closing of dock gate valves whenever they became stuck. That he knew the risks of the intervention and should have always taken the appropriate precautions, which on the day of the accident it turns out he might not have done.*

4. *That as will be seen the respondents can in no way be held liable for the shortcomings caused directly and exclusively by the deceased.*

5. *That the respondents personally are certainly not the legitimate adversaries and this is because the deceased had no legal relationship with them personally and therefore they could never be called in judgment*

.

6. *It results that the respondent exponents cannot be convicted or declared liable in any way for the sinister incident and it follows that there are no damages to be thus liquidated against the same society.*

7. *It follows that there are no damages to be thus liquidated against the respondents.*

Subject to further exceptions.

Having seen that this case was assigned to her as presided over by a decree of assignment of cases and duties given on 13 November 2025;

Saw the criminal trial file in the names of **the Police (Inspector Josric Mifsud) v. Joseph Calleja, Giorgio Filippi, Antonio Palumbo, Giuseppe Palumbo, Raffaele Palumbo and Mark Grech** (Compilation 255/2016), including the acts of the *proces-verbal* number 680/2015 regarding *'Death of Patrick Joseph Vella while he was work at Palumbo Shipyard, on 28 February 2015',* all exhibited with evidence of the Registrar of Criminal Courts and Tribunals1 ;

Having seen the transcripts of the depositions of Franklin Calleja, actress Roseanne Vella, Marcia Cocker, Joseph Abela Medici, Carmen Mangion, Charles Portelli, Joseph Debono, Prof. Alan Deidun and Dr. Claudette Fenech, all produced as witnesses by the actress;

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1 Testimony of Franklin Calleja, 15 November 2021.

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Having seen the transcripts of the depositions of Captain Joe Gabriele, Baldo Guberti, Joseph Calleja and Salvatore Cammerino, all produced as witnesses by the defendants;

Saw the transcripts of the depositions of all the witnesses who testified in cross-examination and in re-examination;

Having seen all the documents produced by the parties respectively and by the witnesses who testified in the procedures;

Having seen all the evidence acquired in the files;

Having seen that by a decree given at the sitting of 15 November 2022, Dr. Joseph was appointed Cassar as a psychiatrist with the task of examining the actress and determining whether she is suffering from permanent disability and if so, the percentage of disability, with costs provisionally for the actress;

Having seen the report of architect Dr. Joseph Cassar presented on 16 March 2023 and sworn in by him on 14 April 2023;

Having seen the transcript of the oral argument of the parties' lawyers at the hearing of 8 May 2025;

Having seen that at the hearing of 26 January 2026 the request of the parties' lawyer was granted to make additional oral submissions in addition to the submissions already made was held before her when she was differently presided over;

Heard the oral argument of the parties' lawyers at the hearing on 8 May 2025;

Saw all the acts;

It was seen that the case was adjourned for today for the promulgation of the sentence;

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Considered;

That this is an action instituted by actress Roseanne Vella as the heir of her husband, the deceased Patrick Joseph Vella, for compensation for damages suffered as a result of the death his death in an accident that occurred on 28 February 2015 while, as a diver, he was carrying out the work given to him by the defendant company at Palumbo *Shipyard,* Cospicua.

The plaintiff contends that her husband lost his life due to the fault of the defendants or whoever from them and requested liquidation and payment of the damages she suffered as a result of his death.

All defendants insist that the death of Patrick Joseph Vella was due to negligence and carelessness as well as non-observance of regulations on his part themselves and in any case, they had no relationship with him *de proprio,* because the The only legal relationship was that based on the tender contract awarded by the defendant company Palumbo Malta Shipyward Limited, to the firm SalpaSub of SALPA Limited, a company that sent a diver – the victim – to carry out the necessary underwater intervention *at the shipyard* it manages.

As far as the defendants, natural persons Joseph Calleja, Giorgio, are concerned Filippi, Antonio Palumbo, Giuseppe Palumbo, Raffaele Palumbo and Mark Grech, was except that they are not legitimate adversaries of the plaintiff's claims and should be released from the observance of judgment.

The said defendants are all directors of the defendant company Palumbo Malta. *Shipyard* Ltd2 , except for the defendant Mark Grech who held the position of *safety officer* of the defendant company, and the defendant Joseph Calleja who held the position of *general manager* of the defendant company, at the time of the incident.

Considered;

In the fifth objection in the defendants' Sworn Reply, it was objected that defendants Antonio Palumbo, Raffaele Palumbo, Giuseppe Palumbo, Giorgio Filippi,

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2 See Form K dated 20.6.2013, *fol.* 555 of the case files.

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Joseph Calleja and Mark Grech are not legitimate opponents of the plaintiff's claims and do not they should not have been prosecuted because they never had any legal relationship with the victim.

In the judgment of this Court, differently presided over, in the names **Il-Perit Dr. Edwin Mintoff v. Joseph Cortis3** , the general principles in the matter of the legal concept of the legitimacy of the adversary cited in the case were brought together:-

"1. As a general rule, the legal interest in the defendant gives him the passive legitimacy to participate in the trial; in the same way as the legal interest in the plaintiff gives him the active legitimacy to promote the judicial action.

2. It is held that in order to determine whether or not a party to a case is the legitimate adversary of the other party, the Court must examine whether, on the face of it, the person sued was materially a party to the transaction which, according to the plaintiff, created the legal relationship between them, leading to the creation of the contractual obligations on the defendant for which he was liable;

3. If this link were established at a prima facie level, the person cited could be considered to be a suitable person to respond to the plaintiff's claims, insofar as they would impose on him an obligation which he was required to satisfy;

4. The inference of a defendant in a judgment must, necessarily, arise from a legal relationship, whether this emanates from a contract, an injury of right from a tortious or civil intervention, ope successionis or from structurally common situations (for example, in a condominium or the creation of certain easements). Which means, consequently, that a lawsuit cannot achieve its purpose unless against the one with whom the plaintiff, for any of the connections mentioned, has a legal relationship.

... ...

7. For the purpose of assessing the integrity of the adversarial process, one must take into consideration what the plaintiff is requesting in the case and not also the outcome of the controversy.

8. When a single defendant is cited in a case, the acceptance of the plea of lack of passive legitimacy in the defendant brings the hearing of the case to an end without the need to deal with and decide on the merits."[4]

It was asserted by the defendants that the defendant company was Palumbo Malta Shipyward. Limited which awarded the work to carry out the necessary underwater intervention in the managed *shipyard*

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3 Decided 7 July 2022.

4 See also the judgment in **Pauline MacDonald v Medistar Healthcare Services Limited et** decided on 28 September 2016, where reference was made to the case in the names: **Focal Maritime Services Company Limited vs Top Hat Company Limited** decided on 9 April 2008 by the Court of Appeal.

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from it and they, personally, had no connection with, or share in
involvement in this business.

From a reading of the plaintiff's Sworn Application – why the defendant's passive legitimacy
is established solely on the basis of the terms of the action as set out in the initiating act, and not
with reference to the findings of the evidence on the merits – it results that although it has not been
expressly stated what the involvement of the said defendants in the incident consists of, or
their connection with the victim or with the defendant company, it was declared that her husband had lost
his life while he was *"on duty"* due to carelessness, non-care, negligence,
failure to comply with regulations and lack of prudence and diligence on the part *of "the*
defendants or any of them".

Thus, an infringement of a right is being alleged as a result of a wrongful intervention on the part of the
defendants or which of them, which intervention gave rise to the damage allegedly suffered
due to the death of the victim: the plaintiff says that the defendants were somehow involved
with the damage allegedly suffered by her as a result of her husband's death, but the claims
its claims for damages are not necessarily based on an alleged infringement
of a contractual obligation arising from an employment relationship with the defendants.

The Court of Appeal (Inf.), in a judgment of 9 July 2008 in the names **Anthony Cauchi et**
vs. Joseph Spiteri et said this:-

"The investigation into the subsistency, or otherwise, of this argument necessarily involves that of the ascertainment occurring, on the basis of the pleadings of the case, that is to say, the result pursued by the plaintiffs in the judgment, tending to the conviction of the defendants of the payment of the right ... claimed."
(Emphasis of this Court)

In the judgment in the names **Frankie Refalo et al vs Jason Azzopardi et** decided on the 5th
In October 2001, the Court of Appeal said this regarding the plea of lack of passive legitimation:-

"In order to establish whether or not a party in a case was a legitimate adversary of the other party, the Court must necessarily verify prima facie whether the person cited in the judgment was materially a party to the transaction which, according to the plaintiff, created the legal relationship from which the action arose in the proposed terms. If this link is established, the person cited could be considered to be a suitable person to respond to the plaintiff's claims, insofar as they would charge him with an obligation which he was required to satisfy insofar as the premises for it, if proven, could lead to the

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a conviction sought in the event that it is found that the same defendant does not have valid exceptions in law to oppose it. This, of course, does not mean that if the Court decides that the defendant was properly summoned insofar as it is established that his legal interest in the merits as proposed by the plaintiff that he should necessarily have been ultimately held as the person responsible to respond to the plaintiff's claims as proposed, nor does it mean that the same defendant does not have valid exceptions in the merits, including that the plaintiff's claims should in fact have been directed at someone else as well insofar as he is involved in the same business and that he could therefore also be summoned as a legitimate adversary in the case.'

Applying these legal principles to the terms of the action as proposed by the plaintiff, based as it is on damage arising from the defendants' alleged negligent conduct or of which, the Court is of the opinion that a *prima facie* legal link exists between the defendants are natural persons, and the damages claimed by the plaintiff due to the death of her husband while he was at work, in such a way that it cannot be said that the defendants are persons completely unrelated to the legal facts that gave rise to the plaintiff's claims, so much so that if the facts stated and the claims made in the Sworn Application are proven, these may lead to the requested conviction. This is enough to root out in every one of the named defendants, the status of a person fit to respond to the claims of the actress in the action she promoted.

Now, of course, if the plaintiff's claims against the defendants who asked to are released from the observance of the judgment, whether they are well-founded on the merits or not, is a question other, and if from the hearing of the evidence on the merits it can sometimes be established that the defendants mentioned were not after all responsible for any actions which, according to the actress, gave rise to the fault for the damages suffered, this would not detract from the fact that from the terms of the action as drawn up in the Sworn Application, the said defendants are fit persons to respond to the plaintiff's claims. Accordingly, every aspect relative to the merits of the plaintiffs' claim in this case, remains at this stage unprejudiced to be refined in the discussion of the merits.

It is therefore rejecting the first objection of the defendants Antonio Palumbo, Raffaele Palumbo, Giuseppe Palumbo, Giorgio Filippi, Joseph Calleja and Mark Grech to the extent that it has been accepted that they are not legitimate opponents of the plaintiff's claims and that they have be freed from the observance of judgment.

Considered;

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That with regard to the analysis of evidence and testimony, the Court begins to observes that much of the evidence presented is that which was brought in the criminal proceedings that were taken against all the defendants in the names The Police (Inspector Josric Mifsud) v. Joseph Calleja et, regarding the crime of involuntary homicide under article 225 of the Code Criminal and contravention of regulation 10(1) of Subsidiary Legislation 424.18 made under the Occupational Health and Safety Authority Act (Cap. 424), which procedures appear to have not yet been determined.

In this regard, the Court makes reference to the judgment in **Darren Vella v Ryan. Sciberras et,** decided by the First Hall on 7 July 20215 where it was held:

"The Court recognises that the rule is that criminal proceedings and civil proceedings are conducted independently of each other. However, the introduction into a civil case of evidence taken from a criminal trial – including judgments concluding the criminal trial – is neither prohibited by law nor irregular. On the contrary, the introduction of such evidence may be a useful tool for assessing the reliability of the evidence presented in the civil trial, in addition to the fact that, as court documents, it is admissible evidence that does not require any further proof of its authenticity."

In the judgment in the names **Audrey Rose Borg et v. Daniel Sciberras,** also decided by this Court, differently presided6 , it was stated:

«It is true that criminal and civil proceedings proceed independently, but it is also held that civil Courts may take into account evidence or clues obtained during criminal proceedings to arrive at a determination of facts on a sound basis of evidence to the degree expected in such proceedings.»

Therefore, the Court has no reservations in making reference to and giving burden of proof to the evidence presented in the criminal trial, without any regard to the fact that were not brought directly before it during the hearing of the present case.

Facts

The Court carefully examined all the documents and evidence, including the evidence presented in the proceedings. criminal charges against the defendants, and from the facts arising therefrom, it is established that:-

5 Confirmed by the Court of Appeal by judgment of 21 January 2025.
6 By judgment of 8 June 2011.

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The defendant company, through its employees, Emiliano Cirillo *(ship manager),* Stephen Farrugia and Andrea Depasquale and/or Ryan Brincat, who was commissioned the services of Patrick Joseph Vella to, on behalf of the company SALPA Limited, which operates under the name Salpasub, does the work. necessary from underwater to repair the damage *to the gate-valve* in dock number 4.

The victim, Patrick Joseph Vella, was one of the two directors of the company. SALPA Limited which is an accredited and approved *supplier* of diving equipment and supplies. He was *a diving instructor and emergency first aid instructor, scientific diver7* , graduated from the University of Malta8 . It is not disputed that the victim had the qualifications necessary to do the work he was hired to do in the society's dock defendant, and was also familiar with the place and the work9

It is also not disputed that the defendant company did not have the equipment and employees trained to dive in the sea / in its docks and that is why it awarded the work under contract to the SalpaSub firm of the company SALPA Limited to provide the service that was required for the repair *of the gate-valve.* The company SALPA Limited sent Patrick Vella, the victim, to provide the requested service.

The company SALPA Limited was at that time commissioned regularly10 by the defendant company Palumbo Malta *Shipyards* Limited in order to provides diving services to carry out interventions and repairs *in the shipyard* and in the its docks which would have required diving work . It was Patrick Joseph Vella, the victim, who in most cases, provided these services on behalf of SALPA Limited. It also results that the defendant company itself requested that the This service is provided by Patrick Joseph Vella himself, as he was a professional diver who was familiar with its basins11 .

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7 See email dated 22 December 2014 *(fol.* 1092 / 1093), part of Doc. BG1).
8 B.Sc. Hons (Chemistry and Biology) and M.Sc. (Biology) See *curriculum vitae fol.* 1095 *et seq.*
9 See testimony of Captain Reuben Lanfranco on 16 October 2019 in the compilation records.
10 See testimony of Mark Grech as well as Salvatore Cammarino in the in genere inquiry proceedings before expert Captain Reuben Lanfranco.
11 *"... in quel periodo li del cantiere era il nostri diver di rifference per turre le operations ... di cantiere..."* - testimony of Andrea Depasquale, 11 July 2018 compilation

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In the shipyard managed by the defendant company Palumbo Malta Shipyard Limited it happened that on 28 February 2015, at around 6.30 am, a vessel was taken out of the dock with number 4, *the docking gate ("drawer")* of the dock was closed and the emptying process began of water from the dock with pumps in order to carry out the necessary work to allow a ship to enter another in the basin. However, it was noted that the water level was not falling at the rate expected and therefore, since there was a suspicion that one *of the valves in the docking gate* of Dock 4 had not been closed properly and the sea was still entering through it, the pumps were stopped immediately12 .

Stephen Farrugia, who at the time of the incident was employed as *a foreman* with the society defendant and was also responsible for the operation *of the pumping stations* - including supervising the process of opening and closing the docks and the filling and emptying of water from the docks - insisted in his testimony that as soon as he realized that the basin was not being emptied as was expected and there may have been a fault in any of the six *gate-valves* of Dock 4, He had stopped the pumps immediately. It was there that he noticed that the water level continued to rise. He testified that as soon as he turned on the pumps, he had given instructions for a diver to be called to the scene to inspect, from underwater, the damaged *gate-valve* of Dock 4. At that time, the sea level in Basin 4 was only about a meter lower than the level of the sea13 . Contact was made with Patrick Joseph Vella, the victim, who was called to the scene to carry out the necessary intervention.

When the victim arrived at the scene, alone, at 11.15 am, he met Mario Abela, who was employed by the defendant company as a steel worker, and Emiliano Cirillo, *ship manager, at the plate shop* of the defendant company. How did Stephen Farrugia and Anthony Farrugia at Dock 4, another worker was also present on site, a certain Valerio Alfieri.

Emiliano Cirillo explained to the victim that the first *valve* on the right side of the dock, It was probably not closing properly. He instructed him to inspect *the valve* and takes the dimensions of the external opening *of the valve* flange to compare them with the plate of the iron that was being worked *in the plate shop,* to then work *a gasket* to is placed on *the valve flange.* The plan was that subsequently, the iron plate

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12 Testimony of Stephen Farrugia, hearing of 21 March 2018, in the compilation
13 Testimony of Stephen Farrugia, *ibid.*

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is lowered into the sea by crane so that, with the assistance of the diver, the plate can be fixed with the *a gasket* on *the valve* so that *the valve* is closed *('blanking')* and the sea does not continue to enter the dock. Thus, the process of emptying the dock can be continued. Patrick Joseph Vella He was given a ruler, a bolt and some tools, and Emiliano Cirillo helped him put on the device. He was also told that it would be better if it went into the sea from the dock side, not from the sea side.

At around 11.25 am the victim fell into the sea from *the docking gate .* Basin 4, in the vicinity of where *the* damaged valve was located. Since at that stage the the victim only had to measure the dimensions *of the flange,* his underwater intervention did not have to take a lot of time, between five and ten minutes in total. Meanwhile, Mario Abela had already he left to get some tools *from the plate shop,* and as the victim fell into the sea, Emiliano Cirillo He also left and went to the shop to give instructions to start working on *the gasket* on top. *the flange.*

When Emiliano Cirillo left *the plate shop,* about five or ten minutes later, he went He stretched out towards the sea in the area where the victim had landed because he had not yet come out of the water, and noticed that there were no bubbles floating in the water. After A few minutes later he also spotted a glove floating in the water in the basin and immediately called for assistance. Contact was also made with Salvatore Cammarina, the victim's partner in the Salpasub business, which arrived on the scene shortly afterwards, and an operation was launched to search and rescue of the victim by officers and divers of the Civil Protection Department and the Armed Forces of Malta.

The Armed Forces received the call to assist in the rescue operation for the around 11.50 am, and arrived on the scene *by dinghy* only a short time later. Four Divers, Lawrence Spiteri and Ludvic Vella from the Civil Protection Department, and Sergeants Audrick Plum and Tyrone Ghirxi from the Armed Forces, went into the sea at the location where it was indicated to them that the victim had gone down14. They found the victim about six meters deep below the surface of the sea (about half the depth of the dock), trapped almost entirely inside the *valve* hole located *in the docking gate* and leading into the dock15. The victim was attached

14 See photograph FS 150326 – AMN 103, and photographs PV 16 forming part of the report of expert Capt. R. Lanfranco, *fol.* 372.

15 See photograph Doc. 15 AMN 103 showing the exposed hole with the valve closed after the water was drained.

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with his feet and the cylinder inside *the valve,* in a way that it could not turn or come off, and he was facing the out to sea. At that time *the regulator (demand valve)* was not in its mouth16 .

It turns out17 that there was such a strong current that it was pulling water from the sea towards the a basin from inside the hole where the victim was trapped, which the divers who were performing the rescue operation they were unable to get the victim out of the *valve* where he was trapped, with their hands. Therefore, the rescue had to be done by tying a rope around the victim who was then pulled up by about five officers who were on the an Army *patrol boat* that was moored to the pier of the same dock.

The victim was taken to Mater Dei Hospital by ambulance, but died a short time later. The His death was determined at autopsy to have been as a result of *asphyxia due to drowning18.* It was also noted at autopsy that the victim had severe bruising on one from his legs that was compatible with a blow he might have received when he was pulled into the canal *valve* due to pressure19 .

The day after the incident, 1 March 2015, from searches carried out at the bottom of Dock 4, A rope used by the victim was found underwater, which rope was located a few meters away from the hole in which the victim was trapped

Considered;

That the Court also makes the following observations and considerations based on on the findings of the witnesses and evidence:-

Differential Pressure

The expert Captain Reuben Lanfranco, in his report which forms part *of the proceedings-*

The report of the inquiry into *the in genere* concluded:-

16 See testimony of Lawrence Spiteri CPD 13 March 2017 in the compilation records.

17 See testimony of Lawrence Spiteri and Ludvic Vella in the compilation acts, 13 March 2017.

18 Autopsy report, *fol.* 428.

19 Report of the expert Captain Reuben Lanfranco and report of Dr. Mario Scerri, *fol.* 407.

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"From the facts and the evidence, the undersigned is of the opinion that the victim, who was also a very experienced diver, died as a result of drowning which occurred when he was pulled into the gate-valve of dock number 4, due to a differential pressure which existed around the valve opening."

In his testimony20, expert Captain Reuben Lanfranco specified that the rescue operation, although not very time-consuming, was relatively difficult because the The water pressure was very strong in the vicinity of the *valve entrance,* so much so that it was it is necessary to call for help from the ground to pull the victim out through *the gate-valve.*

In his report, the expert further explained:-

"Since the water pressure is very high when the gate-valves are opened, it would be very dangerous for a diver to remain in the vicinity of the gate-valve because he could be caught in the water flow that enters the valve opening. This is because a differential pressure is caused where the water pressure outside the basin is higher than that inside and therefore a water pressure pull is created which moves in the direction from outside the basin, towards inside. ***Even when the basin is about to be equilibrated (i.e. the water level inside the basin is equal to that outside, and thus the pressure is neutralised) there will still be a certain pressure present ..."*** 21 (emphasis added)

He also explained that due to the fact that Dock 4 has six (6) *gate-valves,* when these are all open, the water pressure flowing through them is dispersed between them, and as the water level in the basin begins to rise above *the gate-valves,* the more the water pressure near these *valves begins to decrease.* But when only one of the *valves* is open, the pressure passing through the same *valve* will be much stronger.

It is proven by the testimonies of the divers who coordinated the rescue operation. of the victim, that even when they themselves went under the water about an hour after it had been the victim fell, there was still strong pressure in the vicinity *of the valve* that was trapped the victim, which pressure was also dangerous for them so much so that they had to stand Be careful not to get pulled into the hole too.

Sergeant Audrick Plum testified, in the inquest proceedings, that when he was underwater he felt strong *suction* pulls them ever further towards the inside of the basin:

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20 In the compilation minutes, hearing of 25 February 2019.

21 On page 25/26 of his report. The strength of the water pressure entering the basin through the gate valves is shown in photographs PV14 forming part of the report of the expert Captain Reuben Lanfranco, *fol.* 370.

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“As we approached this famous hole my flipper literally bent inwards and that's when we realised there was still current and I felt with my hands that there was a person, there was a cylinder attached.” 22

Sergeant Tyrone Ghirxi23 testified the same. , who stated that although he had not heard sounds of motors and pumps running when he was underwater near the *valve hole,* he said that the water pressure was so strong that he remembers seeing *the fin* still attached at the victim's foot, it trembles violently.

The strong current that at the time the victim went diving was pulling him towards the direction of Basin 4 through *the valve* that remained open, is also manifested in the fact that one from the victim's *flippers* and *mouthpiece ,* as well as the roulette, were all located outside the part of the sea where the victim had landed, but at the bottom of Dock 4 after it had been emptied all from water.

From all this it follows quite logically that, contrary to what Stephen testified Farrugia before the Investigative Court, at the time when the victim fell into the sea at around 11.25 am the water level in the basin could not have been equilibrated with sea level. This This is being said because, as we have seen, the divers who arrived on the scene an hour later to try to save him, all testified about the strong pressure that was still being exerted. grip in the vicinity *of the valve* where the victim was trapped, what pressure would have been neutralized if the sea level were equal on both sides of the basin.

Charles Portelli, who at the time of the incident was the Dock Master in charge of the shipyard defendant company, also expressed the view that the fact that the victim was pulled into *the valve* This means that the water level on both sides of the basin was not balanced. He testified that in the presence of *differential pressure* in the sea, the diver *"is not supposed to descend* [...] *because there is more suction power”* 24

22 Witnesses at the hearing of 25 April 2017 in the compilation records.
23 Witnesses in the inquiry into *the in genere.*
24 Testimony of Charles Portelli before this Court on 11 July 2022.

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It is therefore established that at the time when Patrick Joseph Vella went diving, he was still there is *a valve,* a substantial *differential pressure* element that caused strong *suction from the valve* in the direction of the basin.

Device

As previously stated, when the victim was found trapped in the *valve hole,* he did not have the *mouth piece* in his mouth. *The mouth piece* was eventually located at the bottom of the Dock 4 on the other side *of the valve* where the victim was trapped.

The expert Captain Rebuen Lanfranco, in his report, explained that *the mouth piece* It can easily be detached from *the demand valve* because it is not an integral part of the *demand valve* and is changed frequently. Therefore, the fact that this was removed is not indicative of a defect *in the demand valve* or in the device that was being used by the victim to dive.

The equipment and gear that the victim was wearing when he went diving when he lost his life, had been inspected by the expert assigned to the Inquiry, Captain Reuben Lanfranco. Inspect specifically *the demand valve regulator, mouthpiece* and cylinder, as well as the system which was used to fill the oxygen cylinder and all other equipment used by the victim25 , and concluded that they contained no harm and were all in good condition and suitable for the intervention that was to be carried out by the victim. He concluded also that the equipment was suitable to protect the victim's health and to perform its function safely, and ruled out that they could have been detrimental to the victim or health or caused or contributed in any way to the accident:

Captain Reuben Lanfranco also concluded that the air cylinder used by the victim, if it were filled to its maximum (15 liters), would generally give air to the a diver for more than an hour if the diver is not breathing heavily or do not overexert yourself. However, if *the mouthpiece* is lost and *the demand valve* is detached from the diver's mouth, as happened in the case of today's victim, there is the possibility that the *regulator* goes on *free flow,* which means that air comes out of the cylinder at a very high rate

25A stabilizing jacket, dry suit and face mask, among other equipment found at the scene.

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until it empties, and in a case like that, the cylinder could empty even in five minutes.
minutes26 .

However, it was submitted by the defendants that contrary to what the Captain concluded Lanfranco, the air from the cylinder does not escape through *the demand valve* as long as the a diver is not actively breathing *through the valve,* and therefore even if the victim in the case under examination lost *the mouthpiece* from his mouth, *the regulator* could not goes on *free flow* unless it was defective. They argued, therefore, that the fact that the A cylinder found without any air in it necessarily means that *the demand valve* was defective, or the victim went diving with an almost empty air cylinder or not completely filled, with the consequence that when it got stuck in the *gate-valve hole,* the air in the cylinder was not used until help arrived, although assistance did arrive timely.

However, in the Court's opinion, the defendants have not succeeded in refuting the validity of the thesis of the expert involved in the inquiry into *the in genere:* don't confront him with the opposite theory their that *the regulator* could not, allegedly, go *free flow* with the loss *of the mouth piece* and *the demand valve* from the victim's mouth, nor did they bring *ex parte* expert evidence satisfactory to convince her that the conclusion of the expert who had withheld access and examined all of the victim's equipment at the scene of the accident and conducted a full investigation necessary about the dynamics of the incident immediately after it occurred, it does not repair or it is not reliable.

Here the Court cannot fail to consider the fact that Captain Joe Gabriele, the *an ex parte* expert produced by the defendants, drafted his report no less than seven years after the accident and it is evident that neither had inspected *the shipyard* at the time of the accident, and much less had he physically or otherwise examined the device the victim was wearing during the fatal operation. Therefore any consideration made by him about the state of the equipment, and the state of maintenance of the company's *shipyard* defendant, at the time of the incident, cannot be given weight or reliability, apart from the fact

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[26] Page 22 of Captain Reben Lanfranco's account.

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that the witness himself stated in his testimony before the Court that he is not a diver
expert and had previously been a recreational non-professional diver27 .

Therefore, this Court - having before it the evidence of the conclusions reached
for them the subject matter expert who had been engaged by the Magistrate in the inquiry into *the genere* to relate about the dynamics of the accident and the factors that led to the death of Patrick Joseph Vella - she is not going to dismiss for nothing the evidence brought by the plaintiff, evidence establishing that *the demand valve* used by the victim was free from defects and was working properly28. Nor does it come close to Captain Reuben Lanfranco's thesis that *the regulator* probably went into *free flow* because *the demand valve* was detached from his mouth, not because the air in the cylinder was not used because it was not filled enough from the victim himself.

It must be reiterated here, as stated earlier, that the victim was pulled into the *valve* hole. due to the strong water pressure and was trapped there in a way that he could not get out and therefore, in any case, the hypothesis is not at all remote that, as has also been considered by the Captain Reuben Lanfranco in his report, that *the mouthpiece* and *demand valve* came out of his mouth in the panic that inevitably gripped him as he struggled to coming out of the *valve hole,* and he could not find them again due to the very poor visibility in the water29 . Although the loss *of the demand valve* from his mouth could indeed have accelerated the drowning process, because the victim was deprived of oxygen and could not breathe, the The fact remains that the victim could not rise to the surface of the water because he was stuck in the hole in the *valve* due to high pressure caused *by the differential pressure* resulting from the level lower water level in the basin than sea level.

However, expert Captain Reuben Lanfranco concluded:

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27 The Court also observes that the expert's report contains an analysis and collection of non-technical comments and submissions on the testimonies and evidence collected in the inquiry, which do not constitute proof, and speculations which are not supported by facts or observations made directly by the expert.

28 *"[T]he equipment that was delivering air to the victim's body was working properly"* – Captain's testimony Reuben Lanfranco in the compilation proceedings.

29 It is also established that underwater visibility in the basin is very poor due to pollution as it is located deep inside the Grand Harbour, it is very poor: in the words of Sergeant Audrick Plum one has to hold one's hand in front of one's face to see it underwater.

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"Although there is a system that is taught to every diver so that one can still take air from a cylinder that is running with free flow, this is done until the diver has surfaced again, which in the case of the victim, Patrick Vella, he was unable to do because he was trapped in the valve gate."30

Having established all this, it is time to examine the matter of the defendants' liability. or any of them for the death of Patrick Joseph Vella and for the damages claimed from the actresses his heirs.

Considered;

Article 1030 of the Civil Code provides:-

"Anyone who makes use of his right within the limits of his rights is not liable for the damage caused by such use."

However, according to article 1031:-

"... each person is responsible for the damage that occurs through his own fault."

Article 1032(1) of the Civil Code defines the concept of fault which gives rise to civil liability for the payment of damages, and identifies it in that behavior where it results lack of prudence, lack of diligence and lack of consideration *of the bonus father of the family:-*

> *(1) Anyone who fails to exercise the prudence, diligence, and thoughtfulness of a good father of a family in his actions shall be considered guilty.*
> *(2) No one shall be liable, in the absence of an express provision of law, for damage caused by a lack of prudence, diligence or greater care.*

From a comprehensive reading of all these provisions of the law, the principle emerges that who is the author of the damage arising from an act such as that mentioned in article 1032 of Cap. 16, is obliged to make good the harmful consequences that that act brings about

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30 *Fol.* 349.

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with him, regardless of whether the report that gave rise to the damage is one

contractual31 or extra-contractual.

From this legal norm in the field of civil liability, the principle arises that

Whoever is the author of the damage caused through his own fault is obliged to make good the damage.

negative consequences that that act brings with it.

According to article 1033 of Cap. 16:-

"Whoever, with or without intent to do harm, through willful misconduct or through lack of diligence, prudence or care, does or fails to do anything which violates any duty imposed by law, is liable for the damage caused thereby." 32

From a comprehensive reading of all these provisions of the law there is no

doubt that anyone who, due to his lack of attention, negligence and lack of

prudence to the degree required by law causes, by his acts or omissions, damage to another, he shall be

liable for such damage so caused33 .

In the judgment in the names **Vassallo vs Mizzi** et34 , it was held that:-

".... fault when considered in its entity is one; and under this aspect there is no distinction between a contractual fault and that commonly called aquiliana, which arises from a crime or quasi-crime. The difference between them lies in the cause ... As for the cause, contractual fault presupposes a pre-existing obligation to which it is linked; while aquiliana fault presupposes a fact from which it arises 'ex nunc'."

As far as the Aquilian fault is concerned, in the judgment of the First Chamber in the names

David Brincat et v. Francis Sammut et it was stated as follows:-

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31 Art. 1132(1) of Cap. 16.

32 In the criminal field, the analogous legal provision is that in Article 225 of the Criminal Code which speaks of conduct that is punishable by lack of thought, by negligence, or by lack of skill in an art or profession, or by failure to comply with regulations.

33 In the judgment reported in the Collegium. Vol. XXIV. I. 172, it is said that *guilt is involved: "when there is a violation of a duty and a voluntary omission of diligence for which the consequences of one's own action or omission are not foreseen, and one violates the right of others, without intending it and without even being aware of it"* - This is all reported in the judgment of the First Chamber of the Civil Court of 12 April 2016 in the names **Andrew Brincat et v. Chief Medical Officer of the Government et.**

34 Decided by the First Hall on 9 April 1949 (Vol. XXX111.ii.379).
Cited in the judgment of the First Hall in the names **Major Alfred Briffa et v. The Golden Shepherd Company Limited et,** of 31 October 2013.

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"That it is peacefully accepted that for a Court to find guilt and liability in the conduct of an individual, and subsequently to order him to compensate the injured party in the scope of extra-contractual fault (particularly in quasi-delicts where there is a lack of intent), that aspect that must be examined is the material conduct that the alleged injured party assumed. Such conduct can be both commissive and ommissive. It is this conduct that must be assessed in detail, in order to trace in it, inter alia, whether there were any shortcomings in the duty of care, prudence and diligence of bonus paterfamilias, or the existence of negligence in the duties imposed by law, or of carelessness, impudence or imprudence which constitutes an unlawful act or fact that is recoverable."35

It is also held that:-

"culpability in the case of a harmful act from which the aquilian action originates is manifested in one doing an act voluntarily and failing to foresee the harmful effect of that act when he could have foreseen that effect" 36 .

This means that one needs to link the act that is culpable due to recklessness or lack of diligence and causing the damage, with the foreseeability of that harmful event:

"this predictability must be of reasonable probabilities and not of extremely remote and implausible possibilities" 37 .

Considered;

That the defendants insist that Patrick Vella was not a worker who was hired by someone them to provide their work or services, because the contractor who has been engaged to provide the service of a diver *in the shipyard* of the defendant company, it was SALPA Limited not the victim himself. Consequently no one of them had no contractual relationship with the victim *de proprio:* in other words, it was there is only a contractual relationship between the defendant company Palumbo Malta Shipyward Limited and SALPA Limited.

It was also submitted that in any case, there was no employment relationship between the company defendant and the victim and therefore, as far as the same victim and the company were concerned SALPA Limited, cannot be considered to have been bound by the legal obligations placed on the employer, to protect health and safety at the workplace and

35 Decision of 28 June 2016, confirmed except for the liquidation of damages, by the Court of Appeal by judgment of 17 February 2022.

36 See - Collection. Vol. XLII. I. 74.

37 See – Coll. Vol. XLVIII. I. 258.

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by evaluating and preventing the risks linked to the services to be rendered by the
a diver sent by SALPA Limited under a contract.

But the defendants, with that argument, forget that the responsibility for compensation of the damage arises not only from the breach of a contractual obligation but also from the behavior of anyone who acts with a lack of prudence, lack of diligence and lack of The idea *of the bonus paterfamilias* is that the conduct causes the harm suffered, regardless of whether the relationship that gave rise to the harm is contractual38 or extra-contractual.

Negligence of the defendant company Palumbo Malta Shipyard Limited

The defendants' version is that the burden was solely on the victim and the company that was represents and was engaged by SALPA Limited to carry out the evaluation
of the risks that existed in the provision of the services he was contracted to provide. This why Patrick Vella, since he was not employed by the defendant company, could not considered an 'employee' of the defendant company for the purposes of the law on health and safety at work. They also claim that the defendant company had a relationship
only with the victim's employer, which relationship was derived from a contract of employment a contract and not a contract of employment or service regulated by the Employment and Industrial Relations (Chapter 452).

But with this argument it is manifest that the defendants are dismissing the fact that the Responsibility for accidents that occur in the workplace goes beyond the relationship between the worker and his employer.

Once the defendant company requested the services of a diver to work at the site where the work was to be carried out, which site was under its control, it was
responsible for his health and safety.

Article 2(1) of the Occupational Health and Safety Act (Chapter
424) defines "worker", for the purpose of the obligations regarding health and safety at the workplace work, as:-

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38 Art. 1132(1) of Cap. 16.

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"any person employed by an employer to do work, or to ***provide a service to another person under a contract of service or for a service,*** *and includes a student, an apprentice and a self-employed person, but does not include the crew of a ship registered in Malta or any other person employed on board as part of the entire crew of the ship;"* (Court's emphasis)

In the judgment in the names **Francis Bellia v. Saviour Agius,** of 26 June 2025, the

The Court of Appeal said this in this regard:-

"36. As stated by the First Chamber of the Civil Court in its judgment of 10 July 2006, in the case of ***Benjamin Sammut v. Meli Bugeja Company Limited,*** *liability for accidents at work does not arise solely from the relationship between a worker and his employer. When the working environment is under the control of the employer, he has a duty to do what is reasonably necessary and practical to eliminate or, at least, reduce the dangers and risks to those whom he engages to do work in his interest in that environment. The criterion, therefore, is whether the workplace is under the control of the employer (see in this sense also the judgments of the Court of Appeal of 13 May 2020, in the case of* ***John Muscat v. Camray Limited et*** *and that of 25 February, 2021, in the case in the names* ***Geoffrey Tanti v. Panta Contracting Limited).***

37. [...] *Anyone who has control of the environment in which work is being carried out remains nevertheless burdened with the general duty of* neminem laedere *(i.e. to do no harm), and is therefore expected to do everything reasonably necessary and practical to eliminate, or at least avoid as far as possible, dangers and risks to those entering the site under his control."*

This assignment is in accordance with what is provided in article 6 Chapter 424:

6.(1) An employer shall at all times ensure the health and safety ***of all persons who may be affected by the work*** *being carried out for that employer:*

However, when in carrying out the aforementioned, the employer ***makes use of services or competent persons from outside, the employer shall not be exempt from the applicable duties arising from this Act and from the regulations made thereunder.***
Act:

However, the obligations of workers in the field of health and safety at work shall not affect the principle of employer liability.

(2) The measures to be taken by employers to prevent physical and psychological harm, injury or death, at workplaces, shall be taken on the basis of the following general principles of prevention, namely -

(a) to avoid risk;
(b) the identification of hazards associated with the
work; (c) the evaluation of those risks which cannot be avoided;
(d) the control from the outset of those risks which cannot be avoided;

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(e) that all necessary measures are taken to reduce the risk as far as is reasonably practicable, including replacing what is hazardous with what is non-hazardous or less hazardous;

(f) by giving priority to collective protection measures over individual protection measures; […]"[39]

Therefore, the defendants' argument that the defendant company was exempt from any burden of carrying out an assessment of the risks associated with the work that the victim was supposed to perform on behalf of SALPA Limited *in the shipyard* managed by it, and / or by the burden that ensuring that those risks are identified, controlled and avoided, has little value.

This conclusion is consolidated by the relevant provisions of the Regulations Relating to General Provisions Concerning Health and Safety at Work (Notice) Legal 36 of 2003)40, as they were in force on the date of the fatal accident, 28 February 2015, which regulations find application in every workplace in an indiscriminate manner. The It is the employer's duty to carry out a health and safety risk assessment and take all necessary measures to avoid these risks as well as control of the factors that can give rise to accidents or create health risks, we find it in various regulations in the said Subsidiary Legislation 418.18.

5.(1) *Without prejudice to the generality of the provisions of these regulations, the employer shall, having regard to the nature of the activities of the undertaking and, or establishment-*

(i) identify hazards in the workplace and avoid risks to health and safety,
(ii) evaluate those risks to the health and safety of workers that cannot be avoided and must control them from the outset

[…]

6.(1) *Without prejudice to the generality of the foregoing, the employer shall assess the risks to health and safety, inter alia in the selection of work equipment, the chemical substances and chemical preparations used, the work practices and activities, and the selection and equipment of workplaces, as well as the capabilities of workers to perform the work assigned to them without danger.*

[…]

(3) Following the assessment referred to in the last sub-regulation, and as necessary, the employer shall take all necessary measures to prevent risks to health and safety at the workplace, and shall control those factors which may give rise to accidents or which create a risk to health and, or safety at the workplace including where necessary by

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39 Court's emphasis.
40 Subsidiary Legislation 424.18.

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change working and production methods, in order to ensure an improvement in the level of protection afforded to workers in terms of health and safety.

***10.(1)** It shall be the duty of every employer and every self-employed person to carry out, or to ensure that it is carried out, an appropriate, sufficient and systematic assessment of all the hazards to health and safety which may be present at the workplace and the resulting risks concerning all aspects of the work activity. Such assessments shall take into account the risks to the health and safety of workers and self-employed persons to which they are exposed in the course of their work, as well as the risks to the health and safety of other persons, including visitors to the workplace, which risks arise from the work carried out, in connection with it, or from the conduct of the undertaking.*

Having analyzed the evidence and witnesses, the Court begins by observing that at the time of the incident the The defendant company had a worker employed by it in the role of Health and Safety Manager *of the shipyard* it managed, the defendant Mark Grech41 .

However, it was stated by the same defendant42 that the defendant company carried out a very basic assessment of workplace risks and had no plan. or written procedures that provide for the health and safety of divers performing the necessary underwater work in the docks or *shipyard* managed by it. This is because it does not did it employ specialized divers internally, and did it hire divers from abroad. Therefore, she expected that the assessment of the risks associated with with the work of the divers and the provision of all the equipment necessary for them to dive, it is done by the contractor himself to whom the work is awarded, while on its part providing the necessary tools for the repair work as the case may be. Defendant Mark Grech testified also that no form of *standard* instructions was given to the divers contractors, on how the work should be done in the docks, except that *the ship manager* would give instructions at that time regarding the necessary intervention and the risks involved.

Mark Grech testified:

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41 Regulation 9 of Legal Notice 36 of 2003 provided as follows:-
***9.(1)** In every workplace, the employer shall designate one or more persons who have the necessary skills, abilities, competence and training to assist him in taking the necessary measures with regard to the protection of health and safety at the workplace and the prevention and control of occupational risks.*

[...]
***(3)** If, for any reason, the protective and preventive measures required by these regulations cannot be organised due to a lack of competent personnel in the undertaking and, or establishment, the employer shall engage external services or persons who have the necessary motivation and personal and professional means.*
42 See testimony of Mark Grech in the inquiry into in genere – *fol.* 478.

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“... we have a very basic risk assessment because we are not experts but they are diverse, I think they know the risks, evaluate them and the control measures.”

The defendant Joseph Calleja, who at the time of the incident was *the General Manager* of the The defendant company, also stated in his testimony before the Court that there was no *safety plan* applicable to the work carried out by divers in the company's *shipyard .* defendant.

The Court considers that the *standard* inclusion *in purchase orders* issued by the defendant company for services provided by the victim and/or his company43, of the stipulation: *"All Divers engaged should have the necessary training and competence to carry out such activity",* does not exempt it from its legal obligations in the area of health and safety at work, in particular the duty to provides its workers with a safe place to carry out their work44 .

Expert Captain Reuben Lanfranco testified45:-

"Many times this is also done with some form of agreement where the diver signs a notification or a paper showing that he has been warned of the particular dangers that one can obviously encounter during this type of work."

The lack of a health and safety plan *at the shipyard managed* by the defendant company, by at least as far as the work performed by the diver who was hired to do so was concerned. goes underwater to help repair the damage *to the gate-valve* of Dock 4, he is also evident from a cursory examination of the body of trial evidence.

In practice, one would expect, as a minimum and basic precaution, that society defendant provides at least one person to stay watch from the ground or from another part of the dock during the entire time the diver is in

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43 Part of Doc. BG1, from *fol.* 1101 to *fol.* 1144 of the case files. Baldo Guberti testified that the purchase orders were sent to the supplier electronically.

44 It results from the evidence that the defendant company operated a system whereby after contacting the contractor who was to provide the service - in the case of diving services, SALPA Limited - it would issue *a purchase order* specifying the type of service required and this would be sent electronically to the contractor for approval. *The purchase order* included in its body the aforementioned stipulation.

45 In the compilation acts, testimony of 25 February 2019.

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is underwater, as well as a system or equipment that provides the diver with a means to Signals to those on the ground the need for help or the need to be pulled out from the water in case of emergency.

However, the evidence establishes that the defendant company failed to ensure timely attendance. the entire presence of a person on land supervising the operation for taking measurements of *the valve* flange *underwater :* no employee or representative of the defendant company was present at the scene to monitor the victim while he was underwater.

On the day of the fatal accident, the Dock Master of the defendant company's shipyard, Charles Portelli, had not come to work because he was absent due to health reasons, but Simon Zammit, who occupied the position of *Yard Manager* of the company Palumbo Super Yachts Limited and was responsible for Docks 2 and 3. However, it results from the hearing of witnesses, that Simon Zammit was in dock number 6 at the time of the accident and could not do anything. because he was informed that there was a diver in difficulty, only when the rescue operation was already underway.

It is true that Andrea Depasquale, *the operations manager* of the defendant company, testified that the presence of the diver was not necessary for the diver to carry out the intervention. Dock Master, because the Dock Master's job is to take care of the usage arrangements of the docks, bringing the ship in and landing it on the points. In fact, he confirmed that the intervention that was to be carried out underwater on *the* dock's *docking gate* valve, it would re-enter the responsibilities of the infrastructure *manager* who was Stephen at the time Farrugia.

However, Stephen Farrugia stated in his testimony that he had not remained at the location where the underwater inspection intervention by the diver had to be carried out, because the presence his was needed on a ship *docking* job at Dock 6. He also confirmed that It was not he who gave the victim instructions before he went into the sea, but it was Emiliano. Cirillo, the *shipyard* manager , who was to supervise the operation and had to be ready to intervene.

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But Emiliano Cirillo, *the ship manager* who gave instructions to Patrick Joseph Vella regarding the work he was supposed to perform underwater, *ex admissis* was not present the entire time of the intervention carried out by the victim from underwater, although the intervention was only supposed to last a few minutes. He stated that as soon as the victim went into the sea, he had left the boat. *docking gate* and went to *the plate shop,* and went back to the sea to stretch out from the location where the victim He had gone down to dive, between five and ten minutes later.

Mario Abela, who was also at *the docking gate* when the victim arrived at the scene, also He had managed to leave the scene and went *to the plate shop* until the victim went down to dive.

The Court agrees that the defendant company had no obligation to ensure that a diver commissioned by it had suitable equipment and sufficient air in the cylinder his, nor was there any obligation to give instructions on how he was to carry out the assignment from the perspective of the diver's operation. But nothing exonerates it from the obligation that, as the person in control of the site where the work is being carried out and the person who for which that work is being done (i) takes care to provide an environment that ensures the worker's health, (ii) ensure that the working environment is such that all workers who use the site where they carry out their work, are not exposed to avoidable risks and are other risks are minimised, and (iii) provide adequate supervision so that the operating environment work is not conducive to any form of accident that would prejudice employees and those working on its site46 .

However, in the case under examination, the defendant company did not provide any system of supervision over the workers brought to work at the site controlled by it, to avoid an incident like the one that occurred in the present case. Even if it did indeed have several employees specifically trained in providing first aid, it does not result in anyone of them was on site supervising the operation that was being carried out underwater by the victim, and it does not even appear that any of them called for help timely when the victim failed to emerge from the water when expected.

It also results that the defendant company, through its employees, not only failed from providing an adequate system of supervision, control and administration of the

46 See judgment in the case in the names **Joseph Cini vs George Wells et al.** (Cit. Number 766/93 NA), 29 May 2001.

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an operation carried out by diver Patrick Joseph Vella, but it also failed to provides basic means for the victim to alert in case of emergency, as well as information with clear instructions on the risks present at the workplace, in this case the risks that exist underwater in its basins or in their immediate vicinity47 .

The Court examined the evidence and observed that it does not appear that Emiliano Cirillo had provided clear and unequivocal instruction to the victim not to enter the sea on the outside of the basin due to the strong water pressure around the *valve stem:* asked by the expert Captain Reuben Lanfranco48 if he gave him instructions on where to land, Cirillo replied: *"I told him to look, go down this way, it's better ..."*

The only information Emiliano Cirillo had provided to the victim to ensure his safety his words during the operation that was to be performed underwater were: *"... guarda questa la valvola, tu vai da lato per misurare una flanga di queste, poi dopo risali sopra mi dici la misura qual'e' e, pero' dopo, doveva fare il gasket."*

The defendant company did not even bother to appoint someone to take into account the difference in level between the sea and the water in Basin 4 when the victim came to go under the water, and to measuring *the differential pressure* (which presented a significant risk to the safety of the diver in the intervention he was assigned to do) and thus to ensure that the victim it only goes underwater when the levels are balanced. That's all, Emiliano Cirillo testified that before the victim had entered the water, he had not measured or paid attention to the water level. water in the basin to ensure that it was equilibrated with sea level49 .

There is nothing in the evidence to show that the victim was even warned not to dive near the *valve* due to *differential pressure.* In any case, if the victim was indeed

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47 See testimony of Emiliano Cirillo before expert Captain Reuben Lanfranco, *fol.* 465. Mandates which, as we have seen before, formed part of his role as ship manager responsible for repairs carried out in dock number 4.

See also regulation 12(1) of LS 424.18: *"It shall be the duty of the employer to provide understandable and relevant information to workers and their representatives regarding:*
(i) the risks to health and safety which are known to the employer or which have been identified by a risk assessment carried out by, or for, the employer, and which are known to be present in the workplace in general, as well as in relation to each individual workstation, and in relation to any type of work or work activity assigned; (ii) the preventive and protective measures required in relation to all the risks
identified; (iii) the procedures to be followed in the event of a serious and imminent danger present at work ..."

48 In the acts of the inquiry into the in genere, *fol.* 475.

49 See testimony 8 November 2017 in the compilation records.

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was guided not to dive near *the* damaged valve, and to stay away from it,
The cable could hardly serve as a means of assistance, security or communication.
of iron that had been lowered by crane into the sea in the vicinity of the same *valve* to
marks the position *of the gate-valve* that was damaged.

It does not result from anywhere in the evidence that *the* iron cable mentioned in the report of the
Captain Joe Gabriele produced as an expert witness by the defendant company50 was
was placed precisely to serve as *a lifeline* for divers, even though it
provided a direct connection or means of communication between the person of the
divers and those who remained on land. It does not result anywhere from the body of evidence that the
An iron cable had been lowered into the sea *"to provide a safety reference point during
the dive",* rather than to indicate the precise position *of the valve51.* In fact, Emiliano Cirillo did not say
in his testimony that he had indicated to the victim before going into the sea, the presence of the
cable: otherwise, he stated that instead he continued to monitor the victim while he was underwater,
left the scene for a few minutes. Therefore, the cable indicated by the *ex parte* expert was a little
which was of no use to the victim.

Insofar as Captain Joe Gabriele's report referred to the version of a certain
Valerio Alfieri52 which version is contained in the photocopy of the unsworn statement
dated 2 March 2015, attached to the *ex parte* expert's report (App. 3), the
The Court observes that the said person was never brought to testify before it, and
nor had he testified during the inquiry into *the in genere.* From the acts that it has
before it does not appear that he had testified in the criminal proceedings before the Court
Structural.

Therefore, no weight whatsoever can be given to the version in the statement attributed to
a certain Valerio Alfieri, included in the part where it is said in the statement that Patrick Vella
refused to establish a means of communication while underwater, or to use *a
floating signal,* and that Emiliano Cirillo was heard giving detailed instructions to Patrick
Vella on the security measures that had to be implemented by him and the distance he had to maintain
holds the valve flange . As we saw earlier, Emiliano Cirillo in his testimony did not say

[50] Page 11 of report Doc. JG1.

51 See testimony of Joseph Calleja, 11 June 2024.

[52] Joseph Calleja testified that Valerio Alfieri was the crane operator who lowered the iron cable into the sea in the vicinity of the damaged valve.

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nothing of this except that he had indicated that Patrick Vella should go into the water from the side of the *docking gate* that comes furthest *from the valve* that had to be repaired.

The defendant company also failed to provide an alert system in the event of emergency, even a rope tied to the diver and held by someone on the pier or *the docking gate* that will promptly pull the diver out of the water or call for prompt assistance. Such a system was described by Captain Reuben Lanfranco as a *"lifeline"* that is also used during sea searches.

In his report he said this:-

“2. If a diver has to descend to a place where there is a suspicion that a difference in sea pressure may be present, he must be assisted by another person who is on land (or at the dock door) and who has in his hand a rope that is tied to the diver so that if there is any problem, this person can pull the diver up when the latter gives him a signal by pulling on the rope himself several times.”

Charles Portelli, who at the time of the accident was the Dock Master of the society's *shipyard* defendant, testified that if the diver was inspecting the bottom of the dock to check the bottom of a ship, he would provide the victim with a rope as a means of communication to make signals even through a ball *('float')* on the surface of the water, and would not let it go down if the water level in the basin was not *sea level.*

The defendant company was undoubtedly aware of the danger posed by the existence of *differential pressure* in the sea – a danger that was effectively the cause of the death of the victim - and therefore it was up to her to implement a security system to make everything necessary to reduce the risks inherent in the site, for the benefit of the divers contracted by it from abroad to carry out underwater interventions in the docks and its surroundings. This is not only by ensuring that divers are informed about the specific risks that exist underwater in the basins and potential ones, but by significantly reducing active and provides all the assistance and tools necessary to avoid those risks, especially, as we have seen, providing *a life-line* to the victim when he was underwater, ensuring the implementation of procedures that ensure that there are enough people present on site for the operation to be carried out while protecting the diver's safety and that the diver it only goes underwater when the water level in the basin is equilibrated with sea level

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let the pressure of the water being drawn *into the valve* towards the basin due to gravity, be minimised53 .

The fact that the victim was an experienced diver and may have been familiar with the work under the water in the basins, could not exonerate the defendant company from its duty to provide *a safe system of work* to the worker engaged by it on inherently risky work,

In the judgment in the case in the names **Neville Desira et vs Grech & Co. Company Limited,** it was said thus in relation to:-

"... it was in fact stated in the judgment ***"Borg vs Wells et nomine"*** *(K. 9 September 1981) that "in planning a system of work, the employer must take into account the fact that the workmen become careless in works involved in their daily work", and this took into account "the working atmosphere, the difficulties which the worker finds in the course of his work, the long hours, the speed of work, the lack of help from other workers who are assigned to work with him on the job".54*

All this taken together is sufficient to establish a causal link between the damage suffered by the victim and the wrongful act of the defendant company which failed in its duty to observe the its obligations arising *ex lege* to provide *a safe system of work* within the meaning of meant, even, if nothing else, for this system to guard against inattention or errors of third parties – in this case divers – who were contracted to provide their work in her docks. The danger of *differential pressure* was significant and in her case, it was present at the time the victim went down to dive but did not absolutely nothing was done by the defendant company to reduce or prevent that risk to its worker, even to inform him of the presence and dangers of the difference in sea pressure in the vicinity *of the valve* which was damaged and which had to be submerged in his immediate vicinity.

The Court, after reviewing all the evidence and witnesses, considers that the defendant company was negligent in fulfilling its obligations under both civil law – because it did not comply with the diligence and prudence of a bonus pater familias when *inter alia* it failed to provide any no one to supervise the operation and ensure that before the victim went under the water

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53 Expert Captain Reuben Lanfranco confirmed in his testimony that normally, these matters fall under the responsibility of the ship repair manager who is on duty at the time (Witnesses in the compilation proceedings 25 February 2019).

54 First Chamber, 30 May 2002.

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was there still *a differential pressure* in the vicinity *of the gate-valves* - as well as under the law of the health and safety of the workplace under its control55 - when not only did it not hire someone to carry out an assessment of the risks linked to interventions carried out under the water in its basins by divers, but it also failed to implement practices appropriate and the measures necessary to avoid or eliminate those risks.

Considered;

However, as stated earlier, this does not mean that the worker, the worker, did not also have the obligation to work diligently and carefully in a way that does not provoke himself accidents that with a little care and attention can be avoided.

In the judgment in the names **Carmelo Micallef et v. John Pisani et** nomine decided on 5 October 2001 by the Court of Appeal, it was stated as follows:-

"The worker was therefore not entitled to take unnecessary risks in the execution of the work entrusted to him. While it is true that there are circumstances where the taking of such a risk can be explained and justified due to the nature of the repetitive work or due to a mistaken appreciation of what had to be done at the moment, there are then other circumstances where the taking of such a risk is in no way justified because it would amount to negligence and carelessness on the part of the worker."

In today's case, the responsibility of the victim, Patrick Joseph Vella, to use prudence and due diligence and to take care of one's own health and safety when landing dives into the sea at the defendant company's shipyard to provide the service requested by the same defendant company, also derives from the provisions of articles 1031 and 1032(1) of the Civil Code which enunciate the general principles of civil liability, as well as from the law in the Occupational Health and Safety Authority Act (Chapter 424). A law that requires workers to be careful not to put themselves at unnecessary risk. need.

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55 Evidently, in the facts of the case under examination, there is a breach of duty on the part of the employer, of regulations 4 and 6 of LS 424.18, namely the duty to assess the risks and take the necessary measures to safeguard health and safety at the workplace and to prevent risks at the workplace, which as stated is linked to the general obligation of the employer to protect the health and safety of all employees who may be affected by the work being carried out. This is being said because the employer failed to take all necessary steps to avoid harm to anyone who may be affected by the work.

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Article 7 of Chapter 424 provides:

(1) It is the duty of every worker to safeguard his own health and safety as well as that of other persons who may be affected by the work being carried out.

This obligation goes hand in hand with the duty mentioned in regulation 15 of SL 424.18

***15.(1)** It shall be the duty of every worker to take as much care as possible for his own health and safety as well as that of other persons who may be affected by his acts or work in accordance with the training and instructions given by the employer.56*

It is established from the evidence that Patrick Vella was the expert within the company SALPA. Limited which was commissioned by the defendant company to provide the services of diver on the date of the fatal accident. It also appears that as one of the two directors of SALPA Limited, a company specializing in the field *of diving,* he was responsible for the design and implementation of health and safety measures on site where the company provides diving services57. Therefore, the obligation to assess the health and safety risks associated with the underwater intervention referred to Patrick Vella was charged, he was responsible for the same victim and his company.

The victim was a skilled and experienced diver who knew the dangers inherent in the his work as well as in underwater work in the docks. Defendant Mark Grech testified that the victim was contracted several times by the defendant company to work in the docks and had rendered his services in its shipyard no less than forty-three times previously58 , including on similar work in Dock 4 and Dock 3. This gives rise to the presumption that the The victim had considerable experience of the work done in the docks and was also familiar with with the shipyard of the defendant company.

It also results that the defendant company used the services of the victim and the company his, due to the level of professionalism, reliability and precision that they have always shown in

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56 There is also regulation 7 of LS 424.18: "[...] *where employers, contractors or self-employed persons share a workplace, the employers, contractors and self-employed persons* [...] *taking into account the nature of the activities, shall coordinate their actions in matters relating to protective and preventive measures, and shall inform each other and their respective workers and, or their representatives of such risks."*

57 See testimony of Salvatore Cammarino.

58 Testimony of Balto Guberti, 24 May 2023 – Doc. BG1 and testimony of Joseph Calleja, 11 June 2024.

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performance of their services59 , so much so that *the General Manager* of the society defendant, defendant Joseph Calleja, described him as *“the best that was here in the sector”* 60.

However, for some reason, the victim decided not to follow the basic measures he should have taken. adopted to minimize the risks associated with the work that had to be carried out underwater in the docks of the defendant company.

Start by letting the victim dive into a danger zone: he was informed that only one of the *The docking gate valves* had remained open and were pouring water back into the dock and therefore, as a diver with extensive experience involved in the society's basins defendant, he should have known that the sea pressure that was pulling in the direction of the The basin could have been considerable.

However, the victim chose to dive not from the *docking gate* side which was Emiliano Cirillo pointed out to him and from inside the basin itself, but from the outside of the basin, where the water pressure was pulling through the *valve* hole inwards in a direction towards the dock.

In the Court's view, this failure of the victim carries with it a substantial burden and as such A professional and experienced diver, he certainly had a chance. with danger due to the element of *differential pressure* that exists under the sea in the vicinity *of the gate-valve* which remained open.

Expert Captain Reuben Lanfranco testified as follows regarding this failure of the victim:-

“... obviously part of it is also the responsibility of the diver to be aware of any problems that may exist in the area and this is one of the things that they normally see as a personal diver is that they are working in an area where there are no hazards that could be dangerous [for example], having any motor systems running or any systems even maybe ship propellers ... that could cause hydrodynamic effects that could affect the diver in his activity.”61

59 See testimony of Baldo Uberti 11 June 2024.
60 Testimony of Joseph Calleja of 11 June 2024.
61 Witnesses in the compilation acts 25 February 2019.

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In his report, he concluded:-

"Although it appears, from the testimony of Emiliano Cirillo, that the victim was shown what the dangers (differential pressure) could be near the gate valve opening, the victim still chose to go into the sea from a place that was not ideal for making his first inspection. According to the undersigned, the diver should have gone first into the dock where from there he would have gone to the vicinity of the gate valve from the inside of the basin where the pressure is pushing the diver away from the valve opening and not towards it, and from here he will have a general idea of what the pressure was like present in the valve area"

But above all, Patrick Joseph Vella failed when he dived alone in violation of the rule. or a basic safety standard in the *diving sector,* known as *the buddy rule.*

In his report, expert Captain Reuben Lanfranco explained this rule as follows:-

"A diver should never go into the sea alone, despite the fact that the task he had to do was only a few minutes. Although the victim was an experienced diver, it seems that he failed to take the necessary steps regarding this rule. If for some reason there could not be another diver in the sea, there must always be a stand-by diver nearby dressed in diving equipment ready to intervene in case of need"

The expert also testified:

"One of the regulations, not regulations, it's almost more like it's customary that when someone goes diving they go with someone else. There's what we call a buddy system where [a diver] is always accompanied by another diver. It's one of the golden rules of diving, for example, that a person doesn't go diving alone. In this particular case there was perhaps overconfidence on the part of the person who was diving because perhaps he was familiar with the area, there were some records that I took, there were other times that he did this same type of work as well and he was often hired by Palumbo Shipyards."

Salvatore Cammerino, who was a partner with the victim in the business that was managed by the their company SALPA Limited, testified that he could not explain why the victim he had decided to go diving alone on the day of the accident, because he had never done it before. takes unnecessary risks. This was confirmed by Rino Glorioso who worked as *a diving instructor* with the company SALPA Limited: he testified that the victim was qualified

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both as *a diver* and as *an instructor* and he always carried out preventive assessments as
next to the workplace62 .

All things considered, the Court identifies the proximate cause of the fatality in the omission of the
defendant company from providing *a safe system of work* to the worker who provided it with the
his services in a place under its control, and equally in the conduct of the victim
himself, who went down into the sea and dived on the outside of the dock and in the vicinity *of the valve*
which had remained open, so much so that it had become trapped inside the hole of the same *valve.*

It is true that if the victim had chosen to dive on the opposite side of the dock,
direction of water suction, it would not be caught in the hole, and if it was accompanied by
another diver, could have been given help and saved even if still
got caught in the *valve* hole and/or lost *the mouthpiece.* But the fact remains that the
the defendant company was negligent in its conduct towards the victim, and failed to
manifestly in its duty to protect his health and safety by reducing the
risks inherent in the site and the work that its performance required.

As we saw earlier, it was up to the defendant company – which, from the testimony of its officers
it is evident that the risk of pressure near *the gate-valves* due to pressure difference
was a well-known one - to do an evaluation exercise to be
identified the inherent and other risks in work carried out underwater in or near the docks
of the basins, and to operate a system based on that evaluation to ensure that the
all information to the worker, i.e. the diver who is employed or contracted to work
in the docks, regarding the generic and particular risks of the work contracted to him and the
precautions and methods to be implemented to avoid risks, and is provided with the
equipment necessary to avoid those risks63 .

Expert Captain Reuben Lanfranco said this in his report:-

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62 Prof. Alan Deidun testified in relation to: *"Because you can't dive alone, you have to have a partner to dive with"* – testimony of 15 November 2022.

63 This was unequivocally ruled out by Mark Grech in his testimony during the in genere inquiry.

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"on the part of Palumbo Shipyards there appears to be a lack of procedures and what is familiarization with regard to works where third parties (contractors) are hired to carry out some work in the shipyard. Although it is true that whoever is doing the work must be responsible to carry out an assessment of the risks present, it still remains the responsibility of the person leading the a dock that provides written instructions, familiarization and warnings, as a procedure for "Safe practices for anyone doing any work in the shipyard or docks"

In the judgment of the First Hall of the Civil Court decided on January 27, 2022 in the names **Martin Costa v. Jonathan Bugeja,** reference was made to the teaching of Lord Denning in matter:

"That as was said in other circumstances like these: «Negligence depends on a breach of duty, whereas contributory negligence does not. Negligence is a man's carelessness in breach of duty to others. Contributory negligence is a man's carelessness in looking after his own safety. He is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonably prudent man, he might hurt himself64»

Applying all this to the case under examination, the Court considers that the defendant company, Palumbo Malta Shipyard Limited acted with a lack of diligence and a lack of consideration for *bonuses pater familias* and was negligent in the performance of her duties towards the victim, but at the same time, the victim by his own actions contributed to the harm suffered from him.

Considered;

That the actress also sued them to answer for the damage she allegedly suffered due to the death of her husband, Patrick Joseph Vella, in the accident merit of the case, to the defendant Mark Grech *(the manager* responsible for health and safety) and the defendant Joseph Calleja *(the General Manager),* both employees of the defendant company on the date of accident.

It should be noted that the evidence establishes that the defendant Mark Grech was not present at the location of the accident at any time from the time the victim is called into *the shipyard* until died. Furthermore, there is nothing in the records and in the procedural evidence to show that he was obliged as part of his employment duties, to be present and/or direct the

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64 **Froom v Butcher** CA QB 286 (1976) per Denning LJ.

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operations conducted by divers engaged by the defendant company. Therefore it cannot be said that the harmful event was caused or aggravated because the defendant Grech had acted in breach of any duty or obligation towards the victim by any such act. referred to in article 1032(1) of Cap. 16.

Mark Grech as an employee of the defendant company did not, nor did he, have any duty to provide the victim, as a third party who was hired to provide services in the shipyard of the same defendant company, *a safe system of work.* That obligation was is incumbent on the defendant company as the person for whom the work given to the victim or his company. If it is indeed possible that Mark Grech, in the role of his/her position as *health and safety manager,* acted in breach of any contractual obligation in favour of the defendant company, its principal, was either incompetent in his job or acted with a lack of ability in his duties as a *health and safety officer,* that is a matter that does not form part of the investigation that needs to be carried out in this action regarding the damages suffered by the plaintiff, because it concerns only the sphere of contractual obligations between the defendant company and its employee.

It is the defendant company, as the person who employs the defendant Mark Grech and who to whom the services of the victim were rendered, who must answer for the damages suffered due to any shortcomings in the performance of duties under his service contract.

The same considerations also apply *mutatis mutandis* as far as it concerns the liability of the defendant Joseph Calleja who was, at the time of the incident, an employee as *General Manager of the shipyard* of the defendant company. It was established that he was not present during the underwater intervention carried out by the victim, it cannot be said that the event The harm occurred because he did not use the prudence, diligence, and thought of a father. family well-being. Moreover, since he was not the person to whom the service of the victim and it does not appear that it was contracted by the defendant company specifically to supervise and/or provide some equipment or otherwise assist to the victim during the underwater operation, but failed to do so, there is no causal link between the defendant's role as *General Manager* of the company defendant, and the damage suffered by the plaintiff.

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That the plaintiff also summoned the directors of the defendant company to answer for the damage suffered by her as a result of her husband's death, the Court considers that it does not result from anywhere in the procedural acts and evidence that any of them had made any decision or action that caused the harmful event or aggravated the consequential damage, or that the damage was a consequential effect of some act of one of the directors.

The Court found no evidence that the directors were personally at the location of the accident and/or failed to take any action that was reasonable to prevent the damage that occurred to the victim. However, the directors of the defendant company were not named. nowhere in the complete collection of procedural acts and evidence, much less were they mentioned in connection with the incident, the merits of the case or in relation to the measures taken or were taken by the company's employees who were involved in the operation that was carried out from the victim.

The defendant company they managed employed *a health and safety officer,* Mark Grech, who the Court understood should have been responsible for all matters that fell within the parameters of health and safety of all the company's workers defendant and the site under its control, including presumably, the evaluation of the risks to the health and safety of the divers contracted by the company and the preparation and implementation of a health and safety plan. The company was also a defendant led by them who awarded the work that was executed by Patrick Vella, and not one of the directors *de proprio.*

Considered;

That therefore, the responsibility for the accident on the merits of the case in which Patrick Joseph Vella lost his life belongs to the defendant company Palumbo Malta Shipyard only, with contribution of the victim himself, without any proof that any of the other defendants was at fault for the harm suffered by the actress.

Therefore, the provisions of article 1051 of the Civil Code apply:

"If the party who suffers the damage has, through lack of prudence, diligence or care, contributed to or occasioned the damage, the court, in liquidating the amount of the damages which

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shall be paid to that party, shall decide, in its discretion, in what proportion it has contributed to or occasioned the damage suffered, and the amount of damages to be paid to it by the other persons who have wilfully or negligently contributed to that damage, shall be reduced in that proportion.

As stated in the decision **Francis Bellia vs. Saviour Agius,** decided by the Court of Appeal on June 26, 2025:

"46. As regards the defence of contributory negligence, Article 1051 of the Civil Code applies, by virtue of which the negligence of the party suffering the damage is deducted from the fault of the injured party. As the law currently stands in this regard, there is no fixed or determinative rule as to what that proportion should be (see Civil Appeal of 20 January, 1964 in the case of ***Joseph Galdes v. Victor Micallef),*** *and this is because the discretion which is left to the Court must be based on the particular circumstances of the case and the resulting evidence (see the judgment of the First Hall of the Civil Court of 31 January, 2003 in the case of* ***Onorato Bugeja v. Dennis Agius).***"

The Court considers that for the incident on the merits of the case the defendant Palumbo Malta Shipyard Limited, and the victim himself is equally to blame and therefore, the responsibility for paying the damage caused as a result of the accident, shall be apportioned between the victim and the defendant Palumbo Malta Shipyward Limited, half and half.

Considered;

Having established the issue of responsibility for the accident, it is time to consider the damages. consequences that the actress says were suffered by her.

The law requires that whoever is responsible for the damages must pay for the losses suffered by the injured as a result of the accident or the damage caused to him (Art. 1033 of Cap. 16). However, the plaintiff remains in any case burdened with the obligation to present proof required by law, that is, the best proof as required by article 559 of Cap. 12, of the damage suffered by him.

According to article 1045 of the Civil Code:-

(1) The damage for which the person liable shall be liable, in accordance with the preceding provisions, is the actual loss which his act has directly caused to the party suffering the damage, the expenses which this party may have had to incur as a result of the damage, the loss of wages or other earnings.

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current, and the loss of earnings suffered in the future due to permanent incapacity, total or partial, which that act could have brought about:

However, in the case of damages caused by a criminal offence, which is not an involuntary offence, and only in the case of crimes affecting the dignity of persons under Title VII of Part II of Book One of the Criminal Code and of voluntary crimes against the person which are subject to a penalty of at least three years' imprisonment under Title VIII of Part II of Book One of the same Code, up to the maximum limit of ten thousand euros (€10,000) or up to such maximum limit as the Minister responsible for justice may by regulations establish both as to the maximum amount and as to how it is to be computed according to the case, the damage to be redressed shall also include the moral and, or psychological harm caused to the claimant.

(2) The sum to be awarded for such incapacity shall be determined by the court, having regard to the circumstances of the case, and, in particular, the nature and degree of incapacity caused, and the condition of the injured party.

As stated in the judgment of the Court of Appeal in its judgment of June 15, 2023 in the names **Trevor Grech v. Lawrence Agius:**

*«48. As explained by the Court of Appeal in the judgment **Raymond Sammut v. Anthony Micallef** decided by the Court of Appeal on May 24, 2015, damnum emergens is what the victim has incurred, is incurring, or will have to incur from his estate to make good the damage, while lucrum cessans is the profit or income that, in the past, now or in the future, has been lost or will be lost and therefore does not enter the victim's estate due to the accident.*

*49. It therefore means that in the category of lucrum cessans, the injured party not only has the right to claim compensation for the loss of salary, when he was unable to go to work due to the accident or for the reduction in salary he suffered due to the accident (see Sworn Application number 1107/19/1 7/10/2024 **Marco Joseph Bugeja v. George Fava et** decided by the Court of Appeal on 8 July, 2022); but the injured party can also seek compensation for the loss of future opportunities due to the permanent disability caused by the accident (see **Joseph Farrugia v. John Degiorgio et** decided by the Court of Appeal on 26 October, 2022).»*

Damnum Emergens

As for the claim for compensation for damage consistent *with damnum emergens,* no allegation was made that the plaintiff suffered any actual loss in the accident or as a result in it.

Although in the Sworn Application the plaintiff requested payment of the costs she suffered as contemplated in article 1045 of Cap. 16, has not submitted any proof that it has paid any expenses as a result of the tragic death of her husband. She testified that she found it difficult from an emotional point of view as well as from a financial point of view to raise her children alone without a father, but

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nowhere did she say that she suffered psychological damage to the point that she had to seek treatment through of medications or therapy.

Loss of Profit

Loss of salary or current earnings

The actress testified that she suffered a reduction in her salary because after her husband died she was She left her job as a clerk at the University of Malta and started working as a 'Learning Support Educator' ('LSE') to have more flexible hours and be can take better care of her children. It does not follow that the actress is alleging that she has lost any salary because she could not come to work due to the accident and death of her husband65, but she maintains that when she eventually started working as an LSE, she had a salary less than what she used to receive in her employment with the University of Malta.

However, the plaintiff has not quantified the amount of salary loss for which she is seeking compensation, and after the Court examined the documents produced as evidence of the actress's income, you cannot help but observe that while from employment with the University of In Malta, the actress's gross earnings were €10,014 in 201066, her gross earnings from employment with the Malta Public Service in 2019 were €15,962.70. Ma produced no other evidence regarding the salary from her employment for the period 2011 to 2017 and in any case, the allegation of consistent losses in is not properly proven. a reduction in her salary as a direct result of her husband's death.

Loss of earnings you suffer going forward

As previously stated, the injured party may also seek compensation for loss of future opportunities due to the permanent disability caused by the accident and indeed the actress, Roseanne Vella, stated in her Sworn Application that she personally suffered *"permanent functional impairment, psychological, psychiatric, moral damages and loss of future earnings"* and requested compensation for those damages thus suffered.

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65 She testified: *"I had returned to work, I had a year left to return to work (maternity leave), but I couldn't and I had to go back by force so that I could obviously start earning a wage."* Hearing 7 February 2022.
66 Doc. T6, *fol.* 762.

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In support of the claim for damages arising from permanent disability and damages
psychological problems allegedly suffered by her, the actress requested the appointment of an expert in psychiatry
to prove the permanent psychiatric disability allegedly suffered by her
as a result of her husband's death, and the relative percentage.

The Court heard the report of architect Dr. Joseph Cassar who, after examining the plaintiff and
conducted the *'Clinician Administered PTSD Scale for DSM-5'* and *the 'Beck Depression*
Inventory', came to the conclusion that the actress:

"... *suffers from anxiety and traumatic neurosis (Post Traumatic Stress Disorder with dissociative symptoms) with a disability rate of* 8%".

However, the Court cannot help but observe that nowhere in the psychiatric expert's report is it stated
that the plaintiff suffered permanent incapacity. Article 1045 of the Civil Code is clear that the incapacity
due to which a loss of future earnings is suffered, must be *"permanent".*

There is also the consideration that the judicial expert, although he relied on the plaintiff's state
of anxiety and traumatic nervousness, did not make any objective findings about any
a direct link between this psychiatric state and her husband's death, and in his relationship
nowhere did it specifically state that the condition encountered in the actress – which was not
the direct victim of the accident that caused the damage – resulted in permanent psychiatric damage that
It has had a negative impact on her quality of life and ability to work.

The Court considers that the permanent disability must have been created as a result of the accident and
if clear and direct evidence is not provided establishing a cause and effect link between the event
who caused the damage and the damage allegedly suffered, the claim for compensation
of the damage cannot succeed.

In the circumstances, where the plaintiff made no mention whatsoever in her testimony that
began to suffer from anxiety problems and psychological difficulties that had an impact on the
her daily life and/or her working life, after and due to the death of
her husband, nor did she say that she had been examined by a psychiatrist or other professional in

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mental health field and needed to attend therapeutic sessions or
takes any medication to treat her mental state, the Court can hardly be convinced that
The disability, as determined by the psychiatric expert, arose as a direct consequence of the
an accident due to the cause, and not also from other life circumstances that occurred
before or after the accident.

In addition to this, but linked to the same consideration, the Court cannot but
Please take note of the contents of the official letter number 3655/16 presented by
Carina Hurtelle67 and the testimony of the deceased's business partner, Salvatore
Cammerino68, regarding the factual state of the private and family life of the actress and her husband in the
time of the fatal accident.

In conclusion, it would also be appropriate to observe that the psychiatric expert seems to
arrived at the eight percent (8%) disability rate not only based on the result
of the tests he conducted on the actress, but also with express reference to the criteria that had been
made *in the White Paper* released by the Ministry of Justice and Home Affairs in 2010 entitled
"Amendments to the Civil Damages Law", where it had been proposed that a condition such as
is *'post-traumatic stress disorder'* starting to be treated as a real medical disability,
by introducing compensation for suffering and pain resulting from such a condition.
However, those proposals were never translated into law and the Court does not feel that the exercise
made by the judicial expert may have some value in support of the allegation that the plaintiff
suffered psychiatric harm that could translate into economic loss, or as a basis for
liquidation of moral damages.

As regards the plaintiff's claim for moral damages, the
The Court begins by observing that with the amendments made to article 1045(1) of the Civil Code in
2018, the legislator created an exception to the rule that the damage to be repaired does not
does not include anything other than pecuniary damages. While it is aware of the conflicting jurisprudence that
existed on this matter of moral or non-pecuniary damages, however,
with Act XXXII of 2018 the legislator clarified the legal position by stipulating in the
proviso to the said article 1045(1) of Cap. 16 that the reparable damage shall be deemed to be
shall also include the moral and, or psychological damage caused to the injured party, only

67 Exhibit at page 2384 of the case file.
68 Testimony of 6 March 2025, page 2292 of the case records.

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when the damages are caused by a criminal offence, which is not an involuntary offence, and only in the case of crimes affecting the dignity of persons69 and of voluntary crimes against the person which are subject to a penalty of at least three years' imprisonment70, and this up to maximum limit of €10,000. In the case under examination, it cannot be said that the damages were caused by a voluntary crime.

In a recent judgment of 30 July 2024, in the names **Ivan Azzopardi et v. Alfred Sciberras et,** it was said that although as much as possible, the law is given an interpretation broad in order to comply with the Constitution and the European Convention on Human Rights. Human Rights:

"
46. ... So if the award of extra-pecuniary damages is an exception, a contrariu sensu the rule is that these types of damages are not awarded. ... ... It is clear that through this provision, the legislator is creating an exception to the rule. In the words of the Digesto Italiano:

> *"When the law establishes a rule that derogates from the general principles, in such a hypothesis it is legitimate to argue that nei casi non contemplated debbano instead apply the general principles contrary to the same rule, exceptio firmat regulam in casibus non exceptis. Molti anzi restrictono l'argomento a contrario a questa sola hypotesi."71*

47. There is no doubt that the legislature followed the rule established by the main case-law that compensation for non-pecuniary damage cannot be awarded, and made a specific exception to it in the case of certain criminal offences.

The Court is therefore precluded from liquidating any moral damages by way of compensation to the plaintiff. for sudden damage.

Considered;

That where the injured party loses his life in or because of that act, the law, in article 1046 of Cap. 16, grants to the heirs those damages mentioned together with the loss and actual costs incurred:-

"If, as a result of the act giving rise to the damages, someone dies, the court may, in addition to the actual losses and expenses incurred, award the deceased's heirs damages, as in the case of total permanent incapacity, in accordance with the provisions of the last preceding article."

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69 Under Title VII of Part II of Book One of the Criminal Code.
70 Under Title VIII of Part II of Book One of the Criminal Code.
71 Il Digesto Italiano Vol XIII Parte II, (1901-1904) Interpretazione delle Leggi para 25, page 87.

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In this case, where you are seeking compensation for the damage suffered due to the death of her husband due to the fault of the defendants, the right of action exercised by the plaintiff is granted expressly provided for by article 1046 of Cap. 16, which clearly states that the payment of compensation is owed to the deceased person's heirs and not to the dependents. After all, the The right to compensation for damages is a patrimonial right that is inherited like other rights, which means that the basis of that right of action is found in the actress's capacity as heir of Patrick Joseph Vella by virtue of the will *unica charta* of 30 November 2005 (Doc. T3), through which he had nominated his actress wife as the sole heir his universal 72. Therefore, the plaintiff as the sole heir of Patrick Joseph Vella has the exclusive right to be compensated for those damages that would have been due to the deceased had he not died but only suffered injuries that left him totally incapacitated as there is contemplated in article 1045 of Cap. 16.

As a consequence of the accident, the death of Patrick Joseph Vella occurred, the rate of the disability suffered by him is one hundred percent (100%).

We therefore come to the multiplier. Although in measuring the multiplier, account must be taken of the age of the injured party at the time the accident occurred, and although the Court has seeks to reintegrate the injured party's position as much as possible and place him back in the state that existed before the accident, a simple deduction between age should not normally be made retirement age and the age of the injured party at the time of the accident and only *the maximum* is taken into account *working life expectancy 'sic et simpliciter'.* It is settled case law that in the multiplier must also take into account the *«chances and changes of life»* because the aim behind the exercise carried out in such cases is that the Court seeks to Place the injured person in the same state as before the accident as much as possible.

In the judgment in the names **Trevor Grech vs Lawrence Agius,** decided on 15 June 2023, it was said as follows in relation to:-

"72. The concept of «chances and changes of life» was introduced precisely to justify a reduction in the computation of damages because no one knows the future, and although a person can live to an advanced age, life has taught us otherwise. This is why working life expectancy is often not fully taken into account in the calculation of the multiplier (see ***Francis Gauci v. Jimmy Bugeja*** *decided by the Court of Appeal on 27 November, 2009).*

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72 *Fol.* 755.

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73. As explained by the Court of Appeal in the judgment Charles Azzopardi v. PS 201 Sandro Magro et decided on 24 June, 2016, it is not the case to apply the multiplier criterion as if there were some certainty about decades of future years, because this is an area where moderation must prevail between the rights of the injured party and the obligations of the party who caused the damage (see also ***Rosaria Pintley nomine v. Noel Sciortino et*** *decided by the Court of Appeal on 31 May, 2019)."*

Patrick Joseph Vella was thirty-six (36) years old on the date of the incident on 28 February 2015 and It does not result from the collection of procedural evidence that he was suffering from any conditions. chronic diseases or had any vices that were detrimental to his health: otherwise everything shows that he was a very strong man. Therefore, considering the circumstances and the age of the victim, and the an element of possibilities and changes in life, including the fact that he was doing a job inherently dangerous nature, the Court will apply a multiplier of **24.**

The evidence shows that Patrick Joseph Vella was one of the two directors and shareholders. with equal shares, of the company SALPA Limited, and managed the business of the a company called SalpaSub together with his partner Salvatore Cammerino73 . Although he was a *marine biologist* and had various academic qualifications in the sector, it appears that his income was derived solely from the salary he received as a director of the company SALPA Limited. From an examination *of the financial statements* of the company for the years prior to the accident and for the year of the accident (2013, 2014 and 2015), it results that the directors had not received the payment of dividends from the company.

From an examination of the income tax statements declared by the victim for the year of assessment 2013, it results that he had declared a total gross income of €24,442, while for the assessment year 2014 declared a total gross income of €13,513, and a total gross income of €13,385 for the year of assessment 201574, with the average annual income for the three years in question being **€17,113.**

In calculating the loss of future earnings, the cost of living factor must of course also be taken into account. life: from time to time wages rise as a result of inflation. The our courts have always applied a percentage in addition to the gross annual earnings to

73 See testimony of Salvatore Cammarino, 6 March 2025 and before expert Captain Reben Lanfranco in the records of the inquiry into the in genere.
74 Doc. JD1.

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compensate for the increase in the cost of living when determining the loss of earnings future.

The Court considers that over a period of twenty-four years, the victim's income would undoubtedly have been increases and therefore an adjustment of 24% will be made over a twenty-four year period[75], so that Patrick Vella's average gross income increases to a total of **€21,220 per year.**

It is necessary that a deduction be made from this amount representing the personal consumption that was makes the victim of the liquidated capital.

It was held so by the Court of Appeal in its judgment of April 25, 2024 in names **Roberta Cassar *proprio et nomine* v. Polidano Brothers Limited.**

"... if the victim were to have the sum liquidated by the Court in her hands, part of this sum would certainly have been spent on her personal needs, and therefore it would be appropriate and realistic to deduct 25% from the sum liquidated by the Court due to the victim's personal consumption."

Therefore, it is considered appropriate that in this case too there should be this reduction which takes into account the personal consumption, which reduction would be appropriate to be in the percentage of 25%.

We come to consider the degree of dependence of the plaintiff on the victim, although it should be indicated that the degree of dependency is not a condition for granting compensation, although it may be taken into account when calculating the amount of compensation due.

In the judgment of the First Hall of the Civil Court in the names **Sammut v. Clamus Holding Limited,** dated 27th September 2012, it was stated:-

"(d)... it is not necessary to prove that the victim was earning the money and/or that he was contributing or supporting his heirs with it. Indeed, even future dependency is not, in our law, a pre-condition and essential factor for the award of compensation; and

(e) that the fact remains that the court has the exercise of discretion when considering all the elements that make up the case as to what could happen in the future."

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75 €4,107.

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When Patrick Vella died, he was 36 years old and left behind his actress wife, and three minor children but as we have seen, only the actress is his testamentary heir. In the context of the heirs' dependence on the deceased, it results that as a fact that the actress until To a certain extent, she could be considered dependent on her husband since they were at that time They are raising three minor children together, each four years old, and at the time of the The actress was still *on* maternity leave at the time of the incident and had not worked for several years. However, the evidence shows that the actress also earned a living for her family and therefore the Court considers that the liquidated amount should be reduced by one third (33.33%) due to the degree of her dependence on her husband.

As for the deductions usually made due to a lump sum payment of future earnings *(lump sum deduction),* this is generally 20% when a short period of time has passed until the final judgment is given, it appears that according to the constant jurisprudence of the Courts our:-

"... if the case lasts more than two years, the percentage of reduction due to the payment of a lump sum payment decreases at the rate of 2% for each additional year that the case lasts (see in this sense the judgment of this Court of 13 July, 2020, in the case in the names John Muscat v. Camray Limited et al.

According to the recent, but consistent, case law of the Court of Appeal, generally no No deduction will be made from the liquidated sum if the case takes more than ten years to resolve. it is cut off.

Applying this teaching to the specific facts of the case before it, the Court after considering this case was opened six years after the accident and the final judgment will granted within five years from the date the case was opened in 2021, it considers that it should not no reduction is made due to the lump sum payment of compensation for the damage suffered.

Considering all this, the Court will calculate the amount of damages suffered by the plaintiff online. of *lucrum cessans,* by multiplying the salary of €21,220 by 24 years. This leads to a total of €509,280. This sum is being reduced by half due to the fault contributory pension of the deceased. This leads to a total of €254,640. This sum is

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76 She had one more year left on maternity leave.

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reduced by one third (1/3)77 due to the degree of dependency leading to a total of €169,760, and a further 25% deduction will be made for the victim's personal consumption, leading to for the final sum of **€127,320.**

The total liquidated damages due to the actress, the sole heir of Patrick Joseph Vella consequent to his death in the accident of 28 February 2015, are therefore being liquidated in the total sum of one hundred and twenty-seven thousand three hundred and twenty Euros (€127,320), which sum is owed to the actress by the company defendant Palumbo Malta Shipyward Limited only, its representatives from fault for the accident to the merits of the case.

For all these reasons, it is hereby decided and decreed that:-

1. **Rejects the fifth objection of the defendants Joseph Calleja, Giorgio Filippi, Antonio Palumbo, Giuseppe Palumbo, Raffaele Palumbo and Mark Grech in the Sworn Answer and declares that they are legitimate adversaries of the claims of the actress;**

2. **It accepts in a limited way the second, third, fourth and sixth exceptions in the Sworn Answer of the defendants only insofar as they are compatible with that here decidedly and consequently;**

3. **Only partially accepts the plaintiff's first request by declaring that the an accident that occurred at Palumbo Shipyard, Cospicua, on 28 February 2015 in which Patrick Joseph Vella lost his life, occurred due to the fault of society defendant Palumbo Malta *Shipyard* Limited with contributory negligence Patrick Joseph Vella;**

4. **Accept the second claim in the Sworn Application by liquidating the damages suffered by the plaintiff due to the fault of the defendant company Palumbo Malta Shipyard Limited in the sum of one hundred and twenty-seven thousand three hundred and twenty Euros (€127,320).**

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[77] €84,880.

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5. Reject the third request.

6. Accept the fourth request by condemning the Palumbo Malta Shipyard company Limited pays Roseanne Vella the sum of one hundred and twenty-seven one thousand three hundred and twenty Euros (€127,320), with interest from today.

The costs of the defendants Joseph Calleja, Giorgio Filippi, Antonio Palumbo, Giuseppe Palumbo, Raffaele Palumbo and Mark Grech are paid by the actress, while that all other costs be borne by the plaintiff and the defendant company Palumbo Malta *Shipyard* Limited in the amount of one half each.

Hon. Judge

Rachel Montebello.

Deputy Registrar