



MALTA

**QORTI CIVILI
PRIM'AWLA**

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Illum it-2 ta' Novembru, 2017.

Rikors Numru 319/2013 SM

**Elmo Insurance Limited
(C-3500)
Kif surrogata fid-drittijiet
tal-assikurat taghha Austin Vella**

vs.

**Saviour Vella
(ID Numru 561092 M)**

Il-Qorti,

- 1.0. Rat ir-rikors gumentat promotur datat l-4 t'April, 2013, li permezz tieghu s-socjeta` rikorrenti debitament surrogata kif fuq indikat sintetikament esponiet is-segwenti, (ara foll 1):
 - 1.1. Illi ghall-habta tal-hdax ta' filghodu, (11.00a.m.) tat-8 ta' Settembru, 2012, l-assikurat tas-socjeta` rikorrenti fuq indikat, waqt li kien qed isuq il-vettura numru TAN-256 proprjeta` tieghu fi Triq id-Difisa Civili, l-Mosta, safat milqut mill-vettura numru KAD-852 misjuga mill-intimat, (ara foll 4);
 - 1.2. Illi konsegwenza tal-incident *de quo* s-socjeta` rikorrenti sofriet danni ammontanti ghal dsatax- il elf u hames mitt euro, (€19,500.00), *stante* li l-vettura numru TAN-256 kienet assikurata maghha b'polza komprensiva;
 - 1.3. Illi *stante* l-istess polza assikurattiva s-socjeta` rikorrenti indennizzat lill-assikurat taghha fis-somma indikata fil-paragrafu precedenti u kienet konsegwentement surrogata fid-drittijiet tal-istess assikurat;
 - 1.4. Illi ghal dan l-incident kien jahti l-intimat, u dan, minhabba imprudenza, imperizja, negligenza u inosservanza tar-regolamenti u bi ksur tal-artikli 1031 u 1032(1) tal-Kap 16 tal-Ligijiet ta' Malta;
 - 1.5. Illi ghalkemm l-intimat, flimkien ma *Fogg Insurance Agencies Limited* bhala agenti tas-socjeta` estera *Argus Insurance Company (Europe) Limited*, kienu interpellati biex jaghmlu tajjeb ghad-danni minnha sofferti, baqghu inadempjenti;
 - 1.6. Illi konsegwentement aderiet din il-qorti biex l-intimat jghid ghaliex din il-qorti m'ghandiex:
 - 1.6.1. Tiddikjara lill-intimat unikament responsabbli ghall-incident *de quo* u ghad-danni kollha sofferti mis-socjeta` rikorrenti;

- 1.6.2. Tillikwida d-danni sofferti mis-socjeta` rikorrenti fl-ammont ta' €19,500.00, okkorrendo bl-opra ta' periti *nominandi*;
 - 1.6.3. Tikkundanna lill-intimat ihallas lis-socjeta` rikorrenti s-somma ta' €19,500.00 hekk likwidata;
 - 1.6.4. Bl-ispejjez kif dedotti fl-istess rikors guramentat promotur kontra l-intimat;
2. Rat id-digriet taghha diversament preseduta datat it-2 ta' Mejju, 2013, li permezz tieghu appuntat l-istess ghas-smigh ghall-udjenza hemm indikata, (ara foll 13);
3. Rat ukoll id-digriet sussegwenti tal-istess qorti kif indikata fil-paragrafu precedenti li wkoll igib l-istess data hemm indikata li permezz tieghu tat id-direzzjonijiet procedurali hemm indikati lill-kontendenti, (ara foll 14);
- 4.0. Rat ir-risposta guramentata datata z-17 ta' Lulju, 2013, li permezz taghha l-intimat sintetikament irrisponda bil-mod segwenti ghat-talbiet lejha inrizzati mis-socjeta` rikorrenti, (ara foll 24):
 - 4.1. Illi t-talbiet tas-socjeta` rikorrenti huma infondati;
 - 4.2. Illi l-intimat mhux responsabbli ghall-incident *de quo*;
 - 4.3. Illi s-socjeta` rikorrenti ghandha ggib l-ahjar prova rigwardanti d-danni minnha allegati;
 - 4.4. Salv risposti ulterjuri;
5. Rat id-digriet tal-istess qorti diversament preseduta datat id-9 ta' Jannar, 2014, li permezz tieghu innominat lill-assistent gudizzjarju hemm indikata, (ara foll 29 u 30);
6. Rat id-digriet taghha kif issa preseduta datat id-29 t'April, 2014, li permezz tieghu awtorizzat lill-istess assistent gudizzjarju biex tirritorna l-inkartament kollu fl-atti tal-procedura odjerna, (ara foll 31);

7. Rat in-nota tas-socjeta` rikorrenti datata t-3 ta' Dicembru 2015, li permezz taghha irriduciet is-somma minnha pretiza ghall-ammont komplessiv ta' tlettax- il elf, hames mija u hamsin euro, (€13,550.00), (ara foll 64);
8. Rat il-verbal tal-abbli rapprezentant legali tal-intimat datat il-5 t'April, 2016, li permezz tieghu iddikjarat li l-kwantum kif ridott *ai termini* indikati fil-paragrafu precedenti ma kienux qed jigu kontestati mill-intimat, u dan, minghajr pregudizzju ghar-responsabbilita` tal-incident *de quo*, (ara foll 69);
9. Rat id-digriet taghha datat iz-17 ta' Novembru, 2016, li permezz tieghu, fuq talba appozita tal-abbli rapprezentanti legali tal-partijiet, awtorizat lill-istess biex jittrattaw il-kaz bil-modalita` u fit-termini hemm indikati, (ara foll 76), u kif sussegwentement estizi *ai termini* tad-digriet taghha datat it-2 ta' Mejju, 2017, (ara foll 81);
10. Rat in-nota ta' sottomissjonijiet tas-socjeta` rikorrenti datata s-16 ta' Mejju, 2017, (ara foll 82), flimkien ma' dik tal-intimat datata s-26 ta' Lulju, 2017, (ara foll 90);
11. Semghet ix-xhieda prodotta;
12. Ezaminat id-dokumenti esebiti flimkien mad-dikjarazzjonijiet guramentati esebiti;

Ikkunsidrat:

- 13.0. Illi l-fatti li taw lok ghall-procedura odjerna jistghu jigu sintetikament elenkati bil-mod segwenti:
 - 13.1. Illi s-socjeta` rikorrenti ppromoviet il-procedura odjerna u titlob li l-intimat jigi dikjarat unikament responsabbli ghall-incident in dizamina li sehh fit-8 ta' Settembru, 2012, (ara foll 4 u 47);
 - 13.2. Illi inizjalment l-istess socjeta` talbet danni ammontanti ghal €19,500.00, (ara foll 1), izda sussegwentement, fil-mori tal-kawza, irriduciet dawn id-danni ghal €13,550.00, (ara foll 64);

- 13.3. Illi daparti tieghu l-intimat jeccepixxi li mhux responsabbli tal-incident *de quo*, (ara foll 24), *stante* li waqt li kien hierieg minn triq laterali tal-MCAST tal-Mosta biex jidhol fi Triq id-Difisa Civili, waqt li kien qed jistenna *scammel* li inzerta fit-triq, fegget il-vettura misjuga mill-assikurat tas-socjeta` rikorrenti u sehh l-incident, (ara foll 12, 72 u 77);

Ikkunsidrat:

- 14.0. Illi mill-iskizz anness mar-rapport tal-pulizija rigwardanti l-incident in dizamina sintetikament jirrizulata s-segwenti, (ara foll 12):
- 14.1. Illi l-punt tal-impatt indikat bil-kliem "*dirt tyre marks*" jirrizulta li hu aktar fuq in-naha tax-xellug tat-triq indikata bhala "*towards Jupiter roundabout*";
- 14.2. Illi l-*iscammel* u l-vettura tal-intimat huma indikati li spiccaw ukoll fuq in-naha tax-xellug tal-istess triq;
- 14.3. Illi l-impatt sehh bejn il-vetturi tal-assikurat tas-socjeta` rikorrenti u l-intimat;
- 15.0. Illi skont id-deposizzjoni tal-ufficjal tal-pulizija li marret fuq il-post tal-incident, investigat l-akkadut, u hejjiet l-iskizz in dizamina, (ara foll 45), jirrizulta sintetikament is-segwenti:
- 15.1. Illi l-vettura KAD-852 misjuga mill-intimat kienet hierga mid-dahla li hemm hdejn l-MCAST;
- 15.2. Illi t-triq minn fejn harget il-vettura misjuqa mill-intimat hi triq sekondarja, (ara wkoll foll 12);
- 15.3. Illi ghalhekk Triq id-Difiza Civili, t-triq fejn sehh l-impatt sinistru in dizamina tikkwalifika bhala t-triq principali, (ara foll 12);

Ikkunsidrat:

- 16.0. Illi skont il-*Highway Code* vigenti jirrizulta s-segwenti:

- 16.1. “91. Unless otherwise indicated, traffic on the major road has right of way on traffic crossing, joining or leaving the major road;
- 16.2. “92. At an intersection or junction of a major road and a minor road, traffic on the latter road should give way to traffic on or coming off the major road”;

Ikkunsidrat:

- 17.0. Illi in vista tal-premess ghandu jkun pacifiku li:
 - 17.1. Triq id-Difiza Civili hi t-triq principali;
 - 17.2. L-access mill-MCAST hi triq sekondarja;
18. Illi konsegwentement, skont il-*Highway Code*, l-assikurat tas-socjeta` rikorrenti, *stante* li kien qed isuq fi Triq id-Difiza Civili kellu d-dritt jippretendi li t-traffiku li jkun hierieg mit-triq sekondarja in kwistjoni kellu jaghtih il-precedenza;

Ikkunsidrat:

19. Illi kif sosstniet il-**Qorti tal-Magistrati (Ghawdex), (Gurisdizzjoni Inferjuri)**, fis-sentenza fl-ismijiet **Alvin Buttigieg vs. Peter Paul Grech**, datata t-3 ta' Novembru, 2006:

Gie ribadit fid-duttrina illi:

“There is a well recognised rule that traffic entering or crossing a main road must give way to traffic proceeding along the main road from either direction... it is important that the rule should be observed and the right which it confers should not be allowed to be whittled away; drivers who have the rule in their favour are entitled that the rule will be observed by others ... **O.C. Mazengard: “Negligence on the Highway”, Butterworths Ed. 1962, p. 326-327 ...**

“When coming from a side road into a main road, the driver or rider on a vehicle should select such a moment as will allow him to enter the main road with safety”, (**Charlesworth: “The Law of Negligence”, 2nd Ed., p. 82**);

20. Illi ghandu jkun ghalhekk pacifiku li bhala *side road user* l-intimat ghandu dritt jaqsam minn triq sekondarja ghal wahda principali biss meta bid-debita prudenza, jkun accerta ruhhu li t-triq li ha jidhol fiha tkun libera ghalih biex jippenetra, minghajr ghalhekk ma jiehu riskji li sewwieq prudenti ma jihux;

Ikkunsidrat:

21. Illi minn analizi tax-xhieda prodotta u tal-iskizz ipprezentat *in atti* jirrizulta li l-intimat ma baqax jistenna bhal ma kellu l-obbligu li jaghmel qabel ma jidhol mit-triq sekondarja li kien fiha ghal got-triq principali fejn seh l-incident in dizamina;
22. Illi ghalhekk, ghandu jkun pacifiku li l-intimat effettwa manuvra imprudenti fir-rigward meta naqas li josserva r-regoli tat-traffiku u jesplora sew l-ambjent stradali cirkostanti qabel ma jittanta jipprocedi ghal got-triq principi *de quo*;
23. Illi *di piu`*, ma jirrizultax li l-assikurat tas-socjeta` rikorrenti li kien qed isuq fit-triq principali ikkontribwixxa b`xi mod ghall-incident in dizamina;
24. Illi ghalkemm jirrizulta li l-istess assikurat tas-socjeta` rikorrenti kien qed jaffettwa manuvra ta` surpass, hu xorta wahda kien fil-karreggjata tieghu tat-triq *de quo*, (ara l-iskizz a foll 12);

Ikkunsidrat:

25. Illi konsegwentement, tenut kont tar-rizultanzi kif fuq esposti, din il-qorti hi sodisfatta li l-incident in dizamina kien effettivament ikkawzat mill-fatt li l-intimat hareg ghal kollox minn triq sekondarja ghal triq principali, u dar ghall-karreggjata li fuqha kien qed isuq l-assikurat tas-socjeta` rikorrenti minghajr

m'utilizza dik il-prudenza necessarja biex jaccerta ruhhu li t-triq principali li kien ha jidhol fiha kienet libera ghalih biex jidhol fiha b'inkolumita` ghalih u ghal haddiehor;

26. Illi in vista tas-suespost ir-risponsabbilita` ghall-incident in dizamina qed tigi attribwita lill-intimat;

Ikkunsidrat:

27. Illi fir-rigward tal-ammont ta' danni mitluba mis-socjeta` rikorrenti ssir referenza ghan-nota tal-istess socjeta` datata t-3 ta' Dicembru, 2015, li permezz taghha rriduciet l-ammont komplessiv minnha pretiz ghal €13,550.00, (ara foll 64);
28. Illi *di piu`*, ssir ukoll referenza ghall-verbal tal-abbli rapprezentanti legali tal-intimat li permezz tieghu l-qorti odjerna giet informata li l-ammont hekk ridott mis-socjeta` rikorrenti ma kienx qed jigi kkontestat, (ara foll 69);
29. Illi in vista tal-premess tiddikjara li l-ammont ta' danni hekk pretizi mis-socjeta` rikorrenti huma debitament ipprovati;

Ikkunsidrat:

- 30.0. Illi in vista tas-suespost din il-qorti hi sodisfatta li s-socjeta` rikorrenti pprovat il-kaz taghha skont il-ligi, u konsegwentement:

DECIDE:

- 30.1. Tiddikjara li l-intimat hu unikament responsabbli ghall-incident meritu ta' din il-procedura u tad-danni kollha subiti mis-socjeta` rikorrenti;
- 30.2. Tillikwida d-danni sofferti mis-socjeta` rikorrenti fl-ammont ta' tlettax- il elf, hames mija u hamsin euro, (€13,550.00);
- 30.3. Tikkundanna lill-intimat ihallas lis-socjeta` rikorrenti l-ammont hekk likwidat;

30.4. Bl-ispejjez kif dedotti fir-rikors guraamentat promotur kontra l-intimat.

Onor. Imhalledf Silvio Meli

Decizjoni Finali