



MALTA

**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
GEOFFREY VALENZIA**

Seduta tad-29 ta' Ottubru, 2004

Citazzjoni Numru. 11/2003

**Elmo Insurance Agency Limited, bhala rapprezentant
tas-socjeta' estera Royal & Sun Alliance Insurance
plc,
u b'nota tal- 11 ta' Gunju, 2004, is-socjeta' Elmo
Insurance
Limited bhala cessjonarja tad-drittijiet u obbligi tas-
socjeta'
estera Royal & Sun Alliance Insurance plc f'isimha
proprju
u kif surrogata fid-drittijiet tal-assikurat taghha s-
socjeta'
Nylon Knitting Limited assumiet l-atti tal-kawza,
Middlesea
Insurance plc u Atlas Insurance Agency Limited,
bhala
rapprezentant tas-socjeta' estera AXA Insurance plc,
f'isimhom proprju u bhala surrogati fid-drittijiet tal-
assikurat
tagghom is-socjeta' Nylon Knitting Limited**

Vs

Fahrenheit Freight Forwarders Co. Ltd.

II-Qorti.

Preliminari

Rat **I-att tac-citazzjoni** li permezz taghha s-socjetajiet attrici ppremettew illi s-socjeta' Nylon Knitting Limited inkarigat lis-socjeta' konvenuta bil-garr u trasport ghall-esportazzjoni lejn l-Italja ta' zewg *industrial knitting machines* (Dok. ZM1 sa ZM4);

Peress illi fit-13 ta' Jannar, 2002, waqt li z-zewg magni kienu qed jingarru fl-Italja gewwa *trailer* tas-socjeta' konvenuta, dawn sfaw danneggjati estensivament u rreparabilment meta nar hakem *it-trailer*,

Peress illi s-socjetajiet attrici kienu qed jaghtu kopertura assikurativa fir-rigward tal-merkanzija trasportata u ghalhekk, kif kienu obbligati, huma hallsu ghall-hsara li garrab l-assikurat is-somma komplissiva ta' hamsa u hamsin elf hames mija erbgha u erbghin lira Maltin (Lm55,544): mis-socjeta' attrici Elmo Insurance Agency noe thallsu s-somma ta' Lm723.15c de proprio bhala "survey fees" u s-somma ta' Lm24,271.65c favur is-socjeta' assikurata u ghal dan l-ammont kienet surrogata fid-drittijiet tas-socjeta' assikurata; mis-socjeta' attrici Middlesea Insurance plc thallsu s-somma ta' Lm562.45c de proprio bhala "survey fees" u s-somma ta' Lm18,877.95c favur is-socjeta' assikurata u ghal dan l-ammont kienet surrogata fid-drittijiet tas-socjeta' assikurata; u mis-socjeta' attrici Atlas Insurance Agency Limited noe thallsu s-somma ta' Lm321.40c de proprio bhala "survey fees" u s-somma ta' Lm10,787.40c favur is-socjeta' assikurata u ghal dan l-ammont kienet surrogata fid-drittijiet tas-socjeta' assikurata (Dok. ZM5);

Peress illi s-socjeta' konvenuta hija responsabbli ghall-hsara li garrbet il-merkanzija *de qua*;

Peress illi s-socjeta' konvenuta, ghalkemm kienet interpellata ufficjalment biex thallas il-“quantum” tad-danni fuq riferit, baqghet inadempjenti;

Tghid ghalhekk is-socjeta' konvenuta ghaliex ghar-ragunijiet premessi din il-Qorti m'ghandhiex:

1. Tiddikjaraha responsabbli ghall-hsara fuq riferita.
2. Tillikwida d-danni komplessivi fl-ammont ta' hamsa u hamsin elf hames mija erbgha u erbghin lira (Lm55,544).
3. Tikkundannaha sabiex thallas lis-socjeta' attrici Elmo Insurance Agency Limited noe is-somma ta' erbgha u ghoxrin elf dis' mija erbgha u disghin lira tmenin centezmu (LM 24,994.80c) kwantu ghal LM 723.15c li l-istess socjeta' nkorriet de proprio bhala “survey fees”, u s-somma ta' LM 24, 271.65c li sborsat a favur is-socjeta assikurata u ghal dan l-ammont kienet surrogate fid-drittijiet tas-socejta assikurata.
4. Tikkundannaha sabiex thallas lis-socjeta attrici Middlesea Insurance plc is-somma ta' dsatax –il elf erba' mija u erbghin lira erbghin centezmu (LM 19,440.40c) kwantu ghall LM 562.45c li l-istess socjeta nkorriet de proprio bhala “survey fees” u s-somma ta' LM 18,877.95c li sborsat a favur is-socjeta assikurata u ghal dan l-ammont kienet surrogate fid-drittijiet tas-socejta assikurata.
5. Tikkundannah sabiex thallas lis-socjeta' attrici Atlas Insurance Agency Limited is-somma ta' hdax-il elf mija u tmien liri tmenin centezmu (LM 11,108.80c) kwantu ghal LM 321.40c li l-istess socjeta nkorriet de proprio bhala “survey fees” u s-somma ta' Lm 10,787.40c li sborsat a favur tas-socjeta assikurata u ghal dan l-ammont kienet surrogate fid-drittijiet tas-socejta assikurata.

Kopja Informali ta' Sentenza

Bl-ispejjez komprizi dawk tal-ittra ufficjali tat 23 ta' Lulju 2002 li kienet notifikata lis-socjeta konvenuta fil 25 ta' Lulju 2002, u bl-imghax legali mill 25 ta' Lulju 2002 kontra s-socjeta konvenuta li hija ngunta ghas-subizzjoni.

Rat li s-socjeta' konvenuta debitament notifikata (fol. 15) baqghet kontumaci;

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

Semghet ix-xhieda bil-gurament;

Rat in-noti tal-partijiet;

FATTI

Illi dina l-kawza tirrigwarda incident li gara l-Italia meta zewg makni industrijali li kienu qed jingarru fuq *trailer* mis-socjeta' konvenuta, sfaw mahruqa u danneggjati totalment meta wahda mir-roti qabdet u hadet in-nar u mbaghad in-nar infirex u hakem it-*trailer* bil-makni b'kollox. L-atturi, bhala assikuraturi, qed ifittxu ghal hlas li huma ghamlu lill assikurat taghhom wara li kienet saret *claim* minnhom fuq dina l-hsara u huma gew surrogati fid-drittijiet tal-assikurat taghhom. Huma qed jitolbu s-somma kompleksiva ta' Lm55,544, liema somma tinkludi s-*survey fees*.

KONTESTAZZJONI

Il-konvenuti, ghalkemm kontumaci, fin-nota li gew awtorizzati li jaghmlu, (artikolu 158/10 tal-Kap 12) issottomettew li skond ir-rapport li sar barra minn Malta u li gie ezibit fil-process, jirrizulta (ara fol. 39 u fol. 116) li l-kawza ta' l-incident kienet "*mechanical breakdown*" u dan kien relatat ma l-istess uzu ta' l-istess vettura. Il-hsara kienet tikkonsisti fi ksur ta' parti wahda mir-roti ta' wara. Skond l-istess rapport, fatturi ohra bhala velocita' qabel l-incident ma kienitx il-kawza ta' l-istess. Meta kienu ezaminati r-roti kienu jidhru mantenuti u nstabu f'kundizzjoni tajba. Ir-rota li waslet ghan-nirien kellha tracci ta' "*grease*" u dana nonostante l-hruq li sehh.

Kopja Informali ta' Sentenza

L-atturi minn naha l-oħra qed jissottomettu li l-konvenuti huma responsabbili billi ma ppruvawx li huma hadu dawk il-prekawzjonijiet kollha biex tigi evitata l-hsara li kkaggunat in-nar, speċjalment jekk huma qed jistrieħu fuq id-difiza li jagħti l-artikolu 17(2) ta' CMR.

KONSIDERAZZJONIJIET

Responsabilità tat-trasportatur

Jirrizulta li t-trasport in kwistjoni huwa regolat bir-regolamenti ta' CMR (ara dok a fol 6 tal-process.)

Il-bazi tar-responsabilità' tat-trasportatur toħrog mill-artikolu 17(1) ta' Carriage of Goods by Road (CMR) li jipprovvdli li:

“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.”

Il-konvenuti, għalkemm kontumaci, fin-nota taħhom, qed jirritjenu li huma m'humieħ responsabbli għal dak li gara billi l-hruq kien rizzultat ta' *mechanical breakdown* fit-trailer. Huma qed jibbazaw id-difiza taħhom fuq l-artikolu 17(2) ta' CMR u senjatament fuq il-parti li tipprovvdli li:

“The carrier shall... be relieved of liability if the loss, damage or delay was caused ...through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent”.

Dwar dina d-difiza l-awtur **M. A. Clarke fil-ktieb tieghu “International Carriage of Goods by Road: CMR”** 3rd Edition isemmi l-*leading case* in materja **Sibler v Islander Trucking, (1985)** fejn Mustill J. stabilixxa li *“Article 17.2 sets a standard which is somewhere between, on the one hand, a requirement to take every conceivable precaution, however extreme, within the limits of the law, and on the other hand a duty to do no more than act reasonably in accordance with prudent current practice.... Article 17.2*

requires the utmost reasonable care compatible with good sense”.

Dana jfisser li t-trasportatur irid jeżercita aktar minn *reasonable care in accordance with current practice in the transport industry* u gie meqjus li l-grad ta' “care” li ghandu jkun hemm hu *“barely distinguishable from liability without fault”*. L-istandard ta' “utmost care” tas 17.2 huwa aktar minn dak ta' “reasonable care” u ghandu jigi assessjat fil-prattika fil-kaz konkret u mhux fl-astratt.

L-istess awtur ighid li *“a fire which starts in the vehicle or its equipment is a defect in the vehicle and thus no defence, whether it could have been avoided by the carrier or not”* u jikkwota il-kaz ta' O.L.G.Dusseldorf 18.11.71 fejn kien hemm prova li l-hruq beda mit-tyres. Il-Qorti kienet iddecidiet li *“the carrier had to show absence of any defect in the vehicle. The carrier showed that the vehicle was new and in good condition . The Court was not satisfied, stating that the carrier must prove that the cause could not lie with the vehicle. The onus is heavy, perhaps because the Courts are aware that defects may appear in the vehicle as a result of misuse by the driver; tyres may burst because the driver has hit the curb and may catch fire because of overheating in the brakes.*

Fil-kaz Brussels 17.6.71 li *the carrier proved that the tyre in question was in good condition at the beginning of the journey and argued that therefore the damage had occurred in circumstances which he could not avoid. The Court however held the carrier liable saying that the evidence produced by the carrier does not exclude the possibility that the damage was caused by error, carelessness or negligence on the part of the driver...and does not at all imply that it was impossible for the carrier to avoid the circumstances causing the damage or to prevent their consequences”.*

Fil-kaz in ezami, skond ir-rapport li sar barra minn Malta, a fol 116:

the fire developed in correspondence of the left rear wheel of trailer due to mechanical breakdown.....From our inspection, we may reasonably hypothesise that, breakage of the second roller bearing of the left rear wheel and consequent friction between rolls, shearing hub and the housing of shearing hub inside drum had caused increase in temperature. Turning of wheel, due to vehicle drive and the weight of loaded cargo, made temperature rise up to causing melting of roller bearing and burning of grease and dust present therein. Soon as the driver stopped to verify what was happening the tyre due to high temperature reached by drum caught fire..... The breakage of the roller bearing may rely in possible mechanical breakdown due to usage....

Biex jehles mir-responsabilita, it-trasportatur ghalhekk irid jipprova li hu ha l-mezzi kollha biex jevita kull hsara u li *it was impossible for the carrier to avoid the circumstances causing the damage or to prevent their consequences*. Mhux bizzzejjed li c-cirkostanzi kienu straordinarji imma jridu jkunu tant straordinarji li jrrenduha impossibli lill carrier li jimpedieha anke bl-akbar diligenza.

Fil-kaz in ezami kien jispetta lill konvenuti li jiproducu *history* u *maintenance records* tal vettura biex juru li t-trailer li kien qed jintuza ghal *transport* fit-tul internazzjonali ta' merkanzija kien qed jigi regolarment *serviced* u moghti *maintenance* adekwata u li ma kien hemm xejn hazin fit-trailer precedentement. Fil-fatt dina l-prova ma saritx u dawn ir-records ma gewx prodotti.

Il-fatt biss li kien hemm *mechanical breakdown* fit-trailer ma jezonerax lill konvenuti mir-responsabilita'. Il-konvenuti ma ppruvawx li kien impossibli ghalihom li jevitaw dana l-incident. Jidher li l-*mechanical breakdown* setgha jigi evitat bid-debita attenzjoni u manutenzjoni. Jirrizulta li fi tlett roti ma sviluippawx problemi mentri fir-rotta partikolari kien hemm nuqqas li kkawza l-incident u li l-konvenuti setghu jevitaw. Waqt li r-roti l-ohra kellhom manutenzjoni ghax kien jidher li kellhom *grease*, dik li minnha qabad innar ma kelliex *grease* jew jekk kellha ma kelliex bizzzejjed specjalment meta wiehed jikkonsidra t-toqol tal-

merkanzija li kien qed igorr fuq dak it-tragitt fit-tul. Inltre minhabba n-nuqqas ta' informazzjoni dwar it-**trailer** ma jirrizultax jekk din il-*wheel hub* qatt gietx riparata qabel jew kelliex bzonn li tinbidel. Minhabba wkoll dan in-nuqqas ta' dokumenti dwar l-istat tat-*trailer*, il-Qorti lanqas tista' tezamina jekk "*the condition of the vehicle ...was fit to receive and to contain the goods of the type in question*", f'dan il-kaz zewg makni kbar hafna (ara ritratti).

Ghalhekk anke taht l-artikolu 17(3) tac CMR l-konvenuti ma jistghux jigu ezonerati mir-responsabilita' billi *the carrier shall not be relieved of liability by reason of the defective condition of the vehicle used by him*.

Danni

Il-konvenuti qed jissottomettu li huma m'ghandhomx ihallsu l-ammont kollu mitlub billi hemm il-*weight limitation* skond ic CMR. L- artikolu 23 jipprovvdli li:

When, under the provisions of this convention, a carrier is liable for compensation in respect of total or partial loss of goods, such compensation shall be calculated by reference to the value of the goods at the time and place at which they were accepted for carriage.,

u li

Compensation shall not, however, exceed 25 francs per kilogram of gross weight short.

Il-limitazzjoni tapplika kemm fil-kaz ta' partial loss kif ukoll ta' total loss, izda l-artikolu 29 tac CMR Convention jeskludi l-limitazzjoni tar-responsabilita tal-carrier f'kazi fejn dan juri wilful misconduct jew *equivalent default*. Gie ritenut (ara Malcom Clark fuq riferit) li l-*equivalent default* must be weighed by the lex fori jigifieri l-ligi Maltija. Fil-kaz in ezami l-agir tal-konvenuti li jittrasportaw l-merkanzija in kwistjoni fuq *trailer* li ma kienx idoneju ghal *transport* internazzjonali u fit-tul jammonta ghal *equivalent default*. Ghalhekk id-difiza u limitazzjonijiet ta' responsabilita' tal-*carrier* ma japplikawx ghal kaz odjern. Konsegwentement l-ammont intier mitlub mill-atturi huwa dovut.

DECIZJONI

Ghal dawn il-motivi

Kopja Informali ta' Sentenza

Il-Qorti tiddeciedi billi

Tiddikjara lill konvenuti responsabbli ghall-hsara fuq riferita.

Tillikwida d-danni komplessivi fl-ammont ta' hamsa u hamsin elf hames mija u erbgha u erbghin lira Maltin (Lm55,544).

Tikkundanna lill konvenuti jhallsu s-somma imsemmija kif mitluba;

Bl-spejjez kontra s-socjeta' konvenuta u bl-imghax tal 5% (ara artikolu 27(1) tac CMR) mill 25 ta' Lulju, 2002 sad-data tal-effettiv pagament.

< Sentenza Finali >

-----TMIEM-----