

Kopja Informali ta' Sentenza



MALTA

**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
TONIO MALLIA**

Seduta tal-5 ta' Lulju, 2005

Citazzjoni Numru. 1915/2001/1

**Middlesea Insurance plc kif surrogata fid-drittijiet tal-
kumpannija Almeco Limited**

vs

M.D. Trucking Limited

Il-Qorti:

Rat ic-citazzjoni ppresentata mis-socjeta' attrici fit-28 ta' Dicembru, 2001, li in forza taghha, wara li ppremettiet illi:

Il-kumpannija konvenuta giet inkarigata biex tittrasporta konsenja ta' sbatax-il elf, mija u tmenin kilogramm (17,180kg) "*aluminum profiles*" u elf u tmin mitt kilogramm (1,800kg) "*aluminum powder*" minghand *Almeco Limited, Malta* lil *Tecnoplast Spa* gewwa *Tavezzano I-Italja* kif

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jidher mill-*invoice* hawn annessa u mmarkata Dok A u l-*"International Consignment Note"* immarkata bhala Dok B;

Waqt li l-merkanzija kienet qieghda tigi trasportata lill-konsenjatarju l-istess merkanzija intilfet allegatament minhabba serqa u b'konsegwenza l-kumpannija *Almecco Limited* soffriet danni ghal liema danni hija responsabbli l-kumpannija konvenuta minhabba inadempjenza fl-obbligi kontrattwali taghha u negligenza;

Ghad-danni fuq imsemmija ghamlet tajjed il-kumpannija assikuratrici attrici fis-somma ta' hamsa u ghoxrin elf, tlett mija u sitt liri Maltin (Lm25,306.00) u giet surrogata fid-drittijiet tas-socjeta' assikurata *Almecco Limited* skond il-ligi u skond il-polza ta' assikurazzjoni (Kopja tas-surroga annessa bhala Dok C);

Ghalkemm giet interpellata biex taghmel tajjed ghad-danni fuq imsemmija, anki permezz ta' ittra ufficjali datata 31 ta' Ottubru, 2001, il-kumpannija konvenuta baqghet inadempjenti;

Talbu lill-konvenuti jghidu ghaliex din l-Onorabbli Qorti m'ghandhiex:

1. Tiddikjara lill-kumpannija konvenuta responsabbli ghad-danni sofferti mill-kumpannija *Almecco Limited* li ghalihom ghamlet tajjed il-kumpannija assikuratrici attrici kif fuq imsemmi;
2. Tillikwida d-danni fl-ammont ta' hamsa u ghoxrin elf, tlett mija u sitt liri Maltin (Lm25,306.00) jew somma verjuri li joghgobha tillikwida din il-Qorti;
3. Tikkundannaha sabiex thallas lill-kumpannija attrici kif surrogata fid-drittijiet tal-kumpannija *Almecco Limited* l-ammont hekk likwidat bhala dovut *in linea* ta' danni;

Bl-ispejjez, inkluzi dawk tal-ittra ufficjali datata 31 ta' Ottubru, 2001 u bl-imghax legali kontra l-kumpannija konvenuta li hija minn issa ngunta ghas-subizzjoni;

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Rat in-nota tal-eccezzjonijiet tas-socjeta' konvenuta li *in forza* taghha eccepjet illi:

Id-domandi attrici huma infondati fil-fatt u fid-dritt *stante* illi l-esponenti ma kienx responsabbli bl-ebda mod ghall-akkadut.

Inoltre ma kien hemm ebda negligenza jew nuqqas ta' diligenza fl-espletazzjoni tal-inkarigu.

Subordinament u bla pregudizzju ghall-premess, fil-kaz *in kwistjoni* japplikaw ir-Regolamenti kontrattwali maghrufa bhala CMR u f'dan il-kaz japplika l-Artikolu 17.2 u l-Artikolu 23 ta' l-istess Regolamenti.

Salvi eccezzjonijiet ulterjuri.

Rat id-dikjarazzjonijiet guramentati tal-partijiet;

Rat id-digriet ta' din il-Qorti tal-21 ta' Gunju, 2002, li *in forza* tieghu, wara li rat li l-meritu ta' din il-kawza, kif ukoll il-meritu tal-kawza citazzjoni numru 1917/01 fl-ismijiet "*M.D. Trucking Ltd vs Malta Express Ltd*", huwa konness, ordnat li dawn iz-zewg kawzi jinstemghu kontestwalment u li l-provi mismugha f'wahda minnhom jghoddu wkoll ghall-ohra;

Rat l-atti kollha tal-kawza fl-ismijiet "*M.D. Trucking Ltd vs Malta Express Ltd*";

Rat li dik il-kawza, b'citazzjoni numru 1917/01, kienet giet cancellata min din il-Qorti b'digriet tat-12 ta' April, 2005, u wara dan ma saret ebda talba ghar-re-appuntament taghha;

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

Semghet il-provi li ressqu l-partijiet;

Rat in-nota tal-osservazzjonijiet tas-socjeta' attrici;

Rat li l-kawza thalliet ghal-lum ghas-sentenza;

Ikkunsidrat;

Illi jirrizulta li s-socjeta' lokali *Almecco Ltd* inkarigat lis-socjeta' konvenuta biex din tal-ahhar tesporta lejn l-*Italja* konsenja ta' 17,180kg *aluminum profiles*, u 1,800kg *aluminum powder*. Il-konsenja tghabbiet go *cartons* u kellha tittiehed gewwa *Tavazzano l-Italja* bi *trailer*. It-*trailer in kwistjoni* gie debitament mgħobbi bil-merkanzija ssigillat mill-ufficcjali tad-Dwana, u ittiehed Hal-Far għal-eventwali tluq lejn l-*Italja*. It-*trailer in kwistjoni* telaq minn Malta u twassal sal-port ta' *Genova* bil-vapur. Gewwa l-port ta' *Genova*, is-socjeta' konvenuta issubkuntrattat l-ahhar parti tal-vjagg lis-socjeta' *Malta Express Ltd*, li *da parti* tagħha inkarigat bhala *driver* lill-*Filippo Zisa* biex jiehu konsenja tat-*trailer* mill-port ta' *Genova* u jwasslu sa *Tavazzano*, gewwa *Lodi*. Dan *Sig. Zisa* wassal it-*trailer* sa *Milan* fejn gie ikklerjat mid-Dwana. Jidher li kien hemm xi problemi biex it-*trailer* gie kklerjat mid-dwana, tant li l-procedura kollha hadet mill-hdax ta' filghodu tat-3 ta' Jannar, 2001, sal-4.30pm fl-istess jum. Peress li kien sar il-hin, *Sig. Zisa* ikkomunika mad-destinatarja (is-socjeta' *Technoplast Spa*) u staqsa jekk kienx għad hemm hin biex iwassal it-*trailer* sal-post u / jew ihottu jew jipparkjah gewwa l-*premises* tagħha. Wara li gie infurmat li ma kienx għad fadal hin bizzejjed, id-*driver* saq it-*trailer* għad-dar tieghu gewwa *Trecati*, f'*Novarra*, u wara li pparkja t-*trailer* gewwa *service station* tal-*Agip* f'*Corso Roma*, hu mar id-dar għall-mistrieħ, bil-hsieb li jkompli bit-traggit tieghu l-għada filghodu.

L-għada filghodu, dan it-*trailer* instab mill-Pulizija taljana gewwa *via Gandhi*, f'*Milan*, u meta *Filippo Zisa* gie infurmat b'din is-sejba, hu mar jispezzjona t-*trailer* u sab li kien vojti; hu għamel rapport ta' dan lill-Pulizija lokali.

Minn investigazzjonijiet li saru, irrizulta li t-*trailer*, meta gie pparkjat għal-lejl, kellu *steering lock* fil-gabina, *pero'*, ma kellux *anti-theft device* u lanqas *alarm*. Jirrizulta wkoll li l-post fejn thalla t-*trailer* ma kellux sorveljanza, u l-*istation* kienet fuq triq municipali li tkun frekwentata matul il-gurnata izda vojta matul il-lejl.

Il-merkanzija *in kwistjoni* kienet inxurjata mas-socjeta' attrici *Middlesea*, u peress li insterqet kollha, din hallset lill-esportatur lokali, d-ditta *Almecco Ltd*, il-valur tal-merkanzija *dietro surroga*. Is-somma mhallsa kienet ta' Lm25,306.

Hu ammess mis-socjeta' konvenuta li t-tragit fuq l-art kien kopert bis-*CMR Convention*, u r-regoli ta' dik il-Konvenzjoni japplikaw ghal-kaz *in ezami*.

Fil-kuntest ta' l-involviment tad-*driver*, *Filippo Zisa*, tajjeb li jigi ccarat, ghal kull bon fini, li skond l-artikolu 3 tar-regolamenti tas-*CMR*, "*for the purposes of this convention the carrier shall be responsible for the acts and omissions of his agents as servants and of any other persons of whose services be made use of for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment, as if such acts and omissions were his own*".

Dan l-artikolu wara kollox, jirrifletti principju kardinali fid-dritt civili ta' l-obbligazzjoni, u *cioe'*, li kontraent ma jistax johrog mir-responsabbilita' ghall-ksur tal-kuntratt billi jallega nuqqas ta' persuna li gie mqabbad minnu fil-kors ta' l-esekuzzjoni tal-kuntratt – ara "Farrugia vs Attard noe", deciza mill-Onorabbli Qorti ta' l-Appell (Sede Inferjuri) fit-28 ta' April, 1998. F'dan il-kaz id-*driver in kwistjoni* kien gie mqabbda mis-socjeta' *Malta Express Ltd* biex isuq it-*trailer in kwistjoni* u jgorr il-merkanzija lejn id-destinazzjoni taghha, u kwindi kienet persuna imqabbad mis-socjeta' *Malta Express Ltd* biex tghinha tesegwixxi d-diversi kuntratti li accettat; ghan-nuqqasijiet taghha, *kwindi* twiegeb is-socjeta' *Malta Express Ltd*. *A tenur* tal-principju enuncjat, is-socjeta' *Malta Express Ltd* ma tistax tehles mir-responsabbilita' semplicement ghax ma kellhiex x'taqsam mas-serqa u t-telf tal-merkanzija bis-serq, ghax it-trasportatur jista' jinzamm responsabbli ghall-atti u ommissjonijiet ta' dawk il-persuni li jutilizza ghall-iskop tat-trasport.

Min-naha l-oħra, għandu jingħad ukoll li s-socjeta' *Malta Express Ltd*, bħala *sub-contractor* tas-socjeta' konvenuta, m'għandhiex relazzjonijiet diretti mas-socjeta' attrici; l-obbligu kontrattwali kien assunt mis-socjeta' konvenuta biss, u kull nuqqas tas-*sub*-konduttur jew ta' persuni oħra mqabba għal-esekuzzjoni tal-kuntratt, twiegeb għalih, fil-konfront tas-socjeta' attrici, is-socjeta' konvenuta.

Il-bazi tar-responsabilità' tat-trasportatur tinsab fl-artikolu 17(1) tar-regolamenti ta' *CMR* li jgħid:

"The carrier shall be liable for the total loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery".

Gie ppruvat illi d-ditta *Almecco Ltd*, inkarigat lis-socjeta' konvenuta tiehu hsieb il-gar ta' merkanzija lejn l-*Italia*; din il-merkanzija giet mghobbija fuq it-*trailer* li sussegwentament insteraq. Id-ditta konvenuta qed tecepixxi li mhiex responsabbli għal dak li gara peress li qdjet dmirijeta bl-akbar diligenza u l-merkanzija ntilfet b'forza magguri jew accident. Din id-difiza issib l-applikazzjoni tagħha fl-artikolu 17(a) fejn it-trasportatur hu ezonorat mir-responsabilità' minhabba *"circumstances which the carrier could not avoid and the consequences of which he was unable to prevent"*, u dan hu l-meritu tal-kawza. F'dan il-kuntest, ovvjament titqies importanti id-dikjarazzjoni tad-*driver* bħala l-unika persuna li kienet fuq il-lok ta' l-incident meta sehhet is-serqa.

Skond il-gurista Jan Ramburg (*"The Law of Carriage of Goods" Attempts of Harmonization* 9E.T.L. 1974), il-bazi ta' responsabilità' enuncjata fis-*CMR* mhix eskluza billi dak li ikun agixxa diligentement, izda hemm oneru akbar mixhut fuq it-trasportatur, li jrid jiehu l-mezzi kollha biex jevita kull hsara jew serq. L-awtur S. Zamara (*"Carrier Liability" Am. J. of Comp Law 1975*) jgħid li *"the courts have been reluctant to admit as a defense that the carrier has simply not been negligent. Instead, they place a heavy burden on the carrier to show specifically how the unavoidable circumstance caused the loss"*

Il-grad ta' diligenza rikjesta f'kazijiet simili mit-trasportatur hu deskritt hekk mill-awtur Malcolm A. Clarke fil-ktieb "*International Carriage of goods by Road: CMR*".

"There is a temptation to exonerate the carrier on this ground, if he has taken all 'reasonable steps' to avoid the event causing loss... This would sit easily with the general duty of exercising reasonable care of cargo, which, it has been suggested will be implied in a contract to carry goods by road. But the defense in article 17(2) makes no mention of reasonable steps and such steps are probably insufficient. What the carrier must show is more akin to the plea of impossibility of performance of a contract which involves an event which renders the contract nor merely more onerous but completely impossible of performance. Writers on the CMR are agreed that the event must be one which literally 'could not' be avoided by the carrier. It need not however, like the concept of force majeure in France, be unforeseeable although many events will, by the very fact that they are foreseeable, be avoidable by the carrier of whom such a high standard is required".

Hekk ukoll l-awtur David Glass ('*The Divided Heart of the CMR Convention*' 14 *E.T.L.* 1979) jghid li "*The carrier cannot hope, simply by showing that ordinary care was taken, to escape liability. He must show that in respect of the particular loss or damage, no failing on his part could have contributed to it. It follows that a high degree of proof is required on his part, normally by proving the actual cause and showing how it arose with no fault on his part*". Il-Qrati taghna donnhom qed isegwu din il-linja rigida fl-interpretazzjoni tal-klawsola relattiva tas-CMR – ara "Sullivan vs Grech", deciza minn din il-Qorti fit-2 ta' Frar, 2001, "Galdes vs Bowman", deciza minn din il-Qorti fil-25 ta' Jannar, 2002, u "Farrugia noe vs Gatt noe", deciza mill-Onorabbli Qorti tal-Kummerc fis-16 ta' Jannar, 1984, fejn intqal li "*mhux bizzejjed li c-cirkustanzi kienu straordinarji imma li jridu jkunu tant straordinarji li jirrenduha impossibli lill-carrier li jimpediha anke bl-akbar diligenza. L-essenza tad-difiza hija l-imprevedibilita' u l-inevitabilita'*".

Hu interessanti li f'din l-ahhar kawza, is-serqa grat waqt li z-zewg *drivers* tat-*trailer* kienu reqdin fil-kabina tat-*trailer* waqt il-lejl, izda xorta wahda dik l-Onorabbli Qorti sabet lill-*carrier* responsabbli. Anke f'dan il-kaz, is-serqa saret waqt li d-*driver* kien rieqed id-dar tieghu fil-hin tal-lejl.

In konnessjoni mal-pajjiz ta' l-Italja huwa maghruf li hemmhekk jigu rraportati hafna serqiet tant li fil-1981, il-Federazzjoni Internazzjonali tat-Trasportaturi fuq it-Triq (il-FIATA), harget "*notes of guidance*" biex jigu evitati serqiet f'dak il-pajjiz. Estratt minn dawn in-noti jghidu hekk:

"How can theft be prevented"

A. MEASURES TAKEN PRIOR TO THE START OF AN INTERNATIONAL ROAD TRANSPORT:

1. *An anti-theft device must be installed in the vehicle which must be used even during the shortest absence of the driver from his vehicle.*
2. *Engagement of Reliable drivers' who are handed envelopes containing papers likely to be of use to the police in the case of theft. These envelopes must always remain in the possession of the drivers.*
3. *NEVER TO DIVULGE the nature and value of consignments to strangers.*
4. *To arrange, whenever possible, a CONVOY of 2 to 3 vehicles or have a driving crew of 2 persons.*

B. DURING THE JOURNEY

1. *Never to give a LIFT to hitchhikers.*
2. *Whenever the driver notices something out of the ordinary he must stop at a bust place and, if necessary, ring the police.*

3. *Driver must stop AT GUARDED CAR PARKS, even for short breaks (or else rely on the brotherhood of vehicle drivers during the performance of customs and other formalities). In fact in one case, it was held that a road haulier whose vehicle had been left unguarded for two hours on the customs car park an Italian border station outside office hours and was stolen, was liable for the theft. The Court decided that the driver did not take adequate safety measures to prevent the theft of the vehicle and could not rely on Art. 17.2 of the CMR. That the vehicle was left locked up in a customs area was not sufficient evidence of careful securing.*

4. *Driver must never STOP IN A REMOTE AREA.*

5. *Driver should refrain from travelling alone at night, even on motorways.*

6. *NO DELIVERY of goods, if possible, after office hours or on Friday evenings”.*

Dawn il-*guidelines* fil-fehma ta' din il-Qorti ghandhom jigu addattati b'mod generali f'kull kaz ta' trasport ta' merkanzija fuq l-art. Din il-Qorti tqies dawn il-mizuri bhala necessarji biex trasportatur ikun jista' jipprova jehles mir-responsabilita'; dawn il-mizuri, fil-fehma tal-Qorti, ghandhom jitqiesu bhala *sine qua non* ghal kull vjagg, u n-nuqqas tat-trasportatur li jadopera xi wahda minn dawk il-mizuri, ghandha twassal ghall-konkluzzjoni li t-trasportatur ikun responsabbli ghal dak li jigri. Fi kliem iehor, din il-Qorti tqis dawk il-*guidelines* bhala li ghandhom jigu segwiti u adoperati f'kull kaz ta' trasport fuq l-art, u n-nuqqas li jigu adoperati dawk il-mizuri ta' sigurta', ikun necessarjament ifisser li l-att tat-terzi ma jkunx jista' jitqies bhala wiehed “*which literally ‘could not’ be avoided by the carrier*”.

F'dan il-kaz, jirrizulta li uhud minn dawn il-*guidelines* ma gewx segwiti. It-trailer ma kienx installat b'*anti-theft advice*, ma giex irrangat *convoy* ta' zewg jew tlett vetturi, jew, ta' l-anqas, jintbaghtu zewg sewwieqa mat-trailer, u fuq kollox, id-driver ma waqafx f'*car park* li jkollha

ghassiesa. Din l-ahhar kundizzjoni hija ferm importanti, speċjalment f'lok bhall-Italja, fejn is-serq minn *trailers* lahaq numru allarmanti u l-metodi saru aktar professjonali. Id-*driver in kwistjoni* ipparkja f'*petrol station*, u għalkemm kien hemm vetturi oħra ta' l-istess tip hemm ipparkjati, huwa naqas li josserva obbligu mixhuta fuq, u *cioe'*, li jieqaf biss fejn hemm sistema adegwata ta' sigurta'. Postijiet bhal dawn jezistu l-Italja, u *sta ghad-driver* li jimmanigja r-rotta tiegħu biex, meta jkun wassallu l-hin biex jieqaf, ikun vicin parkegg bhal dan. Mhix skuzza li mhix il-prattika li t-trasport minn Malta jsegwu il-mezzi ta' sigurta' indikata; jekk mhux qed isir hekk, qed tigi adoperata sistema hazina u meta t-trasport ikun se jinvolvi waqfien fl-Italja (li fil-kaz ta' Malta, dan jigri kwazi dejjem), iridu jittiehdu l-prekawzjonijiet kollha mehtiega.

Mhix skuzza lanqas li d-*driver* dam ma klerja id-dokumenti mad-dwana għax, allegatament, kellu xi dokumenti nieqsa. Jekk kien hekk, xorta wahda kellu obbligu li ma jhallix it-*trailer* f'post mhux mgħasses u mingħajr ma jiehu dawk il-mezzi ta' sigurta' dettati mic-cirkustanzi. Id-*driver* gie provdut bi *trailer* nieqes minn kull *security device*, u għal dan tahti s-socjeta' konvenuta li kellha tara li lill-min tissukkuntratta l-kuntratt li ingħatala mid-ditta *Almeo Ltd*, kienet f'sitwazzjoni li taqdi l-inkarigu lilha mogħti skond id-dettami tal-ligi.

Is-serq, skond l-awturi fil-materja, mhux oggettivament adegwat biex jevita li l-htija tintefa' fuq it-trasportatur, izda irid jirrizulta li ttiehdu l-mizuri kollha adegwati biex jigi evitat serq; f'dan il-kaz, dawn il-mizuri ma ttiehdux u, *kwindi*, s-socjeta' konvenuta hija responsabbli għan-nuqqasijiet (u dana peress kif ġia' gie osservat, li l-kuntrattur tat-trasport huwa responsabbli għall-atti jew ommissjonijiet tan-nies imqabba minnu).

Din il-Qorti mhux se tidhol fir-responsabilita' interna bejn is-socjeta' konvenuta, is-socjeta' *Malta Express Ltd*, u d-*driver Filippo Zisa*, peress li l-ahhar tnejn mhumiex parti f'din il-kawza, u din ir-relazzjoni interna mhux il-meritu ta' din il-kawza. Il-kuntratt ta' trasport ingħata lis-socjeta' konvenuta, u, salv il-forza magħgura u l-accident, din is-

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socjeta' hi responsabbli jekk ma twettaqx l-obbligu li assumiet. F'dan il-kaz, jirrizulta li s-socjeta' konvenuta, fil-fatt, ma wettqietx l-obbligu li assumiet, u darba li ma jirrizultax il-forza maggura jew l-accident, hi trid taghmel tajjeb ghal-kull nuqqas.

Rigward l-ammont ta' danni rikjest, id-ditta assikuratrici hallset l-ammont ta' telf ta' merkanzija soffert mid-ditta *Almeo Ltd.* Skond ir-regoli tas-CMR, *pero'*, it-trasportatur hu responsabbli biss ghal 8.33 SDR (*Special Drawing Right*) per gross kilo ta' merkanzija mitlufa. Jirrizulta li l-merkanzija mitlufa kellha piz ta' 18,980 kilos; dan ifisser li l-kumpens hu limitat ghal 158,103.4 SDRs. Kull SDR hija ekwivalenti ghal Lm0.50, u dan igib ghal-valur ta' Lm79,051.70. Din is-somma hi akbar minn dik reklamata, u dan jigri peress li l-valur tal-oggett fis-suq ikun anqas minn dak li johrog mill-applikazzjoni tal-artikolu 23 tal-Konvenzjoni. *Kwindi*, it-talba attrici tista' tintlaqa' minghajr tnaqqis.

Ghaldaqstant, ghar-ragunijiet premessi, tiddisponi mill-kawza billi tichad l-eccezzjonijiet tal-konvenut, u tilqa' t-talbiet attrici kif dedotti, u tikkundanna lis-socjeta' konvenuta thallas lis-socjeta' attrici s-somma ta' Lm25,306 (hamsa u ghoxrin elf, tlett mija u sitt liri Maltin) *in linea* ta' danni, bl-imghax legali mid-9 ta' Frar, 2001, sal-pagament effettiv.

L-ispejjes tal-kawza jithallsu kollha mis-socjeta' konvenuta.

< Sentenza Finali >

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