

-Carriage of Goods By Sea- Hague Rules-

Hague-Visby Rules-

-Exclusion of Liability- Perils of Sea-

- Act of God - Limitation of Liability-

PRIM' AWLA TAL-QORTI CIVILI

IMHALLEF

ONOR. RAYMOND C. PACE LL.D.

Seduta ta' nhar it-Tlieta 9 ta' Jannar, 2001

Kawza Numru 12

Citazzjoni Numru 1042/96 RCP

Dottor Carmel Chircop LL.D.
bhala mandatarju specjali tas-
socjeta estera Messrs von
Rauchhaupt & Senftleben GmbH
tal-Hamburg, Germanja agenti
tas-socjeta assiguratrici Vereints
Versicherung AG surrogata fid-
drittijiet tal-assigurat Johs.
Rieckermann

vs

Avukat Dr. Kevin F. Dingli
nominat b'digriet tat-13 ta' Mejju,
1996 kuratur deputat mahtur mill-
Qorti biex jirrapresenta lis-socjeta
Salona Maritime Ltd.

II-Qorti,**I. PRELIMINARI**

Rat ic-citazzjoni fejn l-attur nomine ippremetta illi s-socjeta Johs Rieckermann permezz ta' polza ta' karigu mahruqa fl-1 ta' Marzu 1995 sportat mill-Hamburg ghal Laemchabang, Thailand makkinarju "*overspray cooker/cooler with foot bath*" lill-socjeta Siam Food Products Public Company Limited tal-Bangkok, Thailand fuq il-vapur MV Solin, liema vapur huwa proprjeta tas-socjeta Maltija Salona Maritime Ltd.;

Illi meta il-merkanzija waslet Thailand fl-1 ta' April, 1995 is-socjeta importatrici rapportat li l-makkinarju saritlu hsara kbira u ghalhekk sar survey kongunt bejn is-socjetajiet esteri Niko, Nettetal; Germanischer Lloyd u rappresentanti tas-socjetajiet esportatici u importatrici;

Illi din il-hsara lill-merkanzija giet stmata, u l-ispejjes tal-istima u dawk incidentali, kif ukoll tal-hsara tammonta ghal DM 231,196.46;

Illi ghal-hsara kif ukoll ghas-survey is-socjeta attrici halset lill-esportatur is-somma ta' DM 231,196.46 li

minnhom is-somma ta' DM12481 jirraprezentaw hlas ghas-survey;

Illi s-socjeta konvenuta skond l-istess polza ta' karigu hija responsabbli li twassal il-merkanzija fi stat tajjeb f'Thailand, u ghalhekk hija responsabbli ghall-hsarat li gew ikkagunati lil dan il-makinarju matul il-vjagg ta' trasport.

Illi l-istess attur nomine ghar-ragunijiet premessi talab lil din il-Qorti sabiex:

(1) Tiddikjara lill-konvenut responsabbli ghall-hsara li saret lill-imsemmi makkinarju u ghall-spejjez relatati inkluz tas-survey;

(2) Tillikwida dawn id-danni fl-ammont ta' DM231,196.46 (circa Lm57,226.84) jew somma ohra verjuri;

(3) Tikkundanna l-konvenut debitur lejn l-attur noe fis-somma ta' DM 231,196.46 (circa Lm57,226.84) jew somma ohra verjuri;

(4) Tikkundannah jhallas l-ammont hekk dovut.

Bl-ispejjez u bl-interessi kontra l-konvenut li huwa minn issa stess ngunt ghas-subizzjoni.

Rat id-dikjarazzjoni tal-attur, il-lista tax-xhieda u l-elenku tad-Dokumenti a fol 3 u 4 rispettivament tal-process.

Rat ir-rikors tal-attur nomine a fol. 16 tal-process fejn wara li ippremetta illi huwa ippresenta citazzjoni kontra s-socjeta Maltija Salona Maritime Ltd. ta' liema ir-rappresentanti huma barranin u ghalhekk hemm bzonn li jigu nominati kuraturi u ghalhekk talab lil din il-Qorti sabiex prevja l-ispedizzjoni tas-soliti bandi, din l-Onorabli Qorti joghghobha tinnomina kuraturi biex jidhru ghall-imsemmi assenti ghall-finijiet tac-citazzjoni fuq imsemmija u fl-atti kollha konnessi u sussegwenti.

Rat in-nota ta' l-Avukat Dottor Kevin F. Dingli a fol. 24 li permezz taghha accetta li jirrapresenta lis-socjeta Salona Maritime Ltd. fl-atti tac-citazzjoni fl-ismijiet premissi u fl-atti l-ohra kollha relattivi u sussegwenti u dana in segwitu tad-digriet moghti minn dina l-Onorabli Qorti fil-15 ta' April, 1996;

Rat in-nota ta' l-eccezzjonijiet tal-konvenut nomine ippresentata fil-21 ta' Ottubru, 1996 a fol. 30 tal-process fejn ecepixxa illi:-

(1) It-talbiet attrici huma nfondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez stante li l-

eccipjenti nomine mhumiex responsabbli għall-
hsara allegata;

(2) Illi subordinatament u minghajr pregudizzju għas-
suespost, it-talbiet attrici huma nfondati fil-fatt u
fid-dritt u għandhom jigu michuda bl-ispejjez
stante li d-danni allegati kienu konsegwenza ta'
kaz fortuwitu: maltemp riskontrat mill-vapur fil-kors
tal-vjagg tieghu (Dok. S);

(3) Illi subordinatament u minghajr pregudizzju għall-
ewwel zewg eccezzjonijiet, ir-responsabilita ta' l-
eccipjenti nomine hija limitata skond il-polza tal-
kariku.

Salvi eccezzjonijiet ohra.

Rat id-dikjarazzjoni, l-lista tax-xhieda u l-eleku tad-
dokumenti tal-konvenuti a fol. 31 u 32 rispettivament
tal-process;

Rat il-verbali tas-seduti quddiem din il-Qorti
diversament presjeduta tal-20 ta' Jannar 1997, 17 ta'
Marzu 1997, 28 ta' Mejju 1997, 15 ta' Ottubru 1997,
25 ta' Jannar 1998, 6 ta' Marzu 1998, 8 ta' Mejju
1998, 26 ta' Ottubru 1998, 8 ta' Jannar 1999, 19 ta'
Mejju 1999 u 17 ta' Jannar 2000.

Rat il-verbali tas-seduti quddiem din il-Qorti kif attwalment presjeduta tas-17 ta' Meju 2000, u 4 ta' Ottubru 2000, fejn il-kawza thalliet ghas-sentenza ghad-9 ta' Jannar 2001.

Rat il-provi dokumentarji u n-noti ta' sottomissjonijiet tal-partijiet.

Rat il-verbal tal-4 ta' Ottubru, 2000 fejn din il-kawza thalliet ghas-sentenza ghall-lum 9 ta' Jannar 2001.

Rat d-dokumenti kollha ezebiti.

Rat l-atti l-ohra kollha tal-kawza.

II PROVI.

Illi din il-kawza titratta dwar hsara li grat fil-merkanzija konsistenti "*overspray cooker/cooler with foot bath*", li giet trasportata minn Hamburg ghal Laemchabang, Thailand mis-socjeta' Johs Rieckermann ghas-socjeta' Siam Food Products Public Company Limited ta' Bangkok, Thailand fuq il-vapur MV. Solin, proprjeta tas-socjeta' Maltija Salona Maritime Ltd.

Illi jirrizulta bla ebda dubju kwalunkwe li matul l-istess tragitt l-istess merkanzija soffriet hsara konsiderevoli,

kif jirrizulta kemm mis-survey li inzamm fl-1 ta' Mejju 1995 maghmul mis-socjetajiet esteri Niko, Nettetal, Germanischer Lloyd u rappresentanti tas-socjetajiet esportatrici w importatrici skond certifikat datat 18 ta' Lulju 1995 li jinsab esebit bhala "Dok. "B" a fol. 7 tal-process, minn fejn jirrizulta li l-hsara grat peress li waqa' container fuq l-istess *cooling system*, u fil-fatt il-*"cooling system"* kienet *"badly damaged beyond repair"*, skond ukoll kif jirrizulta mid-"Dok. "G" a fol. 13 tal-process.

Illi s-socjeta' konvenuta ma ikkontestatx illi din il-hsara ma saritx, izda ikkontestat li l-hsara sofferta ma kienitx imputtabli lilha stante illi d-danni gew ikkawzati minhabba kaz fortuwitu ta' maltempata li hakmet l-istess vapur kif jirrizulta mis-*sea protest u Log Extract* esebita bhala "Dok. "KD1" a fol. 33 sa fol. 45 tal-process. Illi apparti dan l-istess socjeta' konvenuta qed isostni li responsabilita' taghha hija limitatat.

Illi l-provi f'din il-kawza huma kollha dokumentarji. Din il-Qorti analizzat l-imsemmija dokumenti u ghandha s-segweni xi tghid.

Illi l-polza ta' karigu datata 1 ta' Marzu, 1995 tghid fost l-ohrajn illi l-affarijiet huma *"shipped in apparent good order and condition ..."*. Fuq dan il-punt jidher li hemm qbil assolut.

Illi mis-survey report li hemm esebit a fol. 7 tal-process u li jgib id-data tat-18 ta' Lulju, 1995, jirrizulta illi *"a complete pasteurise-installation was transported from Germany to Thailand. When the equipment arrived Thailand there was ascertained a heavily damage at the cooling system"* u *"The cooling system is seriously damaged. I got the information that a container has dropped on the top of the cooling system"*. Dwar il-fatt jekk tistax titranga jew tissewwa l-hsara lamentata dan is-survey report jghid illi *"... it isn't possible to do a semi-reparation. The cooling tunnel shows a total lost. It isn't possible to dismantle anything and install it in a new cooling tunnel"*.

Illi a fol. 10 tal-process hemm *"letter of subrogation"* fejn hemm miktub illi *"all our rights against third parties arising from this average are subrogated to von Rauchhaupt & Senftleben GmbH"*.

Illi a fol. 33 tal-process hemm *note of protest*. Din tghid illi *"On the 2nd March 1995 ship navigating through North Sea. Blowing WSW wind force 9/9 with heavy swell from same direction. Waves striking ship's bow. Ship pitching and lossing speed, heavy strain and vibrations on all her construction. On 3rd March 1995 ship navigating through English Chanal. Blowing strong WSW wind force 9/8 with heavy swell"*

from same direction. Waves striking ship's bow. Ship pitching and lossing speed, heavy strain and vibrations on all her construction. Bilges and tanks impossible sounding.” Inoltre a fol. 34 tal-process hemm not of protest ohra li tghid illi “*On 4th March 1995 ship navigating through Bay of Biscay in course 210. Wind WNW force 9/8 with heavy swell from same direction. Waves overflowing deck and hatches. Ship pitching and heavy rolling, inclination up to 30 degrees port and starboard and lossing speed. Bilges and tanks impossible sounding and given order to the engine for temporary pumping out. On 5th March 1995 ship navigating through Bay of Biscay and along west coast of Spain. Blowing WNW wind force 8/8 with heavy swell from same direction. Waves overflowing deck and hatches. Ship heavy rolling, inclination up to 27 degrees port and starboard. Bilges and tanks impossible sounding and given order to the engine for temporary pumping out. At 1500hrs. local time wind and sea diminishing reaching force 6/5 and ship proceeded full speed ahead”.*

Illi s-survey report mahrug minn *Bell International Surveyors & Adjusters Ltd.* li jinsab esebit a fol. 73 tal-process jghid illi “*According to information obtained from Insured and Note of Protest issued by the vessel's Master, the aforementioned vessel loaded with 22,499.9 M/T of general cargo sailed from*

Hamburg to its destination Bangkok, Thailand. The vessel enroute encountered heavy boisterous weather causing her to roll and pitch violently. She finally arrived at Port Authority of Thailand, Transit Shed No. 4 on 3rd April 1995 when her cargo were discharged. At time of her hatches were opened, damages on some packages were discovered. Hence, our survey was requested for .” Il-kawza tal-hsarat riskontrati skond din is-socjeta hi li “We are of opinion that the damage to cargo can be attributed to shifting of cargo during the heavy weather encountered by the vessel during its voyage”.

III. KONSIDERAZZJONIJIET LEGALI.

Illi l-konvenut nomine fl-ewwel zewg eccezzjonijiet tieghu jghid illi huwa mhuwiex responsabbli għall-hsara allegata u li d-danni allegati kienu konsegwenza ta' kaz fortuwitu u cioe` l-maltemp riskontrat mill-vapur fil-kors tal-vjagg tieghu.

Illi l-Qorti ta' l-Appell fil-kawza fl-ismijiet “**Carmela armla minn Joseph Sapiano et noe vs Antonia mart Vincenzo Fenech et**” deciza fil-15 ta' Jannar, 1997 sostniet illi:

“Jekk id-depozitarju jinvoka l-kaz fortuwitu bhala l-motiv ta' l-esenzjoni tieghu mill-hsara li ssofri l-haga depozitata, il-prova tal-kaz fortuwitu hija mixhuta fuqu”.

Illi dan ovvjament jimporta illi minn jallega li huwa mhux responsabbli ghad-danni ikkagunati minhabba kaz fortuwitu, allura sta ghalih illi jipprova dan.

Illi inoltre l-istess Onorabbli Qorti tal-Appell fil-kawza fl-ismijiet **“Carmelo Wismayer noe et vs Chevalier Anthony Falzon noe et”** deciza fid-29 ta' April, 1996 qalet illi:

“Il-kuncett tal-kaz fortuwitu jew forza magguri ma jsehhx meta ghall-hsara jkun ikkontribwixxa l-fatt pozittiv jew negattiv tal-bniedem. Skond il-principju tad-dritt, biex ikun hemm il-kaz fortuwitu mhux bizzejjed li jkun avveniment insolitu, sproporzjonat u li jkun prodott mill-forzi tan-natura, imma jehtieg li jkun inevitabbli b'mod li ma jistax jigi evitat bid-diligenza ordinarja tal-`bonus pater familias” (Vol.XXXV, P.II, p.637).

u

“Biex ikun hemm il-kaz fortuwitu jrid ikun hemm event li ma jiddependix mill-fatt tad-debitur, event

imprevedibili u inevitabili. Għall-applikazzjoni tal-prevedibilita jew imprevedibilita ta' l-event għandha tigi applikata t-teorija tad-diligenza tal-“bonus pater familias. Kull kaz għandu jigi ikkunsidrat għalih, għaliex ic-cirkostanzi taz-zmien u ta' natura oħra jistghu jirrendu l-event prevedibili f'kaz, li kien ikun imprevedibili f'kaz iehor”. (Vol. XXXI(B)/I/554).

Illi kif diga inghad, l-provi prodotti huma kollha dokumentarji. Illi din id-difiza ikollha success meta jigi pruvat li l-hsara lit-tagħbija grat minhabba l-azzjoni vjolenti tal-maltemp, basta li din il-hsara ma tkunx l-konsegwenza ta' xi negligenza ta' xi hadd.

Illi huwa car li fl-accertament jekk din id-difiza hiex attendibbli jew le, għandhom importanza kbira il-provi li jitressqu, billi l-kwistjoni finalment tirriduci ruhha f'kwistjoni primarjament ta' fatt.

Illi skond il-polza ta' karigu esebita a fol. 5 u 6 tal-process, jirrizulta illi skond il-klawsola numru tnejn (2) għadhom japplikaw il-Hague Rules (General Paramount Clause).

Illi l-paragrafu numru 2 ta' l-artikolu numru IV tal-Hague Rules jghidu illi:

“Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(c) Perils, dangers and accidents of the sea or other navigable waters;

Illi fil-kawza fl-ismijiet “**Robert von Brockdorff noe et vs Albert Mizzi et noe**” deciza mill-Qorti ta’ l-Appell (Sede Kummercjali) fit-6 ta’ April, 1992 intqal illi:

“Il-frazi ‘perils of the sea’ giet definita f’diversi kawzi li gew quddiem il-Qrati Inglizi (ara Nugent vs Smith, 1 CPD, 19,423; u Thames and Mersey Marine Insurance Company vs Hamilton, Fraser and Co. 12 App. C. 484) bhala li tfisser: All kinds of marine casualties, such as shipwreck, foundering, stranding, etc., and every species of damage to the ship or goods at the sea by the violent and immediate action of the winds or waves, or comprehended in the ordinary wear and tear of the voyage, or directly referable to the acts and negligence of the shipowner or his servants as its proximate cause”.

Illi l-konvenut nomine a fol. 35 et seq. tal-process esebixxa Log Extract. Illi **I-artikolu 190 (6) tal-Kap. 234 (ATT DWAR IL-BASTIMENTI MERKANTILI)** jghid illi:

“(6) Id-dhul kollu li jsir fil-gurnal t’abbord ufficjali hekk kif provdut b’dan l-Att ghandu, sakemm ma jigix

pruvat kuntrarju, ikun prova ta' dak li jinsab fih, kemm il-darba tigi pruvata l-awtenticità tal-gurnal t'abbord".

Illi l-artikolu 629 tal-Kodici ta' Organizzazzjoni u Procedura Civili jghid illi:

"Huwa ammissibbli u jistghu jippruvaw dak li jkun fihom, sakemm ma jigix ippruvat il-kuntrarju, basta li tkun ippruvata l-awtenticità taghhom:

(f) id-dokumenti msemmija fis-subartikolu (3) ta' l-artikolu 134, fis-subartikolu (2) ta' l-artikolu 176 u fis-subartikolu (6) ta' l-artikolu 190 ta' l-Att dwar il-Bastimenti Merkantili kif provdut fl-imsemmija disposizzjonijiet".

Illi jista' jkun ukoll rilevanti **l-artikolu 104 tal-istess Kap. 234** hawn fuq imsemmi li jitratta dwar it-testimonjal partikolarment is-subartikolu (7) dwar il-forza probatorja tal-konvenut tal-istess testimonjal. Dan l-artikolu jghid illi:

"Kull parti interessata tkun tista' tipprova kull fatt kuntrarju ghal dak li jintqal fit-testimonjal; u jekk it-testimonjal ma jsirx fiz-zmien specifikat fis-subartikolu (1) ta' dan l-artikolu, kull parti interessata tista' tipprova kull fatt li seta' jirrizulta mit-testimonjal, jew

xort'ohra li ghandu x'jaqsam ma' l-incident, b'kull mezz iehor".

Illi l-bastiment MV Solin mgħobbi bit-tgħabbija (containers, general cargo u steel products) li kellu fosthom dawk ta' l-attur nomine salpa minn Hamburg lejn Bangkok. Illi fit-2 ta' Marzu, 1995 waqt li l-bastiment kien qiegħed jinnaviga fin-North Sea, kien hemm rih jonfoħ b'forza 9/9 b' "*heavy swell*". Illi dan ir-riħ u maltemp baqa' sal-5 ta' Marzu, 1995. Illi fl-4 ta' Marzu, 1995 waqt li l-bastiment kien qiegħed jinnaviga fil-Bay of Biscay kien hemm rih ta' 9/8 b' "*heavy swell*" u minħabba f'din l-azzjoni tal-mewg il-vapur kien involut f' "*heavy rolling and pitching*". Irrizulta illi parti mit-tagħbija u f'dan il-kaz, dik tal-attur nomine, minħabba dan ic-caqliq grala l-hsara, liema hsara grat minħabba l-fatt li waqa' container fuq l-istess merkanzija proprjeta' tal-assigurat tas-socjeta' attrici.

Illi din il-Qorti jidhrilha li l-konvenut ma hax bizzejjed prekawzjonijiet sabiex ma jsehħx caqliq u hsara fil-merkanzija u partikolarment ma ingabet l-ebda prova mis-socjeta' konvenuta sabiex turi għaliqas li l-istess container li gie spostat anke bil-maltemp li kien hemm kien jinsab marbut jew kellu il-*lashing* necessarju sabiex jigi evitat li jiccaqlaq minn postu. Ma ngiebet l-ebda prova li l-merkanzija kienet marbuta sew, u li c-caqliq u konsegwentement il-hsara saret

esklussivament minhabba il-maltemp illi l-vapur iltaqa' mieghu. Illi l-konvenuti lanqas provdew ebda spjegazzjoni il-ghaliex tali merkanzija mertu tal-kawza odjerna giet impoggija fejn attwalment kienet u soggetta li taqa' merkanzija ohra fuqha, u dan anke konsiderando it-tip ta' merkanizja li kienet qed tingarr.

Illi l-attur nomine fin-nota ta' l-osservazzjonijiet tieghu jghid illi bahar qawwi ma jikkwalifikax bhala *Act of God*. Jghaddi biex jikkwota lill-Scrutton fil-ktieb tieghu Charterparties in sostenn tat-tezi tieghu. Illi fl-opinjoni ta' din il-Qorti il-parti ikkwotata mill-attur nomine ma tghidx ezattament dak li qed jifhem l-attur, anzi tista' tfisser illi l-maltemp u jew bahar qawwi jista' jaqa' taht din id-definizzjoni. Pero` minkejja dan, xorta jibqa' il-fatt illi ma ingabet ebda prova sodisfacenti mill-konvenuti li l-merkanzija kienet giet marbuta sew, u allura naqsu mill-oneru taghhom. Normalment, vapur jiltaqa ma dawn is-sitwazzjonijiet ta' maltemp u bahar qawwi fit-tragitti tieghu u bl-ebda mod, sakemm ma jkunx hemm prova kuntrarja, ma jista' jinghad illi kull maltemp jew bahar qawwi ghandu jiskolpa lill-carrier jew lill-vapur minn kull responsabbilita u htija.

“Hu fatt maghruf li tbassir tat-temp ma huwa qatt esercizzju ta' infallibilita u li fuq il-bahar it-temp jista' kultant jiddeterjora f'daqqa u minghajr preavviz”
(“John Abela noe vs L-Avukat Dottor Philip

Sciberras noe” – Qorti tal-Kummerc (JDC) – 6 ta’ Marzu, 1991).

L-attur nomine jghid illi s-socjeta konvenuta ma tistax tistenna li tibbenefika mill-eccezzjonijiet tal-ligi f’kaz car ta’ negligenza da parte tal-kaptan u l-ekwipagg. Il-konvenut nomine ma jsemmi xejn kif kien it-temp u l-bahar fi granet precedenti ghal meta sehh l-incident *de quo*. Dan fl-opinjoni ta’ din il-Qorti kien necessarju sabiex jigi stabbilit jekk kienx hemm id-diligenza ta’ *bonus paterfamilias* ezercitata mill-kaptan meta huwa kien ser jibda l-vjagg tieghu (“**Blackburn vs Liverpool, Brazil and River Plate Steam Navigation Co.**” (K.B. 290 - 1902 - Casebook on Carriage By Sea - E.R. Hardy Ivamy - Sixth Ed. page 163)

Illi ghalhekk dawn l-ewwel zewg eccezzjonijiet tal-konvenut nomine ma jistghux jintlaqghu.

Illi jifdal it-tielet eccezzjoni tal-konvenut nomine x’tigi kkunsidrata u cioe` jekk ir-responsabbilita tieghu hijiex limitata skond il-polza tal-kariku.

Illi l-attur nomine qed jitlob li jigi risarcit fl-ammont ta’ DM 231,196.46 u cioe` circa Lm57,226.84 mentri l-konvenut nomine qed jecepixxi dak illi hemm fil-klawsola numru tnejn (2) tal-polza ta’ kariku u cioe` li:

“... For the purposes of this sub-clause the limitation of liability under the Hague Rules shall be deemed to be £100 sterling lawful money of the United Kingdom per package or unit”.

Illi pero' qabel xejn ghandu jinghad li din il-polza ta' karigu kienet soggetta ghall hekk imsejha *“Paramount Clause”* tipprovdi skond *Clause 2* tal-istess illi:-

“This Bill of Lading shall have effect subject to any National Law making the International Convention relating to Bills of Lading dated Brussels 25th August 1924 (hereinafter called The Hague Rules) or The Hague Rules, as amended by the protocol signed in Brussels 23rd February 1968 (hereinafter referred to as The Hague-Visby Rules) compulsorily applicable to this Bill of Lading. If any term of this Bill of Lading be repugnant to the said legislation to any extent, such term shall be void to that extent but no further.....”.

Illi fl-opinjoni ta' din il-Qorti dan ifisser li fl-ewwel lok huma il-limitazzjonijiet fil-*The Hague-Visby Rules* li ghandhom japplikaw fil-kaz *de quo*, u **paragrafu 5 (a)** tal-istess jipprovdi illi:-

“Unless the nature and value of such goods have been declared by the shipper before shipment and

inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or two units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher”.

Illi allura se *mai* hija din il-kwalsola li ghandha tapplika, u mhux dik indikata mill-konvenuti fil-polza ta' karigu, u dan kemm minhabba n-natura tal-*Paramount Clause* u kemm minhabba artikolu VI tal-istess Regoli.

Illi pero' fl-opinjoni ta' din il-Qorti tali klawsola ta' limitazzjoni lanqas hija applikabbli ghall-merkanizja in kwistjoni stante li din il-merkanzija hija deskritta fil-polza ta' karigu bhala “*2 Cases - Partshipment of overspray cooker/cooler with foot bath*” as 1 - *Deck Machine*”.

Illi kif inghad fis-sentenza “**Avukat Dottor Robert Staines nomine vs Joseph Apps nomine et**” (A.K. 24 ta' April 1998) tali “*package limitation*” anke skond klawsola 5 tal-Hague Rules tapplika biss ghall-*bulk cargo* u allura lanqas tapplika ghall-karozzi, kif kien il-kaz appena citat, u lanqas ghall kaz odjern li jittratta dwar makkinarju deskritt bhal tali fil-*Bill of Lading*

innifisha bhala “*as 1- Deck Machine*”, u f’din l-interpretazzjoni din il-Qorti issib konfort fil-gurisprudenza tal-Istati Uniti kwotata fil-“**Carriage of Goods By Sea**” ta’ John F. Wilson fejn jinghad li karozzi u makkinarju ma ghandhomx jigu ikkunsidrati bhala “*packages*” *ai termini* ta’ din il-klawsola (Third Edition pagna 196 - “Pannell vs American Flyer” (1958 - AMC 1428 etc). Dan huwa differenti mill-kaz ta’ *pallets* ikkunsidrat fis-sentenza fl-ismijiet “**Dottor Ricardo Farrugia nomine vs Albert Mizzi et nomine**” (K. (G.S.) 18 ta’ April 1977) fejn ovvjament tali limitazzjoni tapplika.

Illi jinghad ukoll li din il-limitazzjoni hija applikabbli biss fl-eventwalita’ illi “*neither the carrier nor the ship shall be entitled to the benefit of the limitation of the liability if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage or recklessly and with the knowledge that damage would probably result*”.

Illi applikat dan ghall-kaz *de quo* fl-opinjoni ta’ din il-Qorti jirrizulta kaz ta’ *recklessness* fil-mod li giet stivata l-istess merkanzija, u fil-mod li container minnhom certament ma kienx marbut sew b’mod li bil-maltemp li l-vapur iltaqa’ mieghu, dan waqa’ ghal fuq il-merkanzija *de quo* u kkaguna hsara fl-istess. Illi fl-opinjoni ta’ din il-Qorti, dan il-maltemp prevedibbli f’dawk l-inhawi f’dak iz-zmien tas-sena, flimkien mal-

fatt li l-merkenzija ma kienitx *secure* irrendew tali hsara prevedibbli, u ghalhekk jeskludu wkoll, anke kieku ghall-grazzja tal-argument applikabbli, dawn ir-regoli ta' limitazzjoni ta' responsabilita'.

Illi ghalhekk fid-dawl tal-premess anke din it-tielet eccezzjoni qed tigi michuda.

Illi dwar id-danni jirrizulta li l-ammont ta' danni li halset is-socjeta' attrici lill-assigurat taghha kien jammonta ghall-DM231.196,46, li minnhom l-ammont ta' DM12481 jirrizulta li huma spejjez ta' survey, u dan kawza tal-hsara sofferta fl-istess merkanzija in ezami, kif jirrizulta min n "Dok. "C" a fol. 10 konsistenti fl-*letter of subrogation* u ghalhekk tillikwida l-istess somma bhala danni, f'ekwivalenti fi flus Maltin skond ir-rata ta' kambju ezistenti fid-data ta' din is-sentenza.

IV. KONKLUZZJONI.

Illi ghalhekk ghal dawn il-motivi, din il-Qorti **taqta' u tioddeciedi**, billi filwaqt li tichad l-eccezzjonijiet tal-konvenut nomine bhala infondati fil-fatt u fid-dritt, **tilqa' t-talbiet attrici** b'dan illi:-

- (1) Tiddikjara lill-konvenut nomine huwa responsabbli ghall-hsara li saret fil-makkinarju abbord l-M.V. Solin, u ghalhekk responsabbli wkoll ghad-danni fl-istess, inkluz spejjez relatati inkluz tas-survey.

- (2) Tillikwida d-danni subiti mill-attur nomine fl-ekwivalenti f'munita Maltija ghall-ammont ta' mitejn u wiehed u tlettin elf, mija u sitta u disghin punt sitta u erbghin DM (DM 231,196.46) skond ir-rata ta' kambju prevalenti fid-data ta' din is-sentenza.
- (3) Tikkundanna l-konvenut nomine bhala debitur lejn l-attur nomine fl-ekwivalenti f'munita Maltija ghall-ammont ta' mitejn u wiehed u tlettin elf, mija u sitta u disghin punt sitta u erbghin DM (DM231,196.46) skond ir-rata ta' kambju prevalenti fid-data ta' din is-sentenza.
- (4) Tikkundanna lill-konvenut nomine jhallas lill-attur nomine fl-ekwivalenti f'munita Maltija ghall-ammont ta' mitejn u wiehed u tlettin elf, mija u sitta u disghin punt sitta u erbghin DM (DM 231,196.46) skond ir-rata ta' kambju prevalenti fid-data ta' din is-sentenza.

Bl-ispejjez u bl-imghax legali mid-data tas-sentenza sal-effettiv pagament kontra l-konvenut nomine.

Moqrija.

**Onor. Imhalef Raymond C. Pace LL.D.
9 ta' Jannar, 2001**

Josette Demicoli
Deputat Registratur
9 ta' Jannar, 2001