FIT - TRIBUNAL GHAL TALBIET ZGHAR

Gudikatur: Dr. Marouska Debono LL.D; M.A. in Law

Seduta ta' nhar it-Tlieta, 5 ta' Lulju, 2022

Talba Nru: 317/2020MD

Colin Sammut (ID 587577M)

U

Annabelle Sammut (ID 184178M)

Vs

Marsamxetto Steamferry Services Limited (C12803)

It-Tribunal,

Ra l-avviz fl-ismijiet premessi pprezentat fid-9 ta'Dicembru, 2020[1] permezz ta' liema l-atturi talbu li s-socjeta' konvenuta tigi dikjarata responsabbli ghall-incident in kwistjoni li sehh nhar it-12 ta' Settembru, 2020 f'Dock No.1, Bormla u konsegwentement jikkundanna u jordna lis-socjeta' intimata thallas id-danni kkagunati lir-rikorrenti konjugi Sammut fl-ammont ta' elf, tlett mija, sitta u ghoxrin Euro, tnejn u sittin centezmu (€1,326.62) kawza tal-incident in kwistjoni; bl-ispejjez, u l-imghax legali kontra s-socjeta' intimata.

Ra r-risposta tal-konvenuti pprezentati fl-4 ta' Frar, 2021[2] li eccepew s-segwenti:

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[1] *A fol* 1 *et seq* tal-process.
[2] *A fol* 25 *et seq* tal-process.

1. Il-kumpanija esponenti tichad li agixxiet b'xi mod negligenti, traskurat jew b'imperizja da parti taghha jew tramite l-impjegati taghha, jew li hi b'xi mod responsabbli ghall-allegat hsarat li garrbu l-atturi;
2. Minghajr pregudizzju ghas-suespost, kwalunkwe danni li garrbu l-atturi m'huma xejn ghajr rizultat tan-negligenza tal-atturi stess;
3. Minghajr pregudizzju ghas-suespost, il-kumpanija esponenti qieghda tirrespingi l-allegazzjonijiet u l-pretensjonijiet maghmulin mill-atturi bhala nfondati fil-fatt u fid-dritt.

Ghaldaqstant, in vista tas-suespost, it-talbiet tal-atturi ghandhom jigu michuda.

Bl-ispejjez.

Ra l-atti kollha tal-kawza.

Ra l-affidavits pprezentati mill-partijiet.

Ra d-dokumenti li gew esebieti in atti.

Ra x-xhieda prodotta mill-partijiet.

Ra s-sottomissjonijiet li ghamlu l-partijiet.

Ra li l-kawza thalliet ghas-sentenza.

Fatti fil-Qosor

Fit-12 ta' Settembru, 2020, l-attur kien qieghed jaghmel uzu mill-vettura tat-tip Mazda Bongo bin-numru ta' registrazzjoni FCN 496, li hi rregistrata fuq martu, u cioe' l-attrici Annabelle Sammut. Meta wasal Bormla, ipparkja il-vann f'Dock No. 1, fejn ma kien hemm l-ebda tabella jew sinjal li jirregola t-traffiku li jipprojbixxi l-ipparkjar f'din iz-zona jew fl-entratura tal-istess Dock No. 1. Ftit wara li pparkja ircievha telefonata minghand l-attrici fejn informatu li cemplulha l-Pulizija Ezekuttiva mill-ghassa ta' Bormla fejn informawha li kienet saret xi hsara fuq il-vettura. Meta mar lura fejn ipparkja l-vettura, sab lil certu Clint Grech li kien il-persuna responsabbli ghal-lanca li kienet involuta fl-incident. Meta ccekja l-vettura rrizultalu li saret hsara fuq il-hgiega tan-naha tax-xellug tan-naha ta' quddiem tal-vann, liema hsara li sehhet minhabba l-*gangway* tal-lanca baqghet diehla gewwa l-hgiega tal-van u konsegwentement inkissret mal-impatt. Il-hgiega tal-vann tinsab fl-gholi ta' mija, sitta u ghoxrin centimetru u ghalhekk huwa evidenti illi l-*gangway* tal-lanca in kwistjoni kien jinsab f'dan l-isess gholi meta il-lanca kienet ghadha lanqas biss trakkat.

Provi prodotti

Ra l-affidavit ta' **Colin Sammut**[3] li qal li fit-12 ta' Settembru, 2020, kien qiegħed jagħmel uzu mill-vettura tat-tip Mazda Bongo bin-numru ta' registrazzjoni FCN 496, li hi rregistrata fuq martu, u cioe' l-attrici Annabelle Sammut. Meta wasal Bormla, ipparkja il-vann f'Dock No. 1. Spjega li ma kien hemm l-ebda sinjal jew tabella li jirregola t-traffiku li tipprojbixxi l-ipparkjar f'dik iz-zona jew fl-entratura tal-istess Dock No. 1. Ftit wara li pparkja rcievha telefonata minghand l-attrici fejn informatu li kienu cemplulha mill-ghassa ta' Bormla fejn informawha li kienet saret xi hsara fuq il-vettura. Meta mar lura fejn ipparkja l-vettura, sab lil certu Clint Grech li kien il-persuna responsabbli ghal-lanca li kienet involuta fl-incident u li kien kkawza l-hsara fuq il-vettura. Meta ccekja l-vettura rrizultalu li saret hsara fuq il-hgiega tan-naha tax-xellug tan-naha ta' quddiem tal-vann, liema hsara kienet sehhet minhabba li l-gangway tal-lanca baqa' diehel gewwa l-hgiega tal-van u konsegwentement inkissret mal-impatt. Il-hgiega tal-vann tinsab fl-gholi ta' mija, sitta u ghoxrin centimetru u ghalhekk huwa evidenti illi l-*gangway* tal-lanca in kwistjoni kien jinsab f'dan l-isess gholi meta il-lanca kienet ghadha lanqas biss trakkat.

Ra l-affidavit ta' **Annabelle Sammut**[4] fejn qalet li l-vann tat-tip Mazda Bongo bin-numru ta' registrazzjoni FCN 496 huwa rregistrat f'isimha u li l-istess vann fit-12 ta' Settembru, 2020 kien qieghed jigi uzat mill-attur. Hija kienet iriceviet telefonata mill-ghassa ta' Bormla li ghalkemm il-vann kien ipparkjat kien involut f'incident fejn lanca proprjeta' tal-kumpanija Marsamxetto Steamferry Services Limited ikkawzat hsara fuq il-vann f'Dock No.1, Bormla. Hi cemplet lil attur biex tghidlu x'gara u qaltlu biex imur hdejn il-vann. Hija marret l-ghassa tal-Pulizija ta' Bormla fejn giet infurmata li l-hgiega tax-xellug tan-naha ta' quddiem tal-vann sfat imkissra u dan minhabba illi l-lanca tal-kumpanija Marsamxetto Steamferry Limited laqtet l-istess hgiega bit-tarf tal-*gangway*. Dan kollu jidher fir-rapport tal-Pulizija bin-numru 4/G/1872/2020. Minhabba dan l-incident, hija sofriet spejjez fl-ammont kumplessiv ta' elf, tlett mija sitta u ghoxrin Ewro u tnejn u sittin centezimu (€1,326.62) li jikkonsistu fi €310.82 hgiega gdida sabiex tissostitwixxi l-hgiega imkissra, €306.80, spejjez relatati mat-tqeghid tal-imsemmija hgiega, €79 *shipping fees* tal-hgiega peress li kellha tingieb minn barra minn Malta. Peress li ma setatx tuza l-vann minhabba l-hsara estensiva sofferta, kellha tikri vettura u din fl-ispiza ta' €630.

Ra x-xhieda ta' **PS Dionisius Agius**[5] li spjega li l-involviment tieghu kien li hareg ir-rapport bin-numru 4/G/1872/2020 u ghadda kopja lill-attrici tal-istess rapport. Ma kienx huwa l-Pulizija li investiga l-kas.

Ra x-xhieda ta' **Clint Grech**[6] fejn spjega li hu kien impjegat mas-socjeta' konvenuta bhala kaptan f'Settembru tas-sena 2020. Spjega li fit-12 ta' Settembru, 2020 huwa kien diehel fil-*berth* kif jaghmel is-soltu, u x'hin wasal biex jorbtu ra vann ipparkjat mal-moll fejn beda jpaqpaq il-*horn* sabiex xi hadd jigi jnehhih. Minhabba l-*gangway* hu ma setax jidhol ghaliex ma setghux inizzluha minhabba l-vann, u fil-fatt dam jistenna xi hin. Is-sid baqa' ma marx u kien ir-rih. Kien hemm in-nies warajh u l-passiggieri bdew jilmentaw u ghalhekk kellu jimmanuvra, xi haga li jaghmel regolarment. Dak inhar waqt li kien qed jimmanuvra laqat il-hgiega bil-*gangway*. Spjega li l-*gangway* bilfors ikollok tnizzilha biex tnizzel wiehed mill-*crew* halli jkun jista' jorbot. Fil-fatt kienu gja rabtu wahda u x'hin gew biex jorbtu ohra

[3] *A fol* 35 tal-process.
[4] *A fol* 39 tal-process.
[5] *A fol* 45 tal-process.
[6] *A fol* 50 *et seq* tal-process.

minhabba r-rih li kien hemm id-dghajsa bdiet ticcaqlaq u kien b'hekk li laqtu l-hgiega tal-vann bil-*handle* tal-*gangway*. Kif misset il-hgiega, tfarrket. Nizzlu lil passiggieri u mar jaghmel rapport l-Ghassa. Ikkonferma li bhala hsara kienet fil-hgiega.

Ra l-affidavit ta' **Clint Grech**[7] spjega li l-irwol tieghu huwa li jiehu hsieb is-sewqan tal-lanca li topera bejn il-Kottonera u l-Belt Valletta. Spjega li r-ritratti esebieti mill-atturi ma humiex korretti ghaliex ma jurux il-mod ta' kif il-vettura kienet ipparkjata dak in-nhar tal-incident. Kif raw lil vettura pparkjata stennew fil-kanal navigabbli filwaqt li daqqew il-*horn* diversi drabi bil-ghan li sid il-vettura jigi jnehhiha minnufih biex b'hekk ikunu jistghu jidhlu u jkomplu bis-servizz taghhom. Is-servizz taghhom hu marbut ma *roster* strett impost mill-Awtorita' ghat-Trasport f'Malta li la darba jkollhom id-dewmin fi vjagg wiehed kien ser ikollu impatt fuq il-vjaggi kollha li jsegwu. Il-kundizzjonijiet tat-temp dak inhar ma kienx a favur taghhom proprju minhabba li kienet ix-xita u kellhom il-kurrenti kontra taghhom. Zied jispjega li ma kienetx soluzzjoni li jorbtu ma x'imkien iehor, primarjament ghaliex ma kien hemm imkien iktar ma fejn jorbtu u ghaliex il-habel li juzaw sabiex jorbtu quddiem tal-lanca kien qieghed ezatt bejn il-*bollards* fejn proprju kien hemm il-vettura. Spjega li setghu jaraw li n-navigazzjoni ma kienetx ser tkun wahda facli u kien ghalhekk li stennew ghal madwar kwarta. Meta raw li sid il-vettura baqa' ma dehrx, is-sittin passiggiera li kienu abbord bdew jirritaw ruhhom bid-dewmin, kienu qeghdin jostakolaw zewg dghajjes ohra ghaliex ma setghux jghaddu habba fihom u l-iskeda li biha kienu marbutin kienet qed tittardja b'mod konsiderevoli, hadu d-decizjoni li jidhlu bl-aktar mod galbuz possibbli, bil-ghan li ma jsiru ebda hsarat kemm fuq il-vettura kif ukoll fuq id-dghjsa, filwaqt li ma jwegga hadd mill-passiggieri u l-*crew*. Meta tfacca sid il-vettura hu infurmah mill-ewwel fir-rigward tal-incident li kien ghadu kif sehh u minnufih skuza ruhu maghhom talli halla l-vettura tieghu hemm bhal donnu kien jaf li l-vettura ma kienetx ipparkjata f'post tajjeb.

Fil-kontro-ezami[8] qal ghalkemm in-numru ta' registrazzjoni tal-vettura mertu tal-kaawza ma jiftakrux, mhux l-ewwel darba li ra karozzi fl-istess post, izda qatt ma kien hemm okkazzjoni fejn giet ikkawzata hsara. Huma kienu waqfu mix-xoghol peress li kienu qed jistennew li xi hadd icaqlaq il-karozza, u ta cans sabiex imur is-sewwieq tal-vettura. Ra li l-karozza kienet vicin u qghad attent hafna, u beda jahseb li jista jkun li jolqotha jew inkellha ma jghaddiex minhabba kif kienet u fejn kienet tinsab. Ma kienx hemm la *no parking* u lanqas *double yellow line*. Kompla jispjega li ma kienx hemm hafna spazju. Kien hemm diversi *yachts* li riedu jidhlu u kienu ser jikkawzaw periklu ghalihom u ghal haddiehor. Nizel bahri biex jaralu. Kompla jghid li minn x'hin waslu sa x'hin iddeciedew li jiccaqalqu ma nbidel xejn hlief il-pressjoni li kellhom fuqhom minhabba l-ilmenti li kellhom u il-kwistjonijiet ta' sigurta' li semma. Spjega li l-*gangway* bilfors ried inqabbadha ma l-art biex jidhol, u li bejn il-kantuniera u l-karozza kien hemm bejn wiehed u iehor metru.

Ra l-affidavit ta' **Jerone Micallef**[9] fejn spjega li huwa jokkupa l-kariga ta' *Engine Driver* mal-kumpanija intimata u kien ilu jokkupa din il-kariga ghal dawk l-ahhar sitt snin. Spjega li fit-12 ta' Settembru ghal habta ta' 20.10 hrs hekk kif kienu qed joqorbu lura Bormla sabiex jimmaniggjaw l-lanca f'postha mal-moll, Dock No.1, minn fuq il-bahar setghu jaraw vettura pparkjatata ma fejn jorbtu l-lanca taghhom. Mill-ewwel setghu jaraw li din kienet ser tohloq ostakolu kbir ghalihom ghaliex kienet bejn il-*bollards* fejn riedu jorbtu, u ghalhekk mhux talli ma setghux jahdmu bil-flessibilita' li normalment jahdmu biha, izda lanqas kien hemm post ghal-lanca nnifisha biex tokkupa l-post li fl-ahhar mill-ahhar huwa taghha li tokkupa. Kompla

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7 *A fol* 54 *et seq* tal-process.
8 *A fol* 67 *et seq* tal-process, kontro-ezami datat 22 ta' Settembru, 2021.
9 *A fol* 65 tal-process.

jispjega li l-irwol tieghu bhala *Engine Driver* dak inhar kien li jghin fl-irbit tal-lanca u proprju biex jorbot l-lanca bil-hbula, procedura li ilu jaghmilha snin, minghajr problemi. Meta raw il-vettura fin-nofs, raw li ma setghux jidhlu bil-kumdita' li biha jidhlu s-soltu u ghalhekk stennew ghal ftit sakemm setghu isibu soluzzjoni. Il-kaptan semma l-*horn* diversi drabi fejn stennew ghal madwar 15-il minuta bit-tama li sid il-vettura jinduna u jmur iressaqha izda kien kollu ta' xejn ghaliex sid il-vettura baqa ma dehrx. Huwa kien qed jistenna fuq il-pruwa sakemm il-kaptan infurmah li kienu ser jippruvaw jorbtu bilmod ghaliex il-passieggiera kienu bdew jilmentaw habba d-dewmien li kienu qed jesperjenzaw u ghaliex ma kien hemm imkien iktar sa fejn setghet tigi marbuta l-lanca, kif ukoll raw li kienu qed jostakolaw lanec ohra milli jidhlu fil-port.

Spjega li f'dak il-punt bdew il-manuvri biex jirmiggjaw il-lanca, bil-ghan li jnizzlu il-passiggiera li kellhom abbord minghajr iktar dewmien. Huwa hejja ruhu biex imur fuq il-poppa tal-lanca u kif avvicinaw l-moll, qabez minnufih ghal fuq il-moll sabiex jorbot il-hbula mal-*bollards*. Kienu sejrin tajjeb u hadu kull prekawzjoni possibbli sakemm hekk kif kien qed jorbot l-ahhar habel, il-passarella laqtet ftit it-tieqa, liema tieqa tfarrket minnufih. Qal li dak inhar huwa ghamel l-almu tieghu bhal ma jaghmel dejjem f'xoghlu sabiex jahdem b'mod diligenti u sabiex jirmiggjaw il-lanca minghajr ebda accidenti, izda kif spjega dan kien inevitabbli u mhux fil-kontroll taghhom.

Fil-kontro-ezami[10] spjega li hu jiehu hsieb il-magni u l-irmigg tal-vetturi tal-ingenji tal-bahar. Huwa kien fil-pruwa u kien prezenti meta t-traffiku beda jieqaf peress li kien hemm indecizjoni dwar jekk il-lanca kienetx ser tintrabat jew le. Spjega li hija d-decizjoni tal-kaptan jekk isirx l-irmigg jew le. Kompla jghid li f'dan il-kaz, in vista tal-vettura li kienet qed tostakola, id-decizjoni inizjali kienet li ma jorbotx mal-art. Huma kienu qed iwaqqfu lil kulhadd. Stennew l-iktar li setghu biex jorbtu, imbaghad iddeciedew li jorbtu. Il-mizuri li hadu kienu li l-ewwel rabtu c-cima tal-*istarboard* u mbaghad ic-cima tal-*portside*. B'li ghamlu r-rih ma kienx qed jaffetwahom iktar. Huma stabilizzaw is-sitwazzjoni kemm setghu habba r-rih, madanakollu l-vettura xorta laqtuha.

Konsiderazzjonijiet

Din il-kawza si tratta dwar incident li sehh bejn lanca u vettura, fejn l-atturi qed jitolbu lil dan it-Tribunal sabiex jiddikjara illi l-incidicent sehh kawza ta' negligenza min-naha tas-socjeta' intimata u ghalhekk is-socjeta' intimata ghandha twiegeb ghall-hsara skont l-artikolu 1021 tal-Kap 16 tal-Ligijiet ta' Malta li jipprovdi:

> *Iżda, kull wieħed iwieġeb għall-ħsara li tiġri bi ħtija tiegħu.*

Ghalhekk it-Tribunal irid jara min mill-partijiet hu responsabbli ghal-hsara li garrbet l-vettura tal-atturi meta kienet ipparkjata.

Jirrizulta illi s-socjeta' konvenuta topera r-rotta ta' bejn il-Kottonera u l-Belt u li jorbtu f'Dock No.1 gewwa l-Birgu. Jirrizulta wkoll illi l-attur pparkja l-vettura fl-istess Dock u meta l-lanca giet biex torbot wara t-tragitt li ghamlet sabet l-istess vettura pparkjata. Jirrizulta li wara madwar kwarta ta' stennija ghas-sid sabiex inehhi l-vettura, fejn waqt din l-istennija l-lanca

[10] *A fol* 69 *et seq* tal-process; kontro-ezami datat 22 ta' Settembru, 2021.

kienet qed tostakola bcejjec ohra tal-bahar, il-kaptan ma setax jaghmel mod iehor hlief li jipprova jorbot il-lanca sabiex ikunu jistghu jinzlu l-passiggieri. Jirrizulta illi sakemm intrabat l-ewwel habel kollox kien ghaddej sew izda meta gie biex jintrabat it-tieni habel, il-passerella laqtet il-hgiega tal-istess vettura b'konsegwenza li din inkissret, fejn il-kaptan stess mar jaghmel rapport l-ghassa ta' Bormla biex jispjega dak li gara.[11]

Ikkunsidra li ghalkemm l-impjegati tas-socjeta' konvenuta allegaw li dak inhar tal-incident kien hemm ir-rih u li t-temp ma kienx favurihom, ma giet prodotta l-ebda prova ta' dan. Madanakollu ghalkemm min-naha tal-atturi giet sollevata illi dan id-dannu sar bi traskuragni u li ma intuzatx il-prudenza u d-diligenza u hsieb tajjeb tal-familja min-naha tal-impjegati tas-socjeta' konvenuta, it-Tribunal ma jaqbilx ma din it-tezi. Primarjament ghaliex mix-xhieda taz-zewg impjegati jirrizulta ampjament illi huma stennew kemm setghu sabiex forsi sid il-vettura iccaqlaq il-vettura minn fejn kienet ipparkjata, semmghu l-*horn* u kien wara kwarta li ghamlu dan u wara li ghalqu l-passagg ghal dghajjes ohra li bdew il-manuvri sabiex ikunu jistghu jorbtu.

Ikkunsidra li l-atturi qalu li ma kienx hemm sinjali li wiehed ma jistax jipparkja izda huwa ben maghruf li meta wiehed jipparkja f'zona fejn jintrabtu id-dghajjes u sahansitra mal-*bollards* huwa rispaut li dawn il-*bollards* qeghdin hemm sabiex jintrabtu d-dghajjes.

Illi ghalhekk dan it-Tribunal ma jistax jattribwixxi t-tort unikament lis-socjeta' konvenuta ta' l-incident li gie soffert mill-atturi.

Dan it-Tribunal huwa tribunal ta' ekwita, u jaghmel referenza ghall-artikolu 7 (1) tal-Kap 380 tal-Ligijiet ta' Maltali jipprovdi:

> *It-Tribunal ghandu jaqta' kull talba u kontro-talba li jkollu quddiemu principalment skond l-ekwita':*
>
> *Izda, f'kull kaz, kull kwistjoni li jista jkun hemm dwar il-preskrizzjoni ghandha tinqata' skond il-Ligi.*

It-Tribunal jaghmel referenza ghall-appell fl-ismijiet *Marika Caruana vs Direttur Generali tal-Qrati tal-Gustizzja,* deciz fit-23 ta' Jannar, 2004, fejn il-Qorti tal-Appell qalet is-segwenti:[12]

> *Fir-rigward ta' ekwita' fis-sens litterali taghha t- Tribunal kif gja esprima ruhu drabi ohra fir-rigward jinghad li din tfisser:*
>
> *"Fairness, recourse to principles of justice to correct or supplement the Law; system of Law, coexisting with and superseding common Law and statute Law (Oxford Dictionary).*
>
> *Fil-kamp guridiku l-kelma ekwita' ghandha s-sens illi dan hu principju li ghandu jigi applikat mhux biex ifarrak il-Ligi, jew biex jissostitwixxi l-Ligi, izda biex jissupplimentaha fejn il-Ligi hi mankanti:*

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[11] *A fol* 46 *et seq* tal-process; rapport tal-Pulizija Ezekuttiva.
[12] Appell Civili Nru: 643/2001/1; Onor. Imhallef Philip Sciberras.

"Now equity is no part of the law, but a moral virtue, which qualifies, moderates, and reforms the rigour, hardness and edge of the law, and is an universal truth; it does also assist the law where it is defective and weak in the constitution, and defends the law from crafty evasions, delusions, and new subtilties, invented and contrived to evade and delude the common law, whereby such as have undoubted right are made remediless; and this is the office of equity, to support and protect the common law from shifts and crafty contrivances against the justice of the law. Equity therefore does not destroy the law, nor create it, but assist it" (Dudley [Lord] vs Dudley [Lady] [1705]).

Ghandu jinghad ukoll li:

""Equity follows the law" and in cases where the legal analogy clearly applied, the rule of law was adopted, however harsh it might be."

Kif ukoll li:

"Equity is co-relative and co-existensive with law " (Sources of English Legal History 1750 – 1950 – A.H. Manchester. P. 121)

Il-kuncett tal-ekwita' zviluppa matul is-sekli, pero' sa minn zmien Aristotile l-bazi ta' l-ekwita' kienet dik ta' korp ta' regoli li jissupplixxu fejn il-Ligi hija mankanti:

"Aristotle explains how appeals to equity may be best made by an advocate pleading in the courts, and relates it to the "unwritten" law regarded as underlying an supplying the deficiencies of the body of enacted law" (Introduction to Jurisprudence – Lord Lloyd of Hampstead, 4th ed, p.964)

Dak li hu ekwu huwa gust:

"....... While we sometimes praise what is equitable and the equitable man, ... at other times, when we reason it out, it seems strange if the equitable, being something different from the just, is yet praiseworthy; for either the just or the equitable is not good, if they are different; or, if both are good, they are the same." (Introduction to Jurisprudence – Lord Lloyd of Hampstead, 4th ed, p.964)

U jkompli jghid:

"..... for the equitable, though it is better than one kind of justice, yet it is just, and it is not as being a different class of thing that it is better than the just. The same thing, then, is just and equitable, and while both are good the equitable is superior. What creates the problem is that the equitable is just, but not the legally just but a correction of legal justice. The reason is that all law is universal but about some things it is not possible to make a universal statement which shall be correct. In those cases, then, in which it is necessary to speak universally, but not possible to do so correctly, the law takes the usual case, though it is not ignorant of the possibility of error. And it is none the less correct; for the error is not in the law nor in the legislator but in the nature of the thing, since the matter of practical affairs is of this kind from the start. When the law speaks universally, then, and a

case arises on it which is not covered by the universal statement, then it is right, where the legislator fails us and has erred by over-simplicity, to correct the omission - to say what the legislator himself would have said had he been present, and would have put into his law if he had known. Hence the equitable is just, and better than one kind of justice – not better than absolute justice, but better than the error that arises from the absoluteness of the statement. And this is the nature of the equitable, a correction of the law owing to its universality." (Introduction to Jurisprudence – Lord Lloyd of Hampstead, 4th ed, p.964)

Dak li hu ekwu necessarjament huwa gust, u l-ekwita` hi propju intiza sabiex issir gustizzja ma dak li jkun. L-istess awtur ikompli jghid:

"it is plain what the equitable is, and that it is just and is better than one kind of justice. It is also evident from this who the equitable man is; the man who chooses and does such acts, and is no stickler for his rights in a bad sense but tends to take less than his share though he has the law on his side, is equitable, and state of character is equity, which is a sort of justice and not a different state of character."

Sir Henry Maine isemmi tlett strumentalizzazzjonijiet li jservu biex igibu aktar qrib ta' xulxin l-interessi tas- socjeta' kif distinti minn dawk tal-ligi; u cioe' "Legal Fictions, Equity, and Legislation" u jitlaq b'din il-premessa:

"...Law is stable; the societies we are speaking of are progressive. The greater or less happiness of a people depends on the degree of promptitude with which the gulf is narrowed."

Filwaqt li Lord Denning juri l-preokkupazzjoni tieghu fuq dak li qal Maine fuq it-tlett strumentalizzazzjonijiet: "If they are exhausted where is a new means to be found?" u jispicca jghid:

"The law as I see it has two great objects: to preserve order, and to do justice; and the two do not always coincide. Those whose training lies towards order, put certainty before justice; whereas those whose training lies towards the redress of grievances, put justice before certainty. The right solution lies in keeping the proper balance between the two."

Tenut kont ta' dan kollu, it-tifsira li ghandha tinghata lill- kelma "ekwita`", u aktar tenut kont tal-kliem "skond il-Ligi" illi jinsab ghall xi raguni allaccat mal-kelma "ekwita'" fl- Artikolu 7 tal-Kap. 380 tal-Ligijiet ta' Malta, fil-fehma tat-Tribunal ghandu jigi interpretat fis-sens li l-ekwita` ghandha ssegwi l-Ligi, u ghandha ukoll pero` il-funzjoni specjali li din tissuplimentaha fejn din hi nieqsa, billi taghti rimedju fejn hemm ir-raguni, u b'mod li ssir gustizzja ma' dak li jkun.

Ikkunsidra illi l-atturi pprezentaw serje ta' stimi u ircevuti.[13] It-Tribunal ikkunsidra li ghalkemm dawn l-istimi u l-ircevuti ma gewx awtentikati, s-socjeta' intimata ma rrilevatx dan

[13] *A fol* 13 *et seq* tal-process.

u la ma kienx hemm opposizzjoni min naha tas-socjeta' intimata allura t-Tribunal jifhem li hemm qbil li dawn l-ispejjez effettivament saru min-naha tal-atturi.

Ikkunsidra li:

1) L-fattura tal-hgiega li ssotitwixxiet il-hgiega imkissra hija ta' €310.82[14].
2) L-istima datata 1 ta' Ottubru, 2020 tkopri l-ammont kumplessiv ta €306.80, liema ammont ta' €120 minghajr VAT kien sabiex tinbidel il-hgiega, filwaqt li l-ammont ta' €140 minghajr VAT kien rigward *spray* fuq il-bieba ta' quddiem tan-naha tax-xellug.[15]
3) L-ammont ta' €79 jkopri s-*shipping fees*;[16]
4) L-ammont ta' €630 ikopri spejjez relatati ma *car hire*.[17]

Fir-rigward tal-*ispray* imsemmi fl-istima datata l-1 ta' Ottubru, 2020, it-Tribunal ma jistax jifhem kif din is-somma qed tigi addebitata lis-socjeta' konvenuta u dan ghaliex mill-provi prodotti mill-atturi stess, kif ukoll mir-rapport esebiet mill-Pulizija Ezekuttiva imkien ma jirrizulta illi kien hemm hsara fil-bieba izda ssemma biss li kien hemm hsara fil-hgiega. Ghalhekk jirrizulta biss li l-hsara li saret kienet fuq il-hgiega u s-somma ghal tali tiswija kien biss ta' €141.60, VAT inkluz u mhux l-ammont pretiz ta' €306.80.

Fir-rigward tal-ispiza li tirrelata mal-*car hire*, l-attrici fix-xhieda taghha qalet li peress li ma setghatx tuza l-vann minhabba l-hsara estensiva sofferta, hija kellha tikri vettura fl-ispiza ta' €630.[18] Mill-fattura pprezenta skont id-deskrizzjoni jidher li l-vettura giet mikrija mill-14 ta' Ottubru sal-1 ta' Ottubru filwaqt illi d-data tal-fattura taqra 5 ta' Ottubru, 2020. Jirrizulta li l-incident sehh fit-12 ta' Settembru, 2020. Il-fattura fir-rigward tas-*shipping fee* pprezentata kif ukoll l-istima ta' kemm jiswa x-xoghol fuq il-vettura huma datati l-1 ta' Ottubru, 2020. Allura hawnhekk it-Tribunal jistaqsi allura mit-12 ta' Settembru sal-1 ta' Ottubru l-vettura setghet tinstaq minkejja l-hsarat estensivi li l-attrici allegat li kellha l-vettura? Li jirrizulta lit-Tribunal huwa li la mir-rapport tal-Pulizija Ezekuttiva u lanqas mix-xhieda tal-attur ma ssemma li l-vettura soffriet hsara estensiva, izda li l-hsara saret biss fuq il-hgiega tax-xellug tan-naha ta' quddiem. Illi lanqas biss gew prezentati provi x'kienu l-hsarat estensivi u wisq anqas ghaliex il-vettura ma setghatx tinstaq ghal gimghatejn shah. L-atturi lanqas ma pproducew provi minn meta l-vettura ddahhlet ghat-tiswija u lanqas sa kemm damet ghat-tiswija l-vettura.

Konkluzjoni

Ghalhekk it-Tribunal ghar-ragunijiet hawn fuq spjegati, jiddeciedi li r-responsabilita' tal-incident saret a kawza tal-attur u s-socjeta' konvenuta u s-somma li ghandha thallas is-socjeta' konvenuta lill-atturi hija tal-hgiega li giet rimpjazzata fl-ammont ta' €310.82, ir-rimpjazzament ta' tali hgiega fl-ammont ta' €141.60 u s-*shipping fees* sabiex giet importata l-hgiega fl-ammont ta' €79.00.

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[14] *A fol* 14 *et seq* tal-process.
[15] *A fol* 17 tal-process.
[16] *A fol* 18 tal-process.
[17] *A fol* 19 tal-process.
[18] *A fol* 39 tal-process.

Decide

Ghaldaqstant, it-Tribunal qieghed jaqta' u jiddeciedi dan il-kaz billi jichad l-ewwel talba u jilqa' it-tieni talba limititament fis-somma ta' €531.42 filwaqt li jichad l-eccezzjonijiet tas-socjeta' intimata, bl-imghax legali mid-9 ta' Dicembru, 2020 sad-data tal-pagament effettiv.[19]

L-ispejjez tal-kawza jithallsu ½ mill-atturi u ½ mis-socjeta' konvenuta.

Avukat Dr. Marouska Debono LL.D. M.A. in Law

Gudikatur

[19] Mid-data tal-prezentata tal-kawza.