MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

EDWINA GRIMA

Seduta tal-25 ta' Frar, 2015

Appell Civili Numru. 22/2012

GASANMAMO INSURANCE LIMITED (C3143)

kif surrogata fid-drittijiet tal-assikurat taghha Charlene Catania

Vs

SERGIO GOVE

Il-Qorti,

Rat il-lodo arbitrali moghtija mit-Tribunal tal-Arbitragg tal-14 ta’ Mejju 2012 fejn gie deciz:-

“The Arbitrator

1. *Facts of the case*

The case revolves around an incident, which occurred on the 7th November, 2009 at St. Paul's Bay at around 6.02am. this collision occurred between Kia Sportage Registration Number JBE395 owned by Francis Gove` and driven by Sergio Gove` and two parked vehicles Hyundai 120 ~Registration No HBG945 owned by Charlene Catania and Subaru Vivo Registration No. HBD994 owned by Joseph Pullicino.

From the Warden's Report it results that Sergio Gove` skidded and collided into a parked vehicle pushing it on another parked vehicle. The responsibility of the collision was admitted and this arbitration revolves around the quantum of damages.

On the one side, plaintiff company, insurers for Hyundai 120 Registration number HBG945 being the property of Charlene Catania contended as a result of the collision the insured vehicle was beyond economical repair and consequently that are claiming the amount of Euros 10,309.49. in their Notice of #~Arbitration they exhibited a Survey Report to substantiate their claim wherein the surveyor John Callus estimated the damages to amount to Euros 6,876.89 and noted that the year of manufacture of the vehicle was in fact 2009 i.e. the same year in which the collision occurred. Thus the surveyor considered that this brand new car which was in excellent condition should not be repaired.

Furthermore, in his Survey John Callus estimated the pre-accident value of the car at Euros 12,500 and the wreck value of the vehicle at Euros 2330.

The plaintiffs also exhibited a Discharge Note dated 17th November, 2009, wherein Charlene Catania declared to have received the sum of Euros 12,612. They also exhibited a copy of the log book of the vehicle in question.

In their statement of defence, defendants submitted that whilst Sergio Gove` was solely to blame for the accident under investigation, they insisted that only the sum of Euros 5,876.49 was due to plaintiffs.

John Callus in his testimony and in document exhibited stated that he had based his decision to declare the vehicle as beyond economical repair based on the following considerations:-

1. The nature and extent of structural damage
2. Other parts to be discovered upon dismantling
3. Provision for loss of use
4. Depreciation

Moreover, he stated that the repair cost exceeds 60% of its list price. On the basis of this opinion, the plaintiffs effected payment to their insured. Payment was effected also since the car was only weeks old at the time of the collision. The plaintiffs settled also since their insurance policy states:

"New Car Concession

We will replace your car with a new car… If within 12 months purchase new by you:

Any repair, cost or damage coved by the policy exceeds 60% of its list price (including import tax and vat) at the time of purchase".

Plaintiffs furthermore exhibited a copy of the Motor Claims Handling Agreement on Co-operation between Insurers and a number of e-mails sent between insurance companies.

2. On site Enquiry

No on-site enquiry appeared necessary in this case since the liability for the accident has been admitted.

3. Conclusion

From a careful examination of the case under examination, it results as follows:

In the first place, the undersigned arbitrator has noted that the accident in question occurred on the 7th November, 2009 and the discharge note was effected on the 17th not in the opinion of the undersigned come into play, the period allowed to Citadel Insurance for review of the case (under 10 days) cannot be considered as reasonable notice afforded by Gasan Mamo Insurance to Citadel Insurance in order for the latter to indicate whether they disagree with the settlement proposed. Moreover, notice of settlement to Citadel within a reasonable time has not been proven to the satisfaction of the arbitrator.

At this stage, we have to examine whether Gasan Mamo Insurance could settle this matter in any other manner. From the contract of insurance entered into between the insured Charlene Catania and Gasan Mamo Insurance it results that Gasan Mamo Insurance are contractually bound to provide a new vehicle or settle on a basis of a write off in the event that the vehicle is still in its first year of purchase as brand new and furthermore that the damages sustained by the insured vehicle exceed 60% of the value of the vehicle.

It results from documentation exhibited that Car Number HBG945 was first registered on the 22nd September 2009 and it results that the collision in question occurred on the 7th November 2009. Thus the insured vehicle was less than two months old.

Secondly it results from the documents and evidence exhibited that the damages sustained was well as loss of use and certainly depreciation would exceed 60% of the value of the insured's vehicle.

Thus, in the opinion of the undersigned it results that the plaintiffs had no option but to honour their contractual obligations and settled in the manner which they did."

In the light of the foregoing, I am of the considered opinion that the defendants are to pay plaintiffs the sum of Euros 10,309.49 together with legal interests from the 12th February, 2010 together with the costs of this arbitration.

Illi l-appellanti Sergio Gove aggravat b'dan il-lodo arbitrali ressaq dana l-appell imsejjes fuq aggravvji kemm ta' natura procedurali kif ukoll dwar il-mertu meta jilmenta:

1. Illi l-okkju indikat fl-'award' huwa inkomplet u ma jindikax il-vesti li fih qed tidher is-socjeta appellata bhala surrogata fid-drittijiet ta'l-assigurata taghha Charlene Catania. Dan iwassal ghan-nullita ta'l-istess lodo arbitrali billi inbidel l-okkju tal-arbitragg kif inizjalment impostat.
2. Illi ukoll in-nullita' tal-lodo arbitrali billi ma jikkontjenix decizjoni finali fid-*decide* u cioe' kundanna ghal hlas izda opinjoni u rakkomandazzjoni maghmula mill-Arbitru u dana bi ksur ta' dak li jipprovdi l-Att dwar l-Arbitragg.
3. Fil-mertu, l-Arbitru naqas milli jiehu in konsiderazzjoni ix-xhieda ta' Dr. Edmond Zammit Laferla rapprezentant tas-socjeta Citadel Insurance meta dan xehed illi minn stima tal-*ispare parts* tal-vettura rilaxxjata minn ghand l-agent Meridien Enterprises Limited jirrizulta illi l-valur ta'l-ispare parts kien ferm inferjuri minn dak moghtija mis-*surveyor* tas-socjeta appellata u li abbazi ta'l-istess intlaqghet it-talba attrici.

Illi ma hemmx dubbju illi l-ghan wara kull procedura ta’ arbitragg huwa li joffri mezz alternattiv ghar-risoluzzjoni ta’ vertenza minghajr ma l-partijiet jirrikorru lejn il-Qrati. Illi bl-emendi introdotti ghall-Kapitolu 387 tal-Ligijiet ta’ Malta fl-2004, izda gie introdott l-kuncett tal-arbitragg mandatorju u dana ghar-risoluzzjoni ta’ tilwim bhal dak fil-kaz in dizamina u cioe’ il-kollizzjonijiet tat-traffiku. Dan wassal sabiex procedura li kellha l-ghan taghha informalita u ftehim bejn il-partijiet dwar il-metodu ta’ risoluzzjoni ta’ vertenza pendenti bejniethom hadet ix-xejra, bis-sahha ta’ dawn l-emendi, ta’ procedura quddiem korp kwazi gudizzjarju li fit-tmexxija tal-azzjoni intentata tixbah iktar dik ta’ kawza pendenti quddiem qorti milli risoluzzjoni amikevoli ta’ kwistjoni li tinsorgi bejn il-partijiet li ikollhom ftehim bejniethom. Dan wassal sabiex ir-regoli procedurali li jigu segwitu f’ arbitragg mandatorju, jixhdu hafna ir-regoli tal-Kodici ritual u dana bl-introduzzjoni tat-talba, bir-risposta u kontro-talba jekk ikun il-kaz, fis-smigh tax-xhieda u anke fid-decizjoni finali li tittiehed mill-arbitru.

Premess dan ghalhekk il-Qorti sejra tghaddi biex tara jekk l-appellanti ghandux ragun meta jilmenta illi l-lodo arbitrali huwa null fuq zewg binarji, fl-ewwel lok billi l-okkju ma jindikax illi s-socjeta appellata giet surrogata fid-drittijiet ta’l-assigurata taghha sabiex b’hekk twieled il-jedd taghha ghall-azzjoni odjerna, u fit-tieni lok in-nullita tal-lodo billi dan ma fih l-ebda decizjoni finali izda biss rakkomandazzjoni.

Illi l-artikoli 47 u 48 tal-Att 387 jaghtu il-hajja ghal procedura specjali li ghandha tigi sewgita wara li jinghata l-lodo mill-arbitru. Din il-procedura, li ghandha somiljanza mad-disposizzjonijiet ta’l-artikolu 825 tal-Kapitolu 12, hija tali illi tirrendi id-decizjoni wahda finali biss wara li ighaddi t-terminu koncess ta’ hmistax-il jum u l-ebda wiehed mill-partijiet ma jitlob lill-Arbitru

korrezzjoni jew spjegazzjoni ghad-decizjoni moghtija li ikun fiha certu nuqqasijiet. Dawn jaqraw hekk:

"47(1) Fi żmien ħmistax-il jum wara li taslilhom id-deċiżjoni, kull parti, wara li tagħti avviż ta' dan lill-parti l-oħra, tista' titlob lit-tribunal tal-arbitraġġ li jagħti tifsir tad-deċiżjoni.

(2) It-tifsira għandha tingħata bil-miktub fi żmien ħamsa u erbgħin ġurnata wara li tasal it-talba. It-tifsira moghtija għandha tifforma parti mid-deċiżjoni, u d-disposizzjonijiet tal-artikolu 44(2) sa (8) għandhom jgħoddu."

"48(1) Fi żmien ħmistax-il jum minn meta taslilhom id-deċiżjoni, kull parti, wara li tagħti avviż ta' dan lill-parti l-oħra, tista' titlob lit-tribunal tal-arbitraġġ li jsewwi fid-deċiżjoni xi żbalji ta' komputazzjoni, żbalji klerikali jew tipografiċi, jew żbalji oħra ta' dik l-għamla. It-tribunal tal-arbitraġġ jista' fi żmien tletin jum minn meta jgħarraf id-deċiżjoni tiegħu, jagħmel dawk it-tiswijiet minn jeddu.

(2) Dawn it-tiswijiet għandhom isiru bil-miktub, u d-disposizzjonijiet tal-artikolu 44(2) sa (8) għandhom jgħoddu."

Illi l-Qorti ghalhekk tara illi fir-rigward ta'l-ewwel aggravvju sollevat, l-appellanti messu segwa din il-procedura maghmula apposta sabiex jissewwa xi zball jew omissjoni maghmula mill-Arbitru fid-decizjoni tieghu. Gialdarba il-ligi toffri ghodda procedurali siewja sabiex d-decizjoni tigi sanata, ma jistax issa l-appellanti, fi stadju ta' appell jissolleva in-nullita tad-decizjoni u jitlob li l-istess titwarrab meta huwa baqa' ma adoperax l-mezzi li kellu ghad-disposizzjoni tieghu. Fuq kollox huwa minnu illi d-dritt ta' azzjoni f'idejn is-socjeta appellata twieled bis-sahha tas-surroga legali maghmula mill-assikurata a favur taghha, izda madanakollu xorta wahda il-jedd taghha gie stabbilit u iffirmat u mhux ikkontesta mill-appellat. Il-fatt illi fl-okkju tal-lodo ma jissemmiex dan l-fatt ma jirrendix id-decizjoni bhala wahda inezigwibbli ghaliex hija s-socjeta appellata li ghandha id-dritt *de proprio*, u mhux f'veste

rapprezentattiva, li tircievi l-hlas minn ghand l-appellanti in forza ta' tali surroga. Ghal dawn il-motivi ghalhekk il-Qorti ser tichad dan l-aggravvju.

L-istess ma jistax jinghad, madanakollu ghar-rigward tat-tieni aggravvju sollevat billi hawnhekk il-Qorti tara illi l-artikoli tal-ligi surriferiti ma jistghux isibu applikazzjoni. Illi l-artikolu 47 u 48 jitkellmu dwar kjarifika jew zball tipografiku, klerikali u matematiku fid-decizjoni u mhux sitwazzjoni fejn id-decizjoni hija ghal kollox nieqsa. Dan ghaliex l-lanjanza tirreferi ghal nullita tal-lodo minhabba l-assenza tal-parti decizorja. Illi harsa lejn il-konkluzjoni tal-lodo jindika proprju dan meta hemm imnizzel:

"***In the light of the foregoing, I am of the considered opinion that the defendants are to pay plaintiffs the sum of Euros 10,309.49, together with legal interests from the 12th February 2010 with the costs of this arbitration***."

Illi l-Qorti tosserva mal-ewwel illi id-decizjoni ma fihiex kundanna ghal hlas, izda l-Arbitru jikkonkludi illi fil-fehma tieghu l-intimati ghandhom ihallsu lir-rikorrenti is-somma ta' €10,309.49. Ibda biex l-*istatement of claim* imressqa mis-socjeta appellata ghal konsiderazzjoni ta'l-Arbitru kien fiha zewg talbiet, wahda dikjaratorja in konnessjoni mar-responsabbilta ta'l-incident awtomobilistiku mertu tal-kaz, ohra marbuta mal-likwidazzjoni tad-danni konsegwenzjali ghal tali incident u finalment it-talba ghal kundanna ghal hlas ta'l-ammont likwidat. Illi minn qari ta'l-ahhar parti tal-lodo, jidher illi fl-ewwel lok il-parti dikjaratorja in konnessjoni mar-responsabbilta ghall-incident hija nieqsa ghal kollox. X'aktarx dan sehh minhabba illi fil-kors tal-proceduri arbitrali, ir-responsabbilta tas-sinistru stradali giet ammessa mill-intimat. Dan ma jfissirx illi l-Arbitru kellu jhalliha barra mid-decizjoni tieghu. Fit-tieni lok ghalkemm jidher illi l-Arbitru qabel mal-ammont tad-danni reklamati u ghalhekk ghadda ghal likwidazzjoni ta'l-ammont kif mitlub, madanakollu ma

hemm l-ebda deczijoni f'dan ir-rigward, kif lanqas hemm decizjoni dwar il-kundanna ghal hlas ta' dan l-ammont hekk likwidat ghaliex l-Arbitru esprima biss fehma u mhux ghadda ghal gudizzju finali tieghu fuq dina l-vertenza.

Illi l-artikolu 44 tal-Kapitolu 387 jitkellem dwar il-mod kif ghandhom jinghataw id-decizjonijiet mill-Arbitru meta jinghad:

"(1) Sakemm ma jkunx miftiehem xort'oħra bejn il-partijiet, it-tribunal tal-arbitraġġ jista' jagħti iktar minn deċiżjoni waħda fi żminijiet differenti dwar aspetti differenti ta' kwistjonijiet li għandhom jiġu deċiżi. It-tribunal tal-arbitraġġ jista' jagħti deċiżjoni li għandha x'taqsam –
(a) ma' kwistjoni li taffettwa t-talba sħiħa, jew
(b) ma' parti biss mit-talbiet jew il-kontro-talbiet sottomessi lilu għal deċiżjoni, u jista' wkoll jagħti deċiżjonijiet temporanji u, jew interlokutorji.
(2) Id-deċiżjoni għandha tingħata bil-miktub u titqies li qed tingħata fil-lok miftiehem bejn il-partijiet bħala l-lok tal-arbitraġġ, jew, fin-nuqqas ta' ftehim, fil-lok li jiġi stabbilit mit-Tribunal tal-Arbitraġġ.
(3) It-tribunal tal-arbitraġġ għandu jagħti r-raġunijiet li d-deċiżjoni tkun imsejsa fuqhom, kemm-il darba l-partijiet ma jkunux qablu li ma għandha tingħata ebda raġuni:

Is-sub-inciz 7 imbaghad jiddisponi:

"Deċiżjoni tkun finali meta tirriżolvi dwar il-merti kollha jew parti mill-merti ta' kwistjoni, tista' tkun eżegwita minnufih u mhix preparatorja għal stadju ieħor fil-proċedimenti jew inkella għandha l-effett li ġġib il-proċedimenti fi tmiem."

Decizjoni moghtija mit-Tribunal kwindi ghandha l-effett ta' titolu ezekuttiv u tista' tigi ezegwit bil-mezzi procedurali kollha moghtija fil-ligi inkluz ghalhekk jekk ikun necessarju l-hrug tal-Mandati ezekuttiv wara li l-istess jigu ir registrati mac-Centru Malti ta'l-Arbitragg. Fil-fatt is-sub-inciz 9 jghid:

“**Bla ħsara għall-proċedimenti li jistgħu jsiru kontra deċiżjoni skont l-artikolu 69A, deċiżjonijiet finali għandhom ikunu jorbtu lill-partijiet, u l-partijiet għandhom jobdu dawk id-deċiżjonijiet mingħajr dewmien.”**

Illi fid-dawl ta’ dawn id-disposizzjonijiet tal-ligi ma hemmx dubbju illi l-lodo arbitrali huwa difettuz fil-parti decizorja tieghu li fil-verita hija assenti, tali li jirrendi l-istess null u bla effett fil-ligi u per konsegwenza inezigwibbli u dana fin-nuqqas ta’ kundanna cara fil-konfront ta’l-intimat appellanti Sergio Gove’ (li del resto l-Arbitru jindika ukoll fil-konkluzjoni tieghu fil-plural bl-uzu tat-terminu “defendants”). Ghaldaqstant ghal dawn il-motivi dan l-aggravvju imressaq mill-appellanti jsthoqq akkoljiment.

Ghal dawn il-motivi il-Qorti qieghda tilqa’ it-tieni aggravvju sollevat mill-appellanti, kwindi tghaddi sabiex tiddikjara il-lodo arbitrali moghti fl-14 ta’ Mejju 2012 bhala null u bla effett fil-ligi, tirrimanda l-atti quddiem it-Tribunal ta’l-Arbitragg sabiex tinghata sentenza konformi mal-ligi.

Fic-cirkostanzi tal-kaz, l-ispejjez jibqghu bla taxxa bejn il-partijiet.

< Sentenza Finali >

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