MALTA

TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR DR.

KATJA PSAILA SAVONA

Seduta tat-13 ta' Lulju, 2015

Talba Numru. 433/2009

Atlas Insurance pcc Limited f'isimha propju u kif surrogata fid-drittijiet tal-assigurata taghha I.V. Portelli & Sons Limited abbazi tal-polza tal-assigurazzjoni u tal-ligi.

vs

Jet Services Limited u John Abela Limited

It-Tribunal ,

Ra l-avviz tas-Socjeta'` attrici datat 5 ta' Gunju, 2009 fejn ppremettiet:

Peress li s-Socjeta'I.V. Portelli & Sons Limited inkarigat lis-Socjeta'ntimata Jet Services Limited sabiex tigbor u tittrasporta merkanzija konsistenti f'44 *carton* lejn Malta. Ghalkemm fl-1 ta' Lulju, 2008, Jet Services Limited baghtet *notice of arrival* dwar il-merkanzija kollha relattiva, minnhom gew ikkonsenjati biss 31 *carton* lil I.V. Portelli & Sons Limited.

Peress illi sussegwentement irrizulta illi minn naha taghha, Jet Services Limited kienet inkarigat lil John Abela Limited sabiex tezegwixxi l-inkarigu lilha moghti.

Peress illi l-intimati jew min minnhom huma ghalhekk responsabbli ghan-nuqqasijiet relattivi u ghad-danni konsegwenzjali.

Peress illi ai termini tal-polza t'assikurazzjoni relattiva s-Socjeta'rikorrenti hallset lill-assigurata taghha s-somma ta' elf mija u tmintax-il Ewro u sebgha u ghoxrin centezmu (€1,118.27c) u ghalhekk is-Socjeta'rikorrenti hija surrogata fid-drittijiet tal-assigurata taghha u dan oltre l-hlas ta' tlett mitt Ewro (€300) bhala *survey fees.*

Peress illi s-Socjetajiet intimati jew min minnhom huma ghalhekk debituri tas-Socjeta'rikorrenti fis-somma globali ta' elf erba' mija u tmintax-il Ewro u sebgha u ghoxrin centezmu (€1,418.27c), rapprezentanti l-valur tan-nuqqasijiet fil-merkanzija relattiva u l-ispejjez tas-survey relattiv, kollox kif premess.

Bl-imghax legali mid-data tal-hlasijiet relattivi u bl-ispejjez kontra s-Socjeta'jiet intimati jew min minnhom, li minn issa jibqghu ngunti ghas-Subizzjoni taghhom.

Ra r-risposta tas-Socjeta' konvenuta Jet Services Limited fejn eccepixxiet:

Illi preliminarjament jigi dikjarat li l-merkanzija in kwistjoni giet misruqa waqt li kienet ghand terzi, ossia John Abela Limited li kellhom jikkonsenjaw l-merkanzija ndikata mir-rikorrenti noe;

Illi l-merkanzija in kwistjoni giet migbura minn agent tal-kumpanija ntimata li poggew il-merkanzija fid-depozitu (depot) tal-intimati barra minn Malta, u mbaghad il-kumpanija John Abela Limited ittrasportat din il-merkanzija sabiex twassalha gewwa d-depozitu (depot) tal-intimati Malta. Illi matul it-trasport waqt li l-merkanzija in kwistjoni kienet fil-pussess ta' John Abela Limited, din insterqet u ghalhekk il-kumpanija ntimata qatt ma tista tkun responsabbli ghall-hlas lura stante li ma ghandha l-ebda htija fl-inkarigu li kellha twettaq;

Illi minghajr pregudizzju, jigi sottomess li kull xoghol li ghalih tigi nkarigata l-kumpanija Jet Services Limited hija dejjem a bazi tal-kundizzjonijiet CMR u ghaldaqstant ir-responsabilita' hija limitata u ghalhekk l-ammont mitlub huwa eccessiv.

Illi inoltre, *ex delictu*, l-kumpanija eccipjenti mhijiex responsabbli lejn hadd ghad-danni rikjamati (u dan kif sejjer jigi ppruvat fil-mori tal-kawza) stante li l-kumpanija eccipjenti u l-impjegati taghha ma agixxewx colpozament u *multo magis,* lanqas ma jista jinghad li agixxew dolozament, izda skont dak li tirrikjedi l-ligi.

Salv eccezzjonijiet ulterjuri.

Ra r-risposta tas-Socjeta' konvenuta John Abela Limited fejn eccepixxiet:

Illi, in limine litis, it-talba attrici fil-konfront tal-kumpanija konvenuta John Abela Limited, hija preskritta ai termini tal-CMR [Convention on the Contract for the International Carriage of Goods by Road, signed in Geneve on the 19th May, 1956 as amended by the CMR Protocol of Geneva signed on the 5th July, 1978] u/jew ai termini tal-Artikolu 544[e] tal-Kodici Kummercjali [Kap 13 tal-Ligijiet ta' Malta]

Illi preliminarjament u minghajr pregudizzju ghall-eccezzjonijiet hawn taht imsemmija, jigi sottomess li l-kumpanija John Abela Limited qatt ma giet interpellata ghal hlas ta' kwalsiasi danni.

Illi preliminarjament jigi sottomess ukoll li nfatti m'hemm l-ebda relazzjoni guridika bejn l-attur u l-kumpanija John Abela Limited, u ghaldaqstant, fir-rigward ta' John Abela Limited, l-azzjoni kif interposta hija monka, u ghalhekk ghandha tigi liberata mill-osservanza tal-gudizzju.

Illi minghajr pregudizzju, jigi sottomess li kull xoghol li ghalih tigi nkarigata l-kumpanija John Abela Limited, hija dejjem a bazi tal-kundizzjonijiet tas-CMR u ghaldaqstant, [anke f'ezitu sfavorevoli fil-kawza *de quo* ghall-kumpanija konvenuta John Abela Limited] kif sejjer jirrizulta fil-mori tal-kawza, r-responsabilita' hija *semmai* limitata [limitation of liability] u ghalhekk l-ammont mitlub huwa legalment in eccess.

Illi inoltre, *ex delictu,* l-kumpanija eccipjenti mhijiex responsabbli lejn hadd ghad-danni rikjamata [u dan kif sejjer jigi ppruvat fil-mori tal-kawza] stante li l-kumpanija eccipjenti u l-impjegati taghha ma

agixxewx colpozament u *molto magis,* lanqas ma jista' jinghad li agixxew dolozament, izda skont dak li tirrikjedi l-ligi.

Salv eccezzjonijiet ulterjuri.

Sema' x-xhieda u ra l-affidavits kollha;

Ra l-atti kollha tal-kawza;

Ra n-noti ta' sottomissjonjiet tal-partjiet kollha.

Illi fis-seduta tal- 25 ta' Mejju, 2015 il-kawza thalliet ghas-sentenza.

Illi permezz ta' din il-kawza s-Socjeta' attrici qeghda titlob danni subiti mill-assikurat taghha fis-somma t' elf erba' mija u tmintax-il Ewro u sebgha u ghoxrin centezmu (€1,418.27c) rapprezentanti l-valur ta' merkanzija li nsterqet u *survey fees.*

Illi mill-provi jirrizulta fis-succint li s-Socjeta' assikurata kienet inkarigat lis-Socjeta' konvenuta Jet Services Limited (Jet Services) sabiex iggorr merkanzija mill-esteru u twassalha Malta. Illi Jet Services inkarigat lil John Abela Limited ("John Abela") sabiex iggorr *trailer* b'merkanzija ta' diversi klijenti minghand l-agent ta' Jet Services gewwa Milan fl-Italja sa Malta. It-*trailer* shih gie misruq mill-Italja qabel ma wasal Malta.

Xehed **Joseph Mangion** fil-kapacita' tieghu bhala *Marine Cargo Claims Handler* mas-Socjeta' attrici. Huwa ddikjara illi I.V. Portelli & Sons Limited kienu klijenti taghhom u kienu ghamlu *claim* ghaliex kienu rcevew merkanzija nieqsa ghaliex effettivament kienet insterqet fl-Italja. Kienu inkarigaw lill-Gaston De Giovanni ta' AP Services Limited biex jaghmel *survey*.

Huwa kkonferma l-kontenut tar-rapport esebit in atti[1]. Ghalhekk kienu hallsu l-ammont tal-*claim* flimkien mas-*survey fees*. Is-Socjeta' konvenuta Jet Services pero' qatt ma rrispondiet minkejja diversi ittri.[2]

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[1] A fol 31 tal-process

[2] Ara doks JM1 u JM2

Illi xehed **John Portelli** (Direttur tas-Socjeta' I.V. Portelli and Sons Limited). Hu spjega li s-Socjeta' I.V. Portelli & Sons Limited kienu ser jimportaw merkanzija u kienu hadu *insurance* biex jkopru l-vjagg. Ghall din il-konsenja kienu qabdu lill-Jet Services Limited bhala trasportaturi tal-istess merkanzija.[3] Meta rcevew in-*notice of arrival* u marru jigbru l-merkanzija nnutaw illi kien hemm tlettax-il kaxxa nieqsa. Ikkonferma li l-merkanzija li kienet tikkonssisti f' *lawn mowers* u *shredders* li kellhom f'*container* fl-Italja kienet misruqa. Kienu ikkuntatjaw lill Jet services limited li pero' kellhom jigu kostretti jaghmlu *claim* mas-Socjeta' assigurattrici taghhom li hallsithom[4].

Ra l-affidavit ta' **Gaston DeGiovanni** [5] li kkonferma r-rapport li hejja fuq l-inkarigu ta' Atlas Insurance PCC limited. Hu ddikjara illi ma kienx hemm kundizzjonijet formali ta' garr bil-miktub bejn il-partjiet. It-trasportatur kien pogga parti mill-merkanzija fi trailer u parti ohra ta' 13 il-kaxxa fi trailer iehor fuq trailer bin-numru TR 307 bhala *groupage*. Dan kien ghat-tragitt lejn Malta fit-28 ta' Gunju, 2008. Is-serqa sehhet waqt li t-*trailer* kien ipparkeggjat fi 'C.so Europa di Lainate' gewwa Milan l-Italja. It-*trailer* ma kellu ebda apparat kontra serq installat fuqu. (Ara wkoll dok "GD4" rapport tal-Pulizija) Sussegwentement instab it-*trailer* pero' l-merkanzija in kwistjoni kien giet misruqa u ma kienx hemm possibilita` ta' rkupru. Mill-indagini sar jaf illi I.V. Portelli & Sons Limited ("I.V. Portelli") kienet inkarigat lill-Jet Services biex tigbor u ggorr il-merkanzija lejn Malta , Jet Services Limited kienet qabdet lil John Abela Limited sabiex taghmel dan ix-xoghol, I.V. Portelli ma kinitx a konoxxenza ta' dan il-fatt. Skont De Giovanni t-trasportatur ma kienx pruduenti meta opera t-*trailer* ghaliex ma hax mizuri necessarji kontra s-serq. Iddikjara li l-Italja hija maghrufa ghas-serq u li mezzi kontra s-serq huma ghad-dispossizjoni tat-trasportaturi kollha. Fil-fatt lanqas biss ha l-mizuri bazici u necessarji. Iddeskriva t-traportatur bhala *inkoxxenti u traskurat*. Meta tkellem mas-sewwieq, hu ma pprovda l-ebda dettal dwar kif sehhet is-serqa u ghalhekk wisq anqas ma provda raguni kredibbli. S-Sur DeGiovanni fil-fatt fir-rapport tieghu kiteb is-segwenti:-

"*Fil-qasam tat-trasport fuq l-art, huwa maghruf illi fl-Italja jigu rappurtati hafna serqiet tant illi fl-1981, il-Federazzjoni Internazzjonali tat-Trasportaturi fuq it-Triq (FIATA) harget 'guidelines' li ghandhom jigu osservati mit-trasportaturi biex jigu evitati serqiet f'dan il-pajjiz, li jinkludi fost l-ohrajn: (a) anti-theft device must be installed in the vehicle which must be used even during the shortest absence of the driver from his vehicle, (b) to arrange, whenever possible, a convoy of 2 to 3 vehicles or having a driving crew of 2 persons, (c) driver must stop at guarded car parks, even for short breaks, (d) driver should refrain from travelling alone at night, even on motorways, (e) driver must be alert in restaurants, coffee houses etc. Jiena ghalhekk tal-fehma illi f'dan il-kaz, jirrizulta illi t-trasportatur naqas b'mod serjissimu milli josserva d-diligenza w kura mehtiega*".

Olvin Galea (Direttur tas-Socjeta' Jet Services) kkonferma li din is-serqa tikkoncerna serq *ta' trailer* minn gewwa l-Italja. Spjega li huma jaghmlu xoghol *groupage* mill-Italja ghal Malta kull

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[3] Ara doks a fol 15 sa 18 u 20 u 21

[4] Ara fol 12

[5] a fol 29 tal-process

gimgha u dan tramite *s-sub-contractors* taghhom u cioe' s-Socjeta' John Abela Limited. Din is-Socjeta' John Abela Limited kellha tigbor merkanzija minn gewwa d-*depot* tas-Socjeta' konvenuta gewwa Milan bit-*trailer* taghha. F'dan il-kaz din is-Socjeta' hekk ghamlet u waqt li kienet *en route* lura lejn Malta nsteraq it-*trailer*. Skont ir-rapport dan insteraq barra mill-*gate* u cioe' fl-*autostrada.* Ghalhekk is-Socjeta' ghamlet rapport mal-Awtoritajiet Taljani dwar din is-serqa, u kif kienu tenuti jaghmlu skont ic-CMR conditions. Qal ukoll illi John Abela Limited huma inxurjati. Skont hu t-traspostatur ossia d-driver ta' John Abela Limited kellu jkun prezenti ghat-tghabbija. Huwa pero' ma jiffirmax il-manifest, li jiffirma huwa c-CMR document.

Ikkunsidera:

Preskrizzjoni ai termini tal-kodici kummercjali 544(e) li hija perjodu ta' sena mill-gurnata li wasal il-vapur. Hareg mill-provi illi l-vapur wasal Malta fit-28 ta' Gunju, 2008 u l-azzjoni giet prezentata fi 5 ta' Gunju, 2009. Ghalhekk l-eccezzjoni tal- preskrizzjoni qed tigi michuda.

Illi ma jidhirx li hemm kontestazzjoni dwar il-fatt illi s-Socjeta' John Abela Limited kienet giet inkarigata li ggorr il-merkanzija biex twassalha sa Malta. Dawn kienu ddepozitaw il-merkanzija u l-merkanzija nsterqet meta kienet fil-pussess ta' John Abela Limited.

Illi fir-rigward l-eccezzjoni ta' Jet Services illi l-merkanizija kienet f'idejn terzi ossia John Abela Limited. It-Tribunal ma jistax jaqbel mal-pozizzjoni tas-Socjeta' konvenuta u cioe' li ma hiex responsabbli minhabba li din il-merkanzija ma kienetx fil-pussess taghha. Is-Socjeta' I.V. Portelli & Sons Limited kienet inkarigat lilhom, jigifieri lis-Socjeta' Jet Services, biex jiehdu hsieb il-garr mill-Italija ghall-Malta u infatti l-kuntratt ta' garr sar bejn I.V. Portelli & Sons Limited u Jet Services Limited biss u ghalhekk mill-aspett kemm kuntrattwali u kif ukoll guridiku Jet Services Limited hija responsabbli ghall-tali merkanizija mill-mument li hadet il-merkanzija minghand il-fornitur fl-Italija sa Malta. It-Tribunal huwa tal-fehma illi talvolta giet inkarigata b'din ir-responsabilita` ma tistax tghid illi peress illi din il-merkanzija ma kienetx fil-pussess fiziku taghha allura ma hijiex responsabbli.

Fll-kawza **Albert Farruggia v Michael Attard**[6]*.* Il-Qorti t'Appell qalet is-segwenti:

"Hu principju accettat illi persuna ma tistax tahrab il-konsegwenzi ghall-ksur t' obbligazzjoni jew ghal mora billi tallega tort ta' persuna li maghha kellha relazzjoni. Il-kaz fortwit huwa biss difiza

6 Qorti Appell Inferjuri Imhallef Said Pullicino 28, April, 1998. Ara ukoll Falzon v Mifsud (Qorti Appell Inferjuri 26 ta' Frar, 1960)

meta jintervjeni att ta' persuna terza 'ndipendenti mid-debitur u mhux meta bhal f'dan il-kaz meta it-terz gie mqabbad mid-debitur ghall-fini ta' esekuzzjoni ta' debitu minnu assunt."

Illi johrog mill-provi (u ma jidhirx illi huwa kontestat) u mid-dokumenti esebiti li t-trasport in kwistjoni huwa regolat bl-Att tal-Garr Stradali Internazzjonali ta' Mekanizja tal-Kapitolu 486 tal-Ligijiet ta' Malta. ("il-Konvenzjoni")

F'dan ir-rigward it-Tribunal jaghmel referenza wkoll ghall-kawza ***Thomas Smith Insurance Agency Limited v MD Trucking Limited*** fejn il-Qorti kellha tiddeciedi fi kwistjoni simili, fejn is-sewwieq kien gie mqabad mis-Socjeta' konvenuta biex isuq *trailer*. Bhal fil-kaz odjern insterqet il-merkanzija. Il-Qorti citat il-konvenzjoni l-Artikolu 3 tar-regolamenti tas-CMR;

"*For the purposes of this convention the carrier shall be responsible for the acts and omissions of his agents as servants and of any other persons of whose services be made use of for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment, as if such acts and omissions were his own*".

Dan l-artikolu wara kollox, jirrifletti principju kardinali fid-dritt civili ta' l-obbligazzjoni, u cioe', li kontraent ma jistax johrog mir-responsabbilta' ghall-ksur tal-kuntratt billi jallega nuqqas ta' persuna li gie mqabbad minnu fil-kors ta' l-esekuzzjoni tal-kuntratt. A tenur tal-principju enuncjat, is-Socjeta' konvenuta ma tistax tehles mir-responsabbilta' semplicement ghax ma kellhiex x'taqsam mas-serqa u t-telf tal-merkanzija bis-serq, ghax it-trasportatur jista' jinzamm responsabbli ghall-atti u ommissjonijiet ta' dawk il-persuni li jutilizza ghall-iskop tat-trasport.[7]

Illi ghalhekk l-ewwel difiza tal-konvenut Jet Services kien li ma kellha l-ebda htija ma treggix ghaliex huma nkarigaw lil John Abela Limited minghajr l-involviment tal-klijent.

Illi min-naha taghha s-Socjeta` John Abela Limited tghid li ma kellhiex relazzjoni guridika ma Socjeta' I.V. Portelli and Sons Limited ghaliex il-ftehim kien bejn Jet Services u I.V. Portelli u ghalhekk m'hemm l-ebda ness kontrattwali bejn John Abela Limited u I.V. Portelli. Is-Socjeta' John Abela Limited ghamlet referenza ghall-artikolu 1001 tal-Kodici Civili. Irreferiet ukoll ghall-fatt illi t-tragit kien wiehed spezzetat u kkontestat illi kien hemm kuntratt wiehed ta' garr mas-Socjeta' I.V. Portelli & Sons Limited u Jet Services u ghalhekk m'ghandhux applikazzjoni l-artkolu 34 tal-Konvenjoni. It-

[7] Albert Abela vs S Mifsud & Sons Ltd" (P.A. (RCP) 23 t'Ottubru, 2001) u "GasanMamo Insurance Agency Limited nomine vs Sea Malta Company Limited proprio et nomine" (A.I.C. (PS) – 17 ta' Novembru, 2004.

Tribunal ghalhekk ghandu quddiemu sitwazzjoni citata fil-gurisprudenza fejn f'okkazzjonijiet simili il-Qrati sabu illi t-trasportatur (f'dan il-kaz John Abela Limited) kellu jigi liberat mill-osservanza tal-gudizzju ghaliex il-kuntratt ta' garr ma kienx jinvolvi lilhom u l-ispedittur stess ma kienx jaf bihom ghalhekk hija *res inter alios acta*. Illi pero` jidher illi ma kienitx saret referenza ghall-Artikolu 34 tal-Konvenzjoni liema Artikolu jghid :

"Article 34 : If carraige governed by a single contract is performed by successive road carriers each of them shall be responsible for the performance of the whole operation, the second carrier and each succeeding carrier becoming a party to the contract of carriage under the terms of the consignment note by his acceptance of the goods and the consignment note".

Illi mill-provi prodotti hareg car illi l-ftehim ta' garr kien <u>wiehed</u> (anki jekk kien bjen Jet Services Limited u I.V. Portelli & Sons Limited) u almenu *dal punto di vista* ta' I.V.Portelli. Illi l-istess Socjeta' John Abela Limited kienet *ir-road carrier* li hadet hsieb parti minn dan it-tragit u ghalhekk m'ghandix tigi liberata mill-osservanza tal-gudizzju.

Illi ghalhekk it-Tribunal jichad l-eccezzjonijiet preliminari mqanqla mill-konvenuti Jet Services Limited u John Abela Limited b'dan illi ghandhom jirrispondu ghall-dawn it-talbiet.

Mertu tal-kawza – Tort u Limitazzjoni ta' danni.

Ex delictu s-Socjetajiet konvenuti Jet Services Limited u anke John Abela Limited qed jecepixxu wkoll li mhumiex responsabbli ghat-telf tal-merkanzija in kwistjoni in kwantu l-konvenuti u anke l-impjegati taghha ma aggixewx kolpozament u lanqas dolozament.

It-Tribunal jaghmel referenza ghall-Konvenzjoni:-

"Article 17. 1. The carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery".

"Article 17. 2. The carrier shall, however, be relieved of liability if the loss, damage or delay was caused by the <u>wrongful act or neglect</u> [8] of the claimant, by the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier, by inherent vice of

[8] Emfazi mizjuda

the goods or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent".

"Article 18. 1. T*he burden of proving that loss, damage or delay was due to one of the causes specified in article 17, paragraph 2, shall rest upon the carrier".*

It-Tribunal jaghmel referenza ghas-sentenza ta' ***Middle Sea Insurance et vs Express Trailers Ltd***[9] fejn il-Qorti ghamlet referenza ghas-sentenza fl-ismijiet "***Compunet Limited vs B.A.S. Limited*** u ***Charles Borg noe vs Francis Vella et noe et***[10] fejn intqal is-segwenti:

*"F'sitwazzjoni bhal din l-oneru tal-provi jinkombi b'logicita' lit-trasportatur (Art 18 (1)). Fl-ispjega li jaghtu l-awturi **Hill** u **Massent** fil-ktieb taghhom "**CMR: Contracts for the International Carriage of Goods by Road**", Lloyd's of London Press Ltd, 1984, pagna 68, "ic-cirkostanzi", li ghalihom jirreferi l-artikolu citat 17 (2), jkopru zewg sitwazzjonijiet distinti, definiti bhala "force majeure" u "cas fortuit". Dwarhom jinghad dan*:-

"The former indicates something imposed upon the carrier by a third party with either "de facto" or "de jurecoercive power". This would include Act of State, governmental requisition or the effect of strikes or other industrial action. However, it will also cover an accidental occurrence which is foreign to the normal course of events in the environment in which it occurs, an event which is neither within the power of man nor his judgement to forsee or prevent, such as an accident of nature. 'Cas fortuit', on the other hand, is an accidental occurrence due to chance, which is extraneous to the carrier's normal activities, and which it is not possible to forsee or prevent, but which occurs during and in the course of performance of the contract, as for example, a fire in a warehouse".

Il-gurisprudenza taghna turi li qed tapplika nterpretazzjoni rigida tal-klawzola 17.2 tal-awtur ***Malcolm A Clarke*** "***International Carriage of Goods by Road: CMR***", pagna 78. Fejn gie citat ghall-diversi drabi:-

"What the carrier must show is more akin to the plea of impossibility of performance of a contract which involves an event which renders the contract not merely more onerous but completely impossible of performance. Writers on the CMR are agreed that the event must be one which literally 'could not' be avoided by the carrier. It need not however, like the concept of

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[9] Deciza mill-Prim Awla tal-Qorti Civili fit-30 ta' Novembru, 2010.

[10] (P.A. (PS) – 31 ta' Jannar 2003)

force majeur in France, be unforceseeable (sic) although many events will, by the very fact that they are foreseeable, be avoidable by the carrier of whom such a high standard is required". [11]

Illi ma hemmx kontestazzjoni illi l-merkanzija nsterqet meta kienet fil-pussess ta' John Abela Limited specifikament tas-sewwieq Savio Peccanin. Illi hu rilevanti illi fuq ammissjoni tieghu stess hu kien wahdu meta pparkeggja l-vettura f' post li ma kienx maghluq u kien barra miz-zona fejn jipparkjaw normalment. Ghalkemm inghad li kien f' zona industrijali hu pparkjah fit-triq u mhux fil-parkegg. Illi ma ngabet l-ebda evidenza minn John Abela Limited li t-trakk kien munit b'mezzi ghall-protezzjoni kontra s-serq. Illi s-socjeta` John Abela Limited tghid illi hemm regoli ghall-mistrieh u li kien hemm numru ta' trakkijiet ipparkjati hemm. Illi bir-rispett kollu ghalkemm hemm regolamenti ghall-mistrieh hemm ukoll prekawzzjonijiet li ghandek tiehu, infatti gew citati r-regoli gwida maghrufa bhala FIATA (li ghamel referenza ghalihom De Giovanni u li huma kwotati fil-kawza **Middle Sea Insurance plc kif surrogata fid-drittijiet ta' Pharma MT Limited vs Jet services et[12])** Illi fl-istess kawza l-Qorti ddikjarat is-segwenti fir-rigward tar-regoli imsemmija:-

"Illi hija l-fehma ta' din il-Qorti, anke a bazi tal-gurisprudenza citata li dawn il-linji gwida ghandhom jigu addattati b'mod generali f'kull kaz ta' trasport ta' merkanzija fuq l-art. Din il-Qorti tqis dawn il-mizuri bhala necessarji biex trasportatur ikun jista' jipprova jehles mir-responsabilita', tant li ghandhom jitqiesu bhala 'sine qua non' ghal kull vjagg, b'dan li n-nuqqas tat-trasportatur li jadopera xi wahda minn dawk il-mizuri, ghandha twassal ghall-konkluzzjoni li t-trasportatur ikun responsabbli ghal dak li jigri. Dan ifisser li dawn il-linji gwida ghandhom jigu segwiti u adoperati f'kull kaz ta' trasport fuq l-art, u n-nuqqas li jigu adoperati dawk il-mizuri ta' sigurta' jkun necessarjament ifisser li l-att tat-terzi ma jkunx jista' *jitqies bhala wiehed "which literally 'could not' be avoided by the carrier*".

It-Tribunal huwa tal-fehma illi t-trasportatur mill-inqas kellu juza diligenza ta' *bonus paterfamilias* li ma jistax jinghad hawn. Hareg illi l-Italja hija maghrufa ghas-serq u li mizuri kontra is-serq jistghu jittiehdu facilment. Illi infatti is-*surveyor* Gaston DeGiovanni kkonferma dan. Fil-fatt l-istess surveyor qal li s-sewwieq ma kienx biss traskurat imma *inkoxxenti* li huwa pogga il-merkanzija f'sitwazzjoni ta' riskju kbir tant li nsterqet.

Kif indikat mill-istess awtur *Malcolm A. Clarke*[13] :-

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[11] "Farrugia noe vs Gatt nomine" – K - 16 ta' Jannar,

1984) Ara Galdes v Bowman QC 2001, Sullivan vs Grech" P.A. - 2 ta' Frar, 2001;

[12] Qorti tal-Appell Inferjuri- Imhallef Raymond C. Pace 16 t' Ottubru, 2012.

[13]International Carriage of Goods by Road: CMR

"...to be guilty of wilful misconduct the person acting must appreciate that he is acting wrongfully or is wrongfluuly committing to act and yet he persists in so acting or omitting to act regardless of the consequences..or with reckless indifference to what the results may be".

Hemm diversi fatturi li jwassal lit-Tribunal ghall-konkluzjoni li t-traportatur mexxa "*with reckless indifference*": il-post in kwistjoni li huwa maghruf ghas-serq u t-*trailer* ma kienx munit b'ebda apparat kontra s-serq, thalla f'post pubbliku hdejn l-*autostrada* b'access ghall-pubbliku minghajr l-ebda sorvelljanza u li nfatti s-sewwieq innota biss sighat wara u sahansitra l-hallelin kellhom iz-zmien biex jiehdu *trailer* shih mimli merkanzija u jisparixxu. Ghalhekk dan jikkonferma l-opinjoni tas-*surveyor*. Illi ghalhekk kemm John Abela Limited u kif ukoll Jet Services Limited li nkarigata ma jistghux issa jiprrevalu ruhhom mill-eskluzzjoni ta' responsabilita` u/jew limitazzjoni kontemplata fl-artikoli aditi tal-Konvenzjoni.

Decide:

Illi ghalhekk in vista ta' dan kollu t-Tribunal jaqta` u jiddeciedi billi jichad l-eccezzjonijet kollha u jilqa' t-talba attrici fl-ammont ta' elf erbgha' mija u tmintax-il Ewro u sebgha u ghoxrin centezmu (€1,418.27c) kontra z-zewg konvenuti in solidum.

Bl-ispejjes u bl-imghax hekk kif mitlub fl-avviz tat-talba.

< Sentenza Finali >

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