QORTI ĊIVILI PRIM'AWLA

ONOR. IMĦALLEF TONI ABELA LL.D.

Seduta ta' nhar it-Tlieta, 5 t'April, 2022

Numru

Rikors Numru 1187/2020 TA

Boiken Cela (Karta tal-Identita' 224744A)
vs
Schembri Infrastructures Limited (C17388)
u
Schembri & Sons Limited(C4225)

The Court:

Having seen the sworn application of the plaintiff dated 14th December 2020 by which he premised and demanded the following:

> "1) That the applicant started working with the defendant company Schembri Infrastructure Limited on the ninth (9) of March of the year two thousand and twenty. (2020) as a "Helper to Skilled Labourer" for the salary of fifteen thousand Euro (€15,000) per year (a copy of the statement of payment paid by the defendant company to the applicant is hereby being annexed and marked as Doc A);
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> 2) That even though the applicant started working with the defendant company on the ninth (9) of March of the year two thousand and twenty (2020), the defendant company has till this day not registered the applicant with the agency Jobsplus as one of its employees;

3) That on the eleventh (11) of May of the year two thousand and twenty (2020), whilst the applicant was working in the factory Schembri & Sons Limited, the applicant was involved in an accident at his place of work wherein he lost all of his fingers on his dominant hand, that is, his right hand;

4) That this happened whilst the applicant was operating machinery at his place of work. consisting of a machine that is used to make concrete slabs and a shutter. When the applicant was helping in moving the machine, the shutter fell down and the right hand of the applicant was caught between the machine and the shutter. As a result of this, the applicant lost all of his fingers on his right hand as has been certified (Case Summary is hereby annexed and marked Doc B);

5) That the applicant was immediately taken to hospital where he was operated for twenty two (22) hours in order for all of the fingers on his right hand to be reimplanted. In fact, the applicant suffered from compression-degloving injury and dislocation of the fingers;

6) That the applicant had to spend three (3) months at Mater Dei Hospital so as to be given the necessary care and in fact, he left hospital on the tenth (10) of August of the year two thousand and twenty (2020). As a result of this accident at his place of work, the applicant is suffering from a permanent disability due to the fact that he permanently lost all fingers on his right hand (copy of the medical report of doctor Mr Francis X. Darmanin is hereby annexed and marked Doc C);

7) That this damage on the applicant occurred due to fault on the part of the defendant company since it did not provide the necessary security measures in terms of law to prevent this accident from taking place;

8) That this industrial accident took place solely due to fault on the part of the defendant. company as a result of carelessness, unskilfulness and lack of observance of the regulations on its part

9) That as a result of the industrial accident, the applicant suffered emergent damages and lucrum cessans consisting of permanent disability on his person, psychological damages and loss of employment;

10) That despite the abovementioned facts, the defendant company not only failed to pay the applicant for the damages and medical expenses incurred by him, but it further stopped paying the applicant the monthly salary due to him as an employee of the defendant company;

11) That moreover, whilst the applicant had no other choice but to make use of his injury leave, which he is not being paid for, he is not able to benefit from the Social Security. benefits, namely the Injury Benefit since the defendant company has not yet registered the applicant as one of its employees with Jobsplus;

12) That the defendant company, despite having been called upon, has failed to come forward for the liquidation of the payment of damages, and the applicant had to proceed with these proceedings.

Therefore the defendant company should state why this Honourable Court should not:

1.Declare and decide that the defendant companies, or which one of them, are solely responsible for the industrial accident suffered by the plaintiff on the eleventh (11) of May of the year two thousand and twenty (2020) while he was working in the factory Schembri & Sons and for all the consequent damages suffered by the applicant, as well as for the salaries and all benefits due to him and this due of unskilfulness, negligence and lack of observance of regulations at the place of work on the part of the defendant companies;

2 Liquidate by appointing the nominated experts, the damages suffered by the plaintiff and which he is still suffering and which he will continue to suffer as a consequence of this industrial accident;

3 Condemn the defendant companies, or which one of them, to pay to the applicant the amount so liquidated:

With costs and interests against the defendant company which is from now being summoned on oath."

Having seen the sworn answer of respondent Companies dated 19th February 2021 by which they pleaded by way of exceptions the following:

"1.That preliminarily the plaintiff must prove that he still has the juridical interest to institute these proceedings against the respondent companies since he has subrogated his rights as arising from this incident to third parties, and namely to the company GasanMamo Insurance Limited and therefore the respondent companies ought to be freed from the effects of this judgment.

2.That without prejudice to the foregoing, and also preliminarily, the company Schembri Infrastructures Limited is not the legitimate party to the suit and ought to be freed from the effects of this judgment.

3.That without prejudice to the foregoing, and on the merits, the first plea in so far as directed against the respondent companies is unfounded in fact and in law and ought to be rejected with costs against the plaintiff since the respondent companies are not responsible for the incident de quo.

4.That without prejudice to the foregoing, the causal link between the incident de quo and the permanent disability suffered by the plaintiff is missing.

5.That the second request of plaintiff ought to be rejected since there are no damages to be liquidated in his favour. In any case, and without prejudice to the foregoing the entity of damages being requested by the plaintiff is being contested and therefore he ought to prove the damages according to law.

6.That the third request of plaintiff ought to also be rejected since the respondent companies should not be ordered to pay any damages to the said plaintiff.

7.That without prejudice to the foregoing, plaintiff's request for the payment of interest ought to be rejected since the damages being claimed by the plaintiff havenot yet been liquidated and therefore interest if due, cannot run before the date of judgment.

8. Saving other pleas permissible at law".

Having seen all the acts and documents of the case.

Having heard all the witnesses produced during the hearing.

Having seen the declaration of the parties during the sitting of the 13th May 2021 by which they agreed that the first preliminary plea of respondent Companies is first to be decided before the merits of the case are considered.

Having seen the respective notes of submissions of the parties to the case.

Having seen that the case was adjourned for today in order for the Court to deliver a partial judgment in the light of the above mentioned preliminary plea.

Points of fact:

The plaintiff was employed with Schembri Infrastructure Limited, one of the respondent Companies, as a helper to skilled labourer. Notwithstanding that the plaintiff has been in the employment of the above mentioned respondent Company from the 9th March 2020, his employment was not registered in terms of the law with the State employment Agency JobsPlus.

On the 11th of May 2020, the plaintiff was involved in an industrial accident whilst working at the factory of the other respondent Company Schembri & Sons Limited. In this accident, the Plaintiff lost all fingers of his right hand. At the moment of the accident, plaintiff was operating a machine that produces concrete slabs. While moving the said machine, his right hand got trapped between it and a shutter.

The plaintiff was immediately taken to Mater Dei Hospital and underwent a 22 hour operation to have his right hand fingers reimplanted. Plaintiff suffered a compression-degloving injuries and dislocation of all right hand fingers. Plaintiff spent three months in hospital and is still suffering from a permanent disability having lost all the fingers of his right hand.

In the meantime, Insurance Company GasanMamo Limited paid all expenses for the long stay of the plaintiff at Mater Dei. GasanMamo Limited has been subrogated in the rights of plaintiff according to law as regards these expenses.

Because of all this, plaintiff is now suing respondent companies for damages according to law.

Points of Law:

As already pointed out, parties have agreed that the Court should first decide the first preliminary plea of respondent Companies. This first plea is as follows:

"The plaintiff must prove that he still has the juridical interest to institute these proceedings against the respondent companies since he has subrogated his rights as arising from this incident to third parties, and namely to the company GasanMamo Insurance Limited and therefore the respondent companies ought to be freed from the effects of this judgment."

The Court has understood the said plea to mean, that since GasanMamo Insurance Limited has paid by subrogation, in connection with plaintiff's care during his time at Mater Dei, there are no further claims to be made against the respondents as regards any such future claims. This means that the said payment has extinguished all obligations that respondent Companies may have had at law towards the plaintiff as regards medical expenses that he may incur

in future and therefore did not have any juridical interest to institute these proceedings.

According to article 1145 of the Civil Code, payment is indeed a mode of extinguishment of an obligation and according to article 1146 *payment means the performance of an obligation, whether the subject-matter of the obligation is to give or to do*. (Vide **Decision of 9th of Ottubru, 2003 tal-Prim Awla, in the names of Mac Limited et -vs- Said International Limited et**).

Considerations:

In the first place, the Court finds the preliminary plea somewhat ambiguous, in that it is not clear as to whether it is being made as regards all the merits of the case or limitedly to the claim of expenses in connection with the medical care and long stay of the Plaintiff at Mater Dei Hospital.

The Court has examined all the documents exhibited. Document BCZ acquires major importance as regards the legal question being examined at this stage (a' fol 95). This document refers to the payment effected by GasanMamo Limited on the 22nd of September 2020. The Court is of the opinion that the following passage sheds valuable light on the matter being considered:

"*I hereby acknowledge that by virtue of such payment you become subrogated to my rights and remedies* in respect of the settlement above mentioned as well as for any future sums which GasanMamo Insurance may incur as a result of the above mentioned incident *of the 11th May 2020 in respect of the subject matter insured….*" (Emphasis of this Court).

This clearly means, that although the Insurance Company is paying in terms of the health policy up to the time of payment, any future care or medication in connection with the industrial incident, matter of this suit, and as long as the policy is still in force, will be paid again by the said insurance company. The policy held by the plaintiff is known as in patient plan. In other words, if the plaintiff is again hospitalized for more than day out of need of administration of medical care in connection with the incident in question, the insurance company will make good for any expenses that may be claimed by the medical institution (vide deposition of Mariella Faniello a' fol 107A) .

This means that the plaintiff cannot make a similar claim against the respondent Companies, otherwise, as respondents rightly submit, he will be claiming again that which has already been paid on his behalf by the Insurance Company. This does not however mean that the said insurance Company cannot recoup monies paid on behalf of plaintiff from the respondent Companies by way of the above mentioned subrogation. But this is a matter that does not concern this Court. The same can be said as regards any future payments that the Insurance may have to pay on behalf of plaintiff regarding expenses connected with the incident in question. This is a matter which have to be resolved in the future between the parties concerned if any such eventualities do arise.

The Court does not find any correct legal reasoning in the first preliminary plea in so far, that respondent Companies are insisting to be nonsuited as a consequence of the payment made by the insurance Company. The

respondents argue that plaintiff had any juridical interest to institute proceedings let alone to pursue these proceedings.

However it is to be noted, that the incident took place at a time when plaintiff was in the employment of one respondent Company and while working on the premises of the other. The duty to take care arose at the moment of the occurrence of the accident was theirs , or of one of them. The policy in question is only a health insurance. The core action of the case is based on the principles of the duty to take care and damages in terms of article 1045 of the Civil Code. If ever, the plaintiff cannot claim any medical bills for the time he spent in Mater Dei, but this has nothing to do with other claims of future losses otherwise *lucrum cessans*. If ever, the payment made by the Insurance Company will reflect on the claim of actual losses, that is to say *damnum emergens* and not necessarily all of it. There could well be more actual losses which may not have been covered by the said insurance policy or of an altogether different nature.

There is no express provision of the law which defines the concept of juridical interest. The concept evolved along the time by the Maltese courts. Reference is made to the **Court Decision tn the names of J. Muscat et vs R. Buttigieg et"** (**A.C. 27 ta' Marzu 1990 – Vol. LXXIV.iii.481**) wherein the following was pronuounced as to the meaning of juridical interest :-

"*L-interess irid ikun a) guridiku, jigifieri d-domanda jrid ikun fiha ipotesi ta' l-ezistenza ta' dritt u l-vjolazzjoni tieghu: b) dirett u personali: fis-sens li huwa dirett meta jezisti fil-kontestazzjoni jew fil-konsegwenzi taghha, personali fis-sens li jirrigwarda l-attur, hlief fl-azzjoni popolari; c) attwali fis-sens li jrid johrog*

minn stat attwali ta' vjolazzjoni ta' dritt, jigifieri l-vjolazzjoni attwali tal-ligi trid tikkonsisti f'kondizzjoni pozittiva jew negattiva kontrarja ghall-godiment ta' dritt legalment appartenenti jew spettanti lid-detentur."

After having examined all the facts of the case, this Court is of the firm conviction, that the plaintiff in the light of said three principles, still enjoys the juridical interest according to law, to pursue the present proceedings and this notwithstanding the above mentioned payment by the insurance Company. In other words, the Court will be rejecting the first preliminary plea of the respondent Companies.

Decide:

Now therefore, in view of the above the Court is deciding the matter under consideration by **rejecting the first preliminary plea** of the respondent Companies and orders the continuance of the case, with costs against the respondent companies.

Imħallef Toni Abela

Deputat Reġistratur