MALTA

TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR DR. PHILIP MANDUCA

Seduta tat-12 ta' Gunju, 2003

Talba Numru. 524/2001/1

John Abela Ltd

Vs

Gollcher Company Limited bhala agenti ta' Grandi Traghetti S.p.a di navigazione u The Cargo Handling Company Limited

It-Tribunal

Ra l-Avviz li fih is-socjeta' attrici talbet il-hlas ta' Lm280.00c (mitejn u tmenin lira Maltin) rappresentanti prezz ta' hsarat fit-trailer li kien taht il-kontroll tas-socjeta' konvenuta.

Ra r-Risposta li fiha s-socjeta' konvenuta The Cargo Handling Company Limited eccepiet li t-talba attrici hija nulla in kwantu hija parzjalment indecifrabbli; li t-talbiet huma nsostenibbli stante li s-socjeta' attrici baqghet inadempjenti a tenur ta' l-artikolu 65 tal-Kap 352 tal-ligijiet

ta’ Malta; li minghajr pregudizzju s-socjeta’ attrici ghandha tipprova li l-allegati danni sehhew waqt li t-trailer kien taht il-kontroll effettiv u supervizjoni assoluta tas-socjeta’ eccipjenti; minghajr pregudizzju li t-talbiet huma ntempestivi u minghajr pregudizzju li l-ammont pretiz huwa eccessiv.

Ra r-Risposta tas-socjeta’ Gollcher Company Limited fejn l-istess socjeta’ sostniet li l-attur iddekada mid-drittijiet tieghu billi ghaddiet aktar minn sena bejn il-konsenja tat-Trailer u l-presentata ta’ dawn il-proceduri; li f’kwalunkwe kaz is-socjeta’ konvenut mhuwiex responsabbli ghad-danni reklamati u f’kwalunkwe kaz, minghajr pregudizzju d-danni ghandhom jigu kwantifikati u limitati a tenur tal-kundizzjonijiet tal-garr kif inkorporti fil-polza ta’ kariku.

Ra d-dokumenti esebiti.

Ra s-seduta datata 10 ta’ April, 2002 li fiha xehed Carmelo Abela ghas-socjeta’ attrici fejn jikkonferma li fis-16 ta’ Gunju 2001, is-socjeta’ attrici ghabbiet fuq il-vapur ‘Lince’, trailer number TR 312. Jghid li l-ghada filghodu ta’ meta dahal l-vapur d-driver cempillu biex jinzel ix-xatt minhabba li t-trailer kellu tyre u rim imkissra. Fil-gate pass out gie mnizzel “of which one of the left tyre and rim were damaged”. Illi s-socjeta’ attrici esebit l-Gate Pass out, kopja ta’ ittra lis-socjeta’ Gollcher Company Limited (b’kopja (cc) lil The Cargo Handling Company Limited) u r-Risposta ta’ Gollcher.

Gie esebit u kkonfermat Tally Sheet minn fejn jirrizulta li s-socjeta’ Gollcher taghat konsenja tat-trailer lil Cargo Handling Company Limited u min iffirma t-tally ma ghamel ebda referenza ghal xi danni fit-trailer.

Ikkunsidra li jirrisulta li s-socjeta’ Gollcher Company Ltd kif imharka mhijiex responsabbli ghaliex ma hemm ebda prova li hi responsabbli ghad-danni. Ma hemm ebda rimarka fuq il-Gate Pass out.

Ikkunsidra li skond is-socjeta’ The Cargo Handling Company Limited t-talba hi nsostenibbli stante li s-socjeta’

attrici baqghet inadempjenti a tenur tal-artikolu 65 tal-Kap 352. Dan l-artikolu jipprovdi:

“Notwithstanding the provisions of any other law, no action shall lie against …a contractor in relation to their responsibilities under this Act, or for any loss or damage caused to any person, vessel, goods, vehicles or other things whatsoever on board a ship unless –

a claim in writing, giving particulars as may be reasonably necessary, is given to the …contractor not later than six months after the date on which the goods are accepted by the contractor

the action is commenced within twelve months from the date aforesaid.

Illi jirrisulta li s-socjeta’ attrici baghtet ittra lil Gollcher Company Limited bid-dettalji tal-claim inkluz kopja tal-Gate Pass Out. Kopja ta’ din l-ittra (skond l-istess ittra) giet mibghuta lil The Cargo Handling Company Limited.

Fl-ahhar tal-ittra in kwistjoni hemm il-kliem: “As the trailer suffered the damages whilst under your custody, we are holding both yourselves responsible for the damages which amounts to Lm280.00c (two hundred and eighty Maltese liri).

Illi ghalhekk jirrisulta li claim saret kontra The Cargo Handling Company Limited. Illi t-Tribunal jissotometti li l-intenzjoni tal-legislatur f’dan l-artikolu kien sabiex il-kuntrattur ikun f’posizzjoni li jezamina l-fatti u jiehu l-passi necessarji. Illi fl-ittra in kwisjtoni hemm bizzejjed dettalji.

Illi l-ittra hija datata 20 ta’ Gunju, 2001. Il-kawza giet ippresentata fit-13 ta’ Lulju, 2001 u ghalhekk fi zmien kif stipulat fl-artikolu in kwistjoni.

Illi hemm tally sheet minghajr kummenti u Gate Pass out bil-kummenti “of which one of the left Tyre and Rim Damaged”. Ghalhekk jirrisulta hija s-socjeta’ The Cargo Handling Company Limited li hija responsabbli ghad-

danni. (Ara Gatt vs. Sciberras 20/4/1995 Appell Sede Kummercjali).

Ghalhekk it-tielet eccezzjoni tas-socjeta' ghandha tigi michuda.

Ir-raba eccezzjoni wkoll ghandu jigi michud ghaliex ma hemm ebda raguni ghaliex it-talba hi nterpestiva.

Illi ghar-rigward il-hames eccezzjoni jirrisulta li jumejn wara li t-trailer gie Malta s-socjeta' attrici kienet dige tippretendi Lm280.00c (mitejn u tmenin lira Maltin) tad-danni. Is-socjeta' attrici qalet li ma ghandiex ircevuti dwar it-tyres u r-rim billi uza stock tieghu. Bhala haddiema ukoll intuzaw il-haddiema ta' l-istess socjeta' attrici.

Illi s-socjeta attrici' kellha tippresenta l-ahjar prova dwar id-danni sofferiti minnha. Illi fid-dawl ta' nuqqas ta' rcevuti dwar id-danni u prova konvincenti dwar l-entita' ta' l-istess danni t-Tribunal arbitrio boni viri qieghed inaqqas l-ammont pretiz ghal ammont ta' Lm150.00c (mija u hamsin lira Maltin).

Ghaldaqstant, jilqa' r-Risposta tas-socjeta' Gollcher Company Limited bl-ispejjez kontra s-socjeta' attrici; jichad l-eccezzjonijiet kollha ta' The Cargo Handling Company Limited hlief ghal hames eccezzjonijiet. Jikkundanna lis-socjeta' The Cargo Handling Company Limited sabiex thallas lis-socjeta' attrici l-ammont ta' Lm150.00c (mija u hamsin lira Maltin). Bl-ispejjez kontra The Cargo Handling Company Limited hlief ghal dawk dige decizi. Bl-imghax mid-data ta' din is-sentenza.

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