

Kopja Informali ta' Sentenza



MALTA

**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
TONIO MALLIA**

Seduta tad-9 ta' Ottubru, 2003

Citazzjoni Numru. 1821/2001/1

Charles Farrugia

vs

Malta Investment Management Company Limited

Il-Qorti;

Rat ic-citazzjoni ppresentata mill-attur fis-26 ta' Novembru 2001, li in forza taghha, wara li ppremetta:

1. Illi fil-5 ta' Novembru 1999 waqt li l-attur kien fl-impjieg tas-socjeta konvenuta huwa wegga' fuq il-post tax-xoghol;

Pagna 1 minn 12

Qrati tal-Gustizzja

2. Illi bhala konsegwenza ta' dana l-incident l-attur inkorra dizabilita' ta' natura permanenti;

3. Illi l-incident li wassal ghal dina d-dizabilita' sehh unikament minhabba htijiet imputabbli lis-socjeta' konvenuta;

4. Illi minkejja li s-socjeta' konvenuta giet interpellata diversi drabi sabiex tersaq ghall-likwidazzjoni u ghall-hlas tad-danni nkorsi mill-attur bhala konsegwenza tal-incident suriferit, hija baqghet inadempjenti;

Ghalhekk l-attur talab lil din l-Onorabbli Qorti sabiex:

1. Tiddeciedi u tiddikjara illi s-socjeta' konvenuta hija unikament responsabbli ghall-incident li sehh fil-5 ta' Novembru 1999 fuq il-post tax-xoghol tal-attur u li bhala konsegwenza tieghu l-attur sofra dizabilita' ta' natura permanenti;

2. Tikkundanna lis-socjeta' konvenuta thallas lill-attur id-danni li nkorra l-attur bhala konsegwenza tal-istess incident, u dana f'ammont li ghandu jigi likwidat minn dina l-Onorabbli Qorti, *occorrendo* bl-ghajjnuna ta' periti nominandi;

Bl-ispejjes, inkluzi dawk tal-ittri bonarji datati 5 ta' Marzu 2001, 8 ta' Marzu 2001, 18 ta' Mejju 2001, 16 ta' Settembru 2001, 12 ta' Settembru 2001 u 5 ta' Ottubru 2001, u tal-ittri ufficjali datati 10 ta' Ottubru 2001 dik li ggib id-data ta' illum indirizzata lis-socjeta' assikuratrici GasanMamo Insurance Agency Limited bhala agenti tas-socjeta' assikuratrici estera CGU Insurance plc, kontra s-socjeta' konvenuta li d-diretturi taghha huma minn issa ngunti ghas-subizzjoni.

Rat in-Nota ta' l-Eccezzjonijet tas-socjeta' konvenuta li in forza taghha eccepjet:

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1. Illi l-konvenut bl-ebda mod ma jahti għall-incident in kwistjoni. L-incident ma sehhx minhabba xi tort imputabbli għall-eccipjenti;

2. Ix-xogħol mogħti lill-attur kien normali għax-xogħol tiegħu li ma kien jirrikjeta l-ebda xxjenza jew għodda partikolari. L-incident probabbilment gara minhabba ragunijiet accidentalali li ma jirrispondix għalihom l-eccipjent;

3. Salvi eccezzjonijiet ulterjuri.

Rat id-dikjarazzjonijiet guramentati tal-partijiet;

Rat il-verbal tal-udjenza tat-8 ta' Marzu, 2002, fejn gie registrat li l-partijiet qablu li, f'dan l-istadju, l-provi jigu limitati għall-kwistjoni ta' responsabilita' għall-incident;

Semgħet il-provi li resqu l-partijiet;

Rat l-atti kollha tal-kawza u d-dokumenti esebiti;

Rat il-verbal tal-access mizmum minn din il-Qorti;

Rat in-Nota tal-Osservazzjonijiet tal-partijiet;

Rat li l-kawza thalliet għal-lum għas-sentenza;

Ikkunsidrat;

Illi f'din il-kawza, l-attur kien impjegat bhala *handyman* mas-socjeta' konvenuta, l-MIMCOL; hu kien ilu impjegat magħha għal madwar tlettax-il sena qabel ma sehh l-incident. Il-kumpanija kelha zewg handymen impjegati magħha, li kienu l-attur u s-Sur Frank Borg. L-attur, propreament, dahal impjegat mas-socjeta' konvenuta bhala driver, izda wara sar qbil li hu u siehbu jibdeu jagħmlu ukoll xogħol ta' *handyman* u bdew jithallsu *allowance* zejda. Dan ix-xogħol ta' *handyman* kien jinkludi xogħol zghir bhala tibdil ta' bozoz u tubi, garr ta' computers għat-tiswija, u xogħol hafif simili.

F'okkazzjoni minnhom, il-Manager talabhom igorru xi ghamara minn post ghall-iehor, u ghalkemm kienu jipprotestaw li mhux xogholhom li jgorru l-ghamara, l-*management* kien jinsisti maghhom biex dan ix-xoghol jaghmluh, u fil-fatt ghamluh. Gara, li fil-5 ta' Novembru, 1999, l-attur u siehbu gew mqabbdha ghal darba ohra jgorru skrivaniji kbar ghal barra mill-kamra u, din id-darba, hekk kif l-attur beda jerfa' l-iskrivanija, ha skoss f'dahru, u qed jallega li baqa' mugugh u jsofri dizabilita' permanenti. Is-socjeta' konvenuta qed issostni li l-incident ma kienx tort taghha, imma tort ta' l-istess attur. Hi tghid li l-garr ta' l-ghamara tidhol fil-*job description* ta' *handyman* u ghalhekk kienet intitolata tqabbdha jaghmel dak ix-xoghol.

Ta' min jigi osservat li, wara dan l-incident, saru mill-attur u siehbu, insistenzi mal-Union taghhom biex din tiddefinixxi b'mod car x'jinvolvi x-xoghol ta' *handyman*. Fil-fatt, wara diversi diskussjonijiet, is-Segretarju tat-Taqsima Parastatali tal-Union Haddiema Maghqudin, is-Sur Joseph Grillo, kien, fil-21 ta' Novembru, 2000, baghat ittra lic-Chairman tal-MIMCOL fejn spjega li:

“ix-xoghol ta' handyman jinkludi xoghol zghir illi huwa inferjuri ghal dak ta' tradesman, jigifieri xoghol ta' zebgha, tikhil zghir, bdil ta' flushings u/jew xoghol zghir iehor ta' plumbing illi ma jfissirx tqeghid ta' pajpijiet, tibdil ta' bozoz, tubi jew plakek, kif ukoll xoghol iehor ta' manutenzjoni hafif. Dan ifisser illi xoghol ta' garr ta' ghamara jew oggetti tqal ohra ma jaqax taht il-job description ta' handyman.”

It-termini ta' din l-ittra jidher li giet accettata mill-Management tas-socjeta' konvenuta, pero' qed tinsisti li dan il-qbil sar wara l-incident, fil-waqt li, meta sehha l-incident il-kelma *handyman* ma kienetx definita u wiehed, allura, irid joqghod fuq l-interpretazzjoni generali u skond l-uzu ta' dik il-frasi.

L-attur, kif inghad qed jilmenta li l-incident ma kienx tort tieghu, u la darba wegga waqt li kien fuq xoghol, l-employer ghandu jinzamm responsabbli; hu allega ukoll li

sofra u ghadu jsofri minn dizabilita' permanenti u qed jitlob kumpens.

Il-principji li jirregolaw ir-responsabilita' ta' sid ta' intrapriza biex ihares is-sahha tal-impjegati tieghu huma ben stabbiliti fil-gurisprudenza. Fil-kawza Ingliza "Wilson and Clyde Coql Co. vs English" deciza mill-House of Lords fil-1937, Lord Maugham osserva:

"In the case of employments involving riskit was held that there was a duty on the employer to take reasonable care, and to use reasonable skill, first, to provide and maintain proper machinery, plant, appliances, and works; secondly to select proper skilled persons to manage and superintend the business and thirdly to provide a proper system of working."

Fil-kawza "Calleja vs Fino" deciza minn din il-Qorti fl-10 ta' Otubru, 1980, gie kwotat b'approvazzjoni li:

"It is the employer's duty to provide a safe system of work. Any injury to which the employee has not contributed would be the sole responsibility of the employer. The fact that the system adopted had been in use for years without incident, is not proof that the system is safe: the accident in question justifies this."

Fil-kawza "Borg vs Wells et" deciza mill-Onorabbli Qorti tal-Kummerc fid-9 ta' Settembru, 1981, kompla jizdied li: *"In planning a system of work the employer must take into account the fact that workmen become careless about risks involved in their daily work."* Fil-kawza "Grech vs Ellul", deciza minn din il-Qorti fis-27 ta' Gunju, 1996, intqal: *"It is the duty of every employer to take all reasonable care for his employee's safety in all circumstances at their place of work."* Fil-kawza "Grech vs Farrugia" deciza mill-Onorabbli Qorti tal-Appell fis-7 ta' Dicembru, 1994, intqal li: *"Il-makkinarju ghandu jkun imhars b'mod illi ma jirrekax hsara lil min qed jahdem fuqu, jew qed jadoperah anke meta dan ma jkunx qed jahdem fuqu, jew juza dak il-makkinarju minghajr dik l-attenzjoni u prudenza li wiehed jistenna bhala normalita' u*

dan biex jahgmel tajjeb ghal dik l-aljenazzjoni tal-attenzjoni, prudenza u ghaqal li jsofri haddiem industrijali, propju ghaliex dik l-oljenazzjoni tkun, fil-maggoranza tal-kazijiet, indotta mill-istess natura tal-attivita' industrijali."

Ta' importanza hija ukoll il-kawza "Chetcuti vs Mizzi", deciza minn din il-qorti fl-20 ta' Gunju, 2002, fejn gie osservat li min ihaddem m'ghandux iqabbd lill-haddiema tieghu jaghmlu xoghol li mhux soltu jaghmlu u li ghalih ma kellhomx stharrig.

F'dan il-kaz, ix-xoghol principali tal-attur kien ta' driver, izda, bi ftehim mal-Union li tirrappresenta l-maggoranza tal-haddiema, sar qbil li l-attur tizdidlu d-*description* ta' *handyman*, sabiex meta ma jkunx involut is-sewqan, flok joqghod ihares, ikun jista' jitqabbd jaghmel *odd jobs*; skond ir-rappresentant tal-union, pero', qatt ma kien il-hsieb li l-attur, meta inghata d-deskrizzjoni ta' *handyman* kien se jigi mqabbd jerfa ghamara u jqandel affarijiet kbar u tqal. Meta l-attur u siehbu gew imqabda jerfghu ghamara, dawn kienu dejjem inisslu ilment, izda l-attitudni tal-*management* dejjem kienet li dak ix-xoghol kellu jsir minnhom ghax ma kienx hemm haddiehor li setgha jigi mqabbd jaghmel dak ix-xoghol.

Il-Qorti tifhem li min ikun ingaggjat bhala *handyman*, m'ghandux jigi ordnat iqandel jew jerfa affarijiet tqal. *Handyman* huwa persuna li jista' jigi mqabbd jaghmel *odd jobs* ta' natura hafifa, izda mhux li jgorr affarijiet tqal. Il-garr ta' affarijiet ma jistghax isir minn kulhadd, ghax tinvolvi certa teknika, u wiehed irid ikun mhux biss b'sahtu, izda jrid ikun "jaf" kif jerfa' qabel ma jidhol ghal dak ix-xoghol. Ovvjament, mhux kull irfieh ghandu bzonn certa teknika; oggett irid ikun ta' certa toqol mehud kont il-persuna (fis-sens ta' *physique*) ta' min ikun ser jerfa. Din il-Qorti kella okkazzjoni tara lill-attur, u tista' tghid li ma jidhirx li hu xi persuna ta' certa sahha jew *build*. Din il-Qorti kellha okkazzjoni ukoll tipprova terfa l-iskrivanija in kwistjoni, u setghet tikkonstata li ma hijiex daqshekk hafifa li persuna tista' terfaghha "*as a matter of course*"; anzi hi pjuttost tqila li l-Gudikant bil-kemm seta' jaqlaghha minn mal-art! L-iskrivanija ghandha certa toqol li tirrikjedi ftit

koncentrazzjoni u teknika biex tigi merfugha minghajr riskju ta' periklu. Hu minnu li l-iskrivanija setghet tigi zarmata izda mhux biss il-Manager ma qalhomx biex jaghmlu dan (qalilhom, anzi, biex jerfghu u jgorru l-iskrivanija ghal barra l-kamra) izda la uriehom kif u lanqas ma ipprovdilhom l-ghodda mehtiega. Din il-Qorti thoss li s-sid kellu obbligu jingaggja *labourers* minn barra biex jaghmlu dan ix-xoghol ta' irfieh, u mhux iqabdu z-zewg *handymen* li kellhom u minghajr training ta' xejn, iqabduhom jerfghu skrivanija ta' certa daqs u toqol.

L-awtur Michael Whincup, fil-ktieb "Modern Employment Law" (6th Ed. 1990 pg. 214) jiddiskuti din il-problema ta' irfieh u fil-konkluzzjoni tieghu jghid:

"It is probably safe to conclude that employees are more likely to lose lifting injury claims than win them, since in the last resort they can probably see the difficulties of the job more clearly than anyone else and the final decision to lift or not to lift usually rests with them. That does not of course make training in safe handling methods any the less essential" (sottolinear tal-Qorti).

F'dan il-kaz, l-attur ma inghata ebda stharrig dwar kif jerfa, u lanqas ma jista' jinghad li d-decisjoni li jerfa ittiehdet mill-attur. Kien il-Manager tas-socjeta' konvenuta li kien jinsisti li l-attur u siehbu jgorru l-ghamara, u ma jidhirx li dawn kellhom ghazla. Veru li setghu jghidu "le", pero', meta hemm l-impjegat tieghu fin-nofs, impjegat mhux facli jirrezisti l-ordnijiet tal-employer tieghu. Fil-fatt, l-attur jghid li meta kienu jilmentaw, kienu jigu "mhedda", u jekk impjegat jibda jaghmel ostakoli fuq il-post tax-xoghol, anke jekk daww l-ostakoli jkunu imsejsa fil-ligi, jista' jsib ruhhu fi problemi u forsi anke barra mix-xoghol.

Hi x'inh, l-impjegat mill-ewwel gab l-ilment ghall-attenzjoni tal-Manager tieghu, izda dan xorta wahda kien jinsisti li jsir ix-xoghol ta' irfieh. Fil-kawza ingliza "Hall vs McLaren" (1958) C.A. 110, intqal li normalment, persuna li xogholu huwa li jqandel u jerfa affarijiet tqal, huwa responsabbli ghal ghemilu, imma:

“If he makes any real complaint of the conditions on the score that they make the doing of the work dangerous, or are likely to cause injury...then it may well be that if the employers ignore such a complaint they will do so at their peril.”

F'dan il-kaz, issa, ghandna persuna li mhux ix-xoghol normali tieghu li jerfa oggetti tqal; huwa ressaq ilment li gie injorat mis-sid, u kwindi l-employer irid iwiegeb ghall-konsegwenzi.

Fil-ktieb ta' Whincup, aktar qabel kwotat, l-awtur kien qed jitratta l-aktar kazijiet ta' persuni li xogholhom hu t-tqandil, pero', jinsisti li f'kull kaz, anke meta si tratta minn dawn l-impjegati, is-sid *“should always instruct his workers in safe lifting techniques, in their interest and his.”* (ara ukoll “Pace vs Korporazzjoni Enemalta”, deciza minn din il-Qorti fit-23 ta' Jannar, 2003). Dan is-socjeta' konvenuta, naqset li taghmlu f'dan il-kaz, u jsegwi allura li l-employer naqas, fi kliem kwotazzjoni approvata mill-Onorabbli Qorti tal-Appell fil-kawza “Grech vs Ellul”, gia kwotata, *“to take all reasonable care for his employee's safety.”*

Fid-dawl tad-dhul iminenti ta' Malta fl-Unjoni Ewropea, l-Qorti taghmel referenza wkoll ghall-Ligi tal-Unjoni Ewropea, senjatament il-Council Directive 90/269/EEC tad-29 ta' Mejju 1990 u ghall-Pubblikazzjoni OJL 156, 21.6.1990, it-tnejn li huma jikkoncernaw *“Minimum health and safety requirements for the manual loading of loads where there is a particular risk of back injury to workers.”* Fl-Artikolu numru 2 tad-Direttiva fuq citata inghatat definizzjoni ta' *manual handling of loads*, (u cioe', *“Manual handling of loads means any transporting or supporting of a load, by one or more workers including lifting, putting down, pushing, pulling, carrying or moving a load which by reason of its characteristics or of unfavourable ergonomic conditions, involves a risk particularly of back injury to workers”*) liema definizzjoni tirrispekkja l-attivitá maghmula mill-attur waqt l-impjieg li kawza taghha korra.

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Il-Pubblikazzjoni fuq citatata tindika l-mizuri li ghandhom jittiehdu minn *employer* sabiex jissalvagwardja l-inkolumita' tal-impjegat tieghu, liema mizuri ma gewx evidentement implementati fil-kaz odjern:

“The employer must try to avoid the need for manual handling of loads by workers. He must therefore take appropriate organizational measures or make use of, for instance, mechanical equipment. Where manual handling cannot be avoided, the employer must try to reduce the risks involved.

It is also the employer’s duty to inform the workers of the weight of the load to be carried and the center of gravity of the highest side of a load, and the risks involved in incorrect handling.” (enfasi mizjud)

FI-Artikolu numru 3 tad-Direttiva jinghad:

“The employer shall take appropriate organizational measures, or shall use the appropriate means, in particular mechanical equipment, in order to avoid the need for the manual handling of loads by workers. Where the need for the manual handling of loads by workers cannot be avoided, the employer shall take the appropriate organizational measures, use the appropriate means or provide workers with such means in order to reduce the risk involved in the manual handling of such loads, having regard to annex 1.”

L-Artikolu numru erbgha (4) tad-Direttiva ikompli jghid:

*“Wherever the need for manual handling of loads by workers cannot be avoided, the employer **shall organize workstations** in such a way as to make such handling as safe and healthy as possible and:*

(a) ***assess, in advance if possible, the health and safety conditions of the type of work involved, and in particular examine the characteristics of loads, taking account of Annex 1;***

(b)

(c) ***take care to avoid or reduce the risk particularly of back injury to workers, by taking appropriate measures, considering in particular the characteristics of the working environment and the requirements of the activity, taking account of Annex 1.*** (enfasi mizjud)

Is-socjeta' konvenuta la hadet mizuri appoziti, la pprovdiet xi forma ta' makkinarju sabiex jghin fit-tqandil, u lanqas tat informazzjoni dwar il-piz tal-iskrivanija lill-attur.

It-tip ta' informazzjoni li ghandha tinghata mill-*employer* lill-impjegat tinsab mnizzla fl-Artikolu numru sitta (6) fejn jinghad:

“(1) *Employers must ensure that workers and/or their representatives receive general indications and, where possible, precise information on:*

- *the weight of the load,*
- *the center of gravity of the highest side when a package is eccentrically loaded.*

(2) *.....employers must ensure that workers receive in addition proper training and information on how to handle loads correctly and the risks they might be open to particularly if these tasks are not performed correctly,*”

Fl-Annex 1 li ghalih issir referenza fl-Artikolu fuq citati jissemeww *“Refence Factors”* li jikkombacaw mac-cirkostanzi tal-kaz odjern. In fatti rigward il-*Characteristics of the load* hemm innizzel illi :

“*The manual handling of a load may present a risk particularly of back injury if it is:*

- *too heavy or too large,*
- *unwieldy or difficult to grasp,*

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- *unstable or has contents likely to shift,.....”*

Fl-Annex II issir referenza ghal “*Individual Risk Factors*”:

“The worker may be at risk if he/she:

- does not have adequate or appropriate knowledge or training.”

L-attur f'dan il-kaz, ma nghata ebda informazzjoni dwar kif kellu jerfa l-iskrivanija. Huwa veru li dawn id-direttivi ma kienux jorbtu lil min ihaddem hawn Malta meta sehh l-incident, pero', huma indikattivi tal-obbligi li fil-fehma tal-Qorti, kull min jimpjega haddiema ghandu jonora taht il-ligi generali tal-pajjiz, u jirriflettu b'mod specifiku l-obbligu generali ta' min ihaddem biex jissalvagwardja s-sahha tal-haddiema u biex jipprovdi dawk l-ghodod necessariji sabix jigu evitati danni lill-istess impjegati (ara “Bray vs Petroni”, deciza minn din il-Qorti fit-30 ta' Novembru, 2001).

In vista ta' dan, is-socjeta' konvenuta ghandha tinstab responsabbli ghall-incident li sehh fil-5 ta' Novembru, 1999, u li fih allegatament wegga l-attur.

Ghaldaqstant, ghar-ragunijiet premessi, tiddisponi minn din il-vertenza, billi tilqa' l-ewwel talba tal-attur u tiddeciedi illi s-socjeta' konvenuta hija unikament responsabbli ghall-incident li sehh fil-5 ta' Novembru, 1999, fuq il-post tax-xoghol tal-attur u li bhala konsegwenza tieghu, l-attur allegatament sofra diszabilita' ta' natura permanenti.

Il-Qorti tordna l-prosegwiment tas-smigh ta' din il-kawza sabiex tigi trattata u deciza t-tieni talba tal-attur.

L-ispejjes ta' din id-decizjoni ghandhom jithallsu mis-socjeta konvenuta.

< Sentenza In Parte >

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