

Kopja Informali ta' Sentenza



MALTA

**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
TONIO MALLIA**

Seduta tat-30 ta' Marzu, 2006

Citazzjoni Numru. 694/2002

**Prokuratur Legali Madeleine Firman bhala mandatarju
specjali f'isem u ghan-nom tas-socjeta' estera
Ecclesiastical Insurance Office plc kif surrogata fid-
drittijiet tas-socjeta' estera Moda in Pelle (1975)
Limited**

vs

**(1) Concorde International Freight Forwarders
Limited**

(2) Malta Express Limited

Il-Qorti:

Rat ic-citazzjoni pprezentata mis-socjeta' estera li *in forza*
taghha, wara li ppremettiet illi:

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Moda in Pelle (1975) Limited xtrat sabiex timportat fl-Ingilterra konsenja zraben mill-Italja u inkarigat lil *Alpi United Kingdom*, rapprezentanti fl-Ingilterra tas-socjeta' taljana *Albini & Pitigliani S.p.A.*, sabiex isiru l-arrangamenti necessari ghall-garr ta' l-istess konsenja zraben mill-Italja ghall-Ingilterra;

L-imsemmija socjeta' estera *Albini & Pitigliani S.p.A.* ikkuntrattat lis-socjeta' konvenuta *Concorde International Freight Forwarders Limited* sabiex dina iggorr l-istess merkanzija lejn l-Ingilterra;

Minn naha taghha, is-socjeta' *Concorde International Freight Forwarders Limited* is-sub-kuntrattat dan l-inkarigu jew parti minnu lis-socjeta' konvenuta l-ohra *Malta Express Limited*;

Fis-sebgha u ghoxrin (27) ta' Meju, tas-sena elfejn u wiehed (2001) f'Genoa, l-Italja, meta dina l-istess merkanzija kienet fil-pussess tal-konvenuti jew minn minnhom *in corso* lejn l-Ingilterra, insterqet – liema serqa sehhet minhabba li konsenja thalliet waheda u/jew abbandunata fil-*ramp area* f'San Benigno, Genoa, u/jew minhabba nuqqasijiet ohra attribwibbli lill-konvenuti jew minn minnhom;

Minhabba l-imsemmija serqa is-socjeta' *Moda in Pelle (1975) Limited* soffriet id-danni, ghal liema danni l-konvenuti huma risponsabbli (flimkien jew mod iehor) u jridu jaghmlu tajjeb *stante* l-imsemmija nuqqasijiet taghhom;

L-attrici *nomine* hallset lis-socjeta' estera *Moda in Pelle (1975) Limited* d-danni li baghtit din ta' l-ahhar konsegwenza ta' l-imsemmi incident liema danni ammontaw ghal tlieta u hamsin elf, sitt mija sitta u ghoxrin liri inglizi (Pounds Sterling 53,626), llum ekwivalenti ghall-Lm34,375, liema hlas sar billi s-socjeta' *Moda in Pelle (1975) Limited* kienet assikurata ma' l-istess attrici *nomine*;

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L-attrici *nomine* hallset ghas-survey li sar *in konnessjoni* ma' l-imsemmija *survey* ammontanti ghal elfejn u mija u erba' *pounds* u tlieta u ghoxrin *pence* inglizi (*Pounds Sterling* 2,104.23);

L-attrici *nomine* illum tinsab surrogata fid-drittijiet ta' l-imsemmija *Moda in Pelle (1975) Limited* (Dok B);

Minkejja lis-socjetajiet konvenuti gew interpellati mill-attrici *nomine* permezz ta' ittra ufficcjali tat-tlieta u ghoxrin (23) ta' Mejju sena elfejn u tnejn (2002) sabiex jersqu ghall-likwidazzjoni u hlas ta' danni, izda dawn xorta baqghu inadempjenti (Dok A);

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

1. Tiddeciedi u tiddikkjara li s-socjetajiet konvenuti jew min minnhom huma responsabbli ghad-danni konsegwenza tas-serqa ta' l-imsemmija konsenja zraben li sehhet fis-sebgha u ghoxrin (27) ta' Mejju, tas-sena elfejn u wiehed (2001) f'Genoa, l-Italja.

2. Tillikwida l-imsemmija danni sofferti fl-ammont komplessiv ekwivalenti fid-data tas-sentenza ghal sterlina hamsa u hamsin elf, seba' mija disgha u ghoxrin *pounds* u tlieta u ghoxrin *pence* inglizi (*Sterling* 55,729.23) ekwivalenti ghal Lm35,799.60 jew ghal somma verjuri.

3. Tikkundanna s-socjetajiet konvenuti jew min minnhom jhallsu l-attrici *nomine* s-somma likwidata skond id-domanda precedenti.

Bl-ispejjez inkluzi dawk ta' l-ittra ufficcjali (Dok A) u bl-imghax mid-data ta' l-imsemmija ittra ufficcjali sad-data tal-hlas effettiv kontra l-konvenuti li huma ngunti minn issa ghas-subizzjoni.

Rat in-nota tal-eccezzjonijiet tas-socjeta' konvenuta *Concorde International Freight Forwarders Ltd* li *in forza* taghha eccepjet illi:

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1. It-talbiet attrici fil-konfront taghhom huma infondati fil-fatt u fid-dritt. L-attrici trid tipprezenta il-prokura taghha;
2. Il-kawza hija milquta minn dekadenza tat-terminu *ai termini* tal-Art 32 tar-Regoli ta' CMR.
3. Ma hemmx ness legali bejn l-atturi u l-eccipjenti *stante* li l-atturi qabbdur direttament sabiex jaghmel ix-xoghol direttament lil Albini e Pitigliani S.p.a..
4. Tna-nuqqas allegat mill-atturi l-eccipjenti ma jahtu bl-ebda mod u ghalhekk mhumiex responsabbli tad-danni talvolta sofferti mill-atturi; it-tragitt sar mill-konvenuti l-ohra u l-incident sar f'dan it-tragitt fuq liema operat l-eccipjenti ma kellhomx poter. L-eccipjenti ma kienu bl-ebda mod responsabbli ghad-danni li setghu gew sofferti, la kienu negligenti u ma kellhom ebda htija fl-akkadut;
5. L-eccipjenti ghamlu dak kollu fil-poter taghhom sabiex it-tragitt ikun wiehed minghajr incidenti; huma issubappaltaw lill-konvenuti l-ohra li dejjem wettqu xogholhom sewwa u l-eccipjenti ma kellhomx ghaliex jissuspettaw li dawn setghu iwettqu xogholhom hazin. Ghalhekk l-eccipjenti ma jistghux jinzammu responsabbli ta' xi forma ta' negligenza jew nuqqas iehor.
6. Skond ir-regoli ta' CMR li tahtu jaqa' dan it-trasport id-danni li jistghu jinkorru l-eccipjenti huma limitati skond l-istess regoli ta' CMR u b'hekk is-somma mitluba f'kull kaz hija eccessiva.
7. Is-*survey* mhux danni naxxenti direttament mis-serqa imsemmija fic-citazzjoni u b'hekk f'kull kaz l-ispejjez taghha ma jistghux jigu attribwiti lill-eccipjenti.

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

1. I-socjeta' konvenuta ma kella ebda responsabilita' jew tort fl-akkadut u illi l-istess socjeta' konvenuta *tramite* l-impjegat taghha hadet il-prekawzjonijiet kollha possibli fic-

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cirkostanzi tal-kaz, u qdiet l-inkarigu afdat lilha bid-dilingenza.

2. L-inkarigu tas-socjeta' konvenuta ttermina mal-konsenja tal-merkanzija fil-port ta' Genova lil Dragan Miculovic u minn dak il-hin 'il quddiem s-socjeta' konvenuta ma kellha ebda relazzjoni ohra mas-socjeta' konvenuta *Concorde International Freight Forwarders Limited*, u *kwindi* x'gara sussegwentement ma tista qatt tirisponi ghalih is-socjeta' *Malta Express Limited* izda *semmai* l-istess socjeta' konvenuta *Concorde* jew lil min l-istess socjeta' issubappaltat l-bqija tal-vjagg.

3. Salv eccezzjonijiet ohra.

Rat id-dikjarazzjonijiet guramentati tal-partijiet;

Rat il-verbal registrat fl-udjenza tad-29 ta' Ottubru, 2002, fejn is-socjeta' konvenuta *Concorde International Freight Forwarders Ltd* irtirat it-tieni eccezzjoni taghha, dik tad-dekadenza tal-azzjoni;

Semghet il-provi li ressqu l-partijiet;

Rat l-atti kollha u d-dokumenti ezebiti;

Semghet lid-difensuri tal-partijiet;

Rat in-nota tas-6 ta' April, 2005, li *in forza* taghha s-socjeta' attrici cediet l-atti tal-kawza fil-konfront tas-socjeta' konvenuta *Concorde International Freight Forwarders Ltd*;

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

Ikkunsidrat;

Illi jirrizulta mill-provi li ditta ingliza *Moda in Pelle (1975) Limited* ordnat konsenja zraben mill-Italja, u inkarigat lil *Alpi United Kingdom*, l-agenti fl-Ingilterra tas-socjeta' taljana *Albini e Pitigliani S.p.A.*, sabiex taghmel l-arrangamenti mehtiega ghat-trasport tal-merkanzija minn

Prato, gewwa l-Italja, ghall-Ingilterra. Il-vjagg kellu jsir bit-trailer minn Prato ghall-port ta' Genova, u minn hemm il-merkanzija kellha titghabba ghall-Ingilterra. Is-socjeta' taljana *Albini & Pitigliani S.p.A.* inkarigat lid-ditta konvenuta, *Concorde International Freight Forwarders Ltd*, bhala *sub-contractor*, sabiex dina iggorr l-istess merkanzija lejn l-Ingilterra. Ghal parti tal-vjagg fuq l-art minn Prato sal-port ta' Genova, is-socjeta' *Concorde International*, da parti taghha, issubappaltat is-sub-kuntratt lis-socjeta' konvenuta l-ohra, *Malta Express Limited*. Din tal-ahhar inkarigat lid-driver taghha, certu Filippo Zisa, sabiex jiehu pussess tat-trailer u jwassal il-container minn Prato sal-port ta' Genova.

Dan id-driver, fis-26 ta' Mejju, 2001, ha pussess tat-truck numru PHZ100 u, wara li rabat mieghu *semi-trailer* proprjeta' tas-socjeta' konvenuta, *Concorde International*, telaq minn Prato dritt lejn Genova. Il-container kien wiehed *groupage* u kien jikkontjeni diversi merkanzija destinata ghal diversi importaturi gewwa l-Ingilterra. Ghall-habta tal-5.30am tal-ghada, dan Filippo Zisa wasal fil-port ta' Genova, u peress li minn hemm it-trasport tal-container ghall-Ingilterra kien se jsir minn xi hadd iehor, ipparkja s-*semi trailer* fuq ir-rampa maghrufa bhala ta' San Benigno. Hemmhekk, hu ta' c-cwieviet tat-trailer u d-dokumenti relattivi ghat-trasport lill-certu Dragan Miculovic li kellu jghadihom lill-kollega tieghu, certu Noel Drew, li ma kienx ghadu wasal fil-port. Dawn it-tnejn kienu impjegati ta' certu Darren Formosa, li kellu kumpanija tat-trasport li kienet giet inkarigata mid-ditta konvenuta *Concorde International* igorr il-merkanzija mill-port ta' Genova ghall-Ingilterra. Dan il-*hand over* kien ilu hekk jsir almenu ghal sentejn kull meta kien ikun hemm lok ta' trasport ta' merkanzija mill-port ta' Genova.

Id-driver halla s-*semi-trailer* fuq ir-rampa tal-port ghax dak kien l-uniku post vojt u ipparkjah wara diversi *semi-trailers* ohra li kienu jinsabu wkoll fil-port. Is-*semi-trailer* ma kellux *anti-theft device*.

Wara li ghadda l-konsenja tas-*semi-trailer* lil Miculovic, Filippo Zisa telaq bit-truck lejn id-dar, izda ghall-habta tal-

12.30pm, ircieva telefonata minn Noel Drew li qallu li ma setax isib is-*semi-trailer in kwistjoni*. Filippo Zisa spjega fejn kien halla s-*semi-trailer* u anke qallu li kien ghadha c-cwieviet u d-dokumenti lil Miculovic.

Ghall-habta tas-2.00pm, ircieva telefonata minghand s-*shipping agent*, li nfirmah li kienu sabu s-*semi-trailer f'Corso Perrone*, u hu gie mitlub imur lura Genova biex jivverifika l-kontenut tas-*semi-trailer* peress li kien instab miftuh. Id-*driver* mar lura f'Genova, u wara li l-lokalizza t-*trailer*, sab li dan kien vojt u li l-kontenut tieghu kien misruq.

Jirrizulta wkoll li r-rampa ta' San Benigno, fejn Zisa halla t-*trailer*, mhiex *security area*. Mhiex mdawra b'xi *fence* jew *barrier*, izda hi biss spazju miftuh accessibbli ghall-kulhadd. *Inoltre*, l-*area* twassal ghal diversi toroq, u giet diskritta bhala "*a rather run down area*" u mhux frekwentata b'*patrols* tal-Pulizija jew mghamra b'*security personnel*. Dan Dragon Miculovic li lilu Zisa ghadha c-cwieviet u d-dokumenti relattivi ghas-*semi-trailer* tieghu, mhux xi ufficcjat inkarigat, imma *driver* iehor li dak il-hin inserta wkoll wassal *trailer* iehor tad-ditta *Concorde* fil-port ta' Genova. Kien Tonio Bone, ufficcjat tad-ditta *Concorde International* li ta' istruzzjonijiet lil Zisa biex iwassal is-*semi-trailer* minn Prato sal-port ta' Genova.

Il-valur tal-merkanzija misruqa kienet ta' Lit49,188,690, *pero'*, il-*claim* li saret mill-kumpanija importatrici kienet ghall-valur tas-*selling price* ta' l-istess merkanzija, li giet konfermata li kienet ta' Lstg 53,725. Din l-ahhar somma thallset mill-kumpanija assikuratrici *dietro surroga*. Thallset wkoll mid-ditta assikuratrici s-*survey fees* ammontanti ghal Lstg2,104.23.

Jidher mill-assjem tal-provi li t-trasport *in kwistjoni* huwa regolat bir-regolamenti tas-CMR, u dan mhux biss ghax hu kkonfermat minn ufficcjali tas-socjeta' attrici, izda jirrizulta wkoll mad-dokument ta' trasport li fl-intestatura tieghu jindika li hu soggett ghar-regolamenti tas-CMR.

Fil-kuntest ta' l-involvement 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 or servants and of any other persons of whose services he 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-Onorabli Qorti ta' l-Appell (Sede Inferjuri) fit-28 ta' April, 1998. F'dan il-kaz id-*driver in kwistjoni* kien gie mqabbad mis-socjeta' konvenuta biex isuq it-*trailer in kwistjoni* u jghabbi l-merkanzija ta' diversi klijenti taghha, u *kwindi* kienet persuna imqabbad mis-socjeta' konvenuta biex tghinha tesegwixxi d-diversi kuntratti li accettat; ghan-nuqqasijiet taghha, *kwindi*, twiegeb is-socjeta' konvenuta. *A tenur* tal-principju enuncjat, is-socjeta' konvenuta 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.

Il-bazi tar-responsabilita' tat-trasportatur tinsab fl-artikolu 17(1) tar-regolamenti ta' CMR li jghid:

“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 good and the time of delivery”.

Gie ppruvat illi d-ditta estera *Moda in Pelle (1975) Ltd* ordnat konsenja zraben mill-Italja u dawn gew konsenjati u mghebbija fuq it-*trailer* li sussegwentament insteraq. Id-ditti konvenuti qed jecepixxu li mhumiex responsabbli ghal dak li gara peress li qdew dmirijethom bl-akbar diligenza u l-merkanzija ntilfet b'forza magguri jew accident. Din id-

difiza issib l-applikazzjoni taghha fl-artikolu 17 (2) fejn it-trasportatur hu ezonorat mir-responsabbilita' 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 x-xhieda tad-driver bhala 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' responsabbilita' enuncjata fis-CMR mhix eskluza billi dak li ikun agixxa diligentament, 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) jghid li *"the courts have been reluctant to admit as a defence 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 not 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 unforceseable 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-Onorabli Qorti tal-Kummerc fis-16 ta' Jannar, 1984, fejn intqal li *"mhux bizzejjed li c-cirkostanzi kienu straordinarji imma li jridu jkunu tant straordinarji li jirrenduha impossibbli 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-Onorabli Qorti sabet lill-*carrier* responsabbli.

In konnessjoni mal-pajjiz ta' l-Italja huwa maghruf li hemmhekk jigi 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 busy 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 at 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. *Driver must be alert in restaurants, coffee houses etc.*

7. *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-responsabbilita'; 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 dak 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, specjalment f'l-ok bhall-Italja, fejn is-serq minn *trailers* lahaq numru allarmanti u l-metodi saru aktar professjonali.

Id-*driver in kwistjoni* pparkja l-vettura f'rampa pubblika li fiha ghandu access kulhadd. Ghalkemm kien hemm vetturi ohra ta' l-istess tip hemm ipparkjati, huwa naqas li josserva obbligu mixhut fuqu, u *cioe'*, li ma jhallix il-vettura f'post mhux kustodit. Hu veru li l-istruzzjonijiet moghtija lid-*driver* kienu intezi li hu jwassal is-*semi-trailer* sal-port ta' Genova, u xejn izjed, *pero'*, bhala depozitarju tal-merkanzija, huwa jibqa' responsabbli ghall-istess sakemm effettivament jaghmel konsenja tas-*semi-trailer* lil minn kien inkarigat jiehu hsieb it-tieni parti tal-vjagg. F'dan il-kaz, meta d-*driver* wasal fil-port ta' Genova, huwa sab li l-ufficcjal inkarigat ghat-tieni *leg* tal-vjagg, Noel Drew, ma kienx ghadu wasal fuq il-post, u allura, meta nduna li kien hemm *semi-trailer* iehor tad-ditta *Concorde International*, sab lill-awtista ta' dak is-*semi trailer*, u kkonsenjaluh c-cwieviet u d-dokumenti relattivi, halli dan jghaddihom lil Drew meta jasal. Din, *pero'*, ma tistax titqies bhala

konsenja ta' merkanzija, ghax ma saretx lill-ufficcjali tal-kumpanija ta' Darren Formosa, li kellu jiehu hsieb il-vjagg mill-port ta' Genova. Il-Qorti jidhrilha li l-imsemmi *driver* ma ippruvax li kien s-Sur Bone, tas-socjeta' *Concorde* li qallu biex ihalli t-*trailer* f'idejn Sur Miculovic, u fil-fehma ta' din il-Qorti, din il-konsenja lilu saret fuq inizjattiva personali tad-*driver*.

Id-*driver*, Filippo Zisa, hass li ma kellux ghal fejn joqghod jistenna lil Noel Drew meta kien hemm *driver* iehor qed jistennih b'*semi-trailer* simili; allura, minghajr ma ha ebda prekawzjoni biex jaghmel is-*semi-trailer secure*, ghadda l-karti lid-*driver* l-iehor u telaq 'l hemm. Dan id-*driver* 'l iehor, *pero*', ma kienx xi ufficcjat tad-ditta ta' Darren Formosa jew tad-ditta *Concorde International*, u lanqas ma kienet persuna inkarigata tiehu konsenja tal-merkanzija. Jekk gieli kien jigri hekk, dan kien isehh b'arrangement bejn id-*drivers*, *pero*', xorta whda *driver* li jkollu pussess ta' *trailer* ma jehlisx mir-responsabbilita' qabel ma jikkonsenja l-merkanzija lill-ufficcjal inkarigat tad-ditta trasportatrici. Id-*driver* Filippo Zisa ma ha ebda passi biex jinnewtralizza s-*semi-trailer*, u jidher li kull m'ghamel kien li sakkar il-bibien tas-*semi-trailer* b'katnazz, li zgur kellu jkun jaf li ma kienetx bizzzejjed biex timpedixxi s-serq tat-*trailer*. Bhala fatt, id-*driver* abbanduna wahdu s-*semi-trailer* f'post mhux *secure* u accessibbli ghall-pubbliku. Jekk hu kien qed jafda li Miculovic jaghti daqqa t'ghajn lis-*semi-trailer* tieghu wkoll, dan kien riskju li hu assumu fuqu, u din il-*"mizura"* (jekk tista' issejhilha hekk) zgur li ma kellhiex titqies bhala bizzzejjed biex tissostitwixxi l-mizuri li kellhom jittiehdu. L-awtorita' marittima tal-port ta' Genova qiesu l-*area* fejn Zisa halla t-*trailer* bhala *area "pubblica, non guardianata e in regime nazionale e non estero in quanto antecedente la cinta dogonale del Porto di Genova"*. 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 *Malta Express Ltd*, ghandha titqies responsabbli ghan-nuqqasijiet (u dana peress li, kif gia gie asservat, il-kuntrattur tat-trasport

huwa responsabbli ghall-atti jew ommissjonijiet tan-nies inqabbda minnu).

Ghar-rigward tad-ditta *Concorde International Frieght Forwarders Ltd*, din kienet il-kumpanija inkarigata tiehu hsieb it-trasport shih minn Prato, gewwa l-Italja, sal-Ingilterra, u hija, ghalhekk il-kumpanija primarjament responsabbli ghall-esekuzzjoni tal-kuntratt. Ir-responsabbilita' primarja, attwalment, hija tad-ditta estera *Albini & Pitigliani S.p.a.*, *pero'*, subordinatament, is-socjeta' *Concorde International* ghandha terfa' l-piz tar-responsabbilita' bhala l-kumpanija attwalment inkarigata biex twettaq it-trasport. Jidher li ghalkemm din is-socjeta' inkarigat lid-ditta *Malta Express* twettaq parti mill-vjagg, ma hadetx passi biex tassikura t-trailer meta dan jingieb fil-port ta' Genova u , ghalhekk, ghandha hi wkoll tbatu parti mir-responsabilita', u dana fil-kuntest tar-relazzjoni interna ta' bejn il-konvenuti. Fil-kuntest tar-responsabbilita' tal-konvenuti fil-konfront tas-socjeta' attrici, din ir-responsabilita' ghandha titqies wahda solidali, kif jikkontempla l-artikolu 115 tal-Kodici tal-Kummerc.

Internament, *pero'*, ir-responsabbilita' ta' *Malta Express Ltd*, hija aktar gravi, ghax din, *tramite* d-driver taghha, Filippo Zisa, naqset serjament fl-obbligu taghha li tikkustodixxi l-merkanzija fdata f'idejha bhala *bonus paterfamilias*. Ghalhekk, tqies li s-socjeta' *Concorde International Freight Forwarders Ltd*, ghandha tinzamm responsabbli ghat-telf fi grad ta' kwart (1/4), u s-socjeta' *Malta Express Ltd* fi grad ta' tlett-kwanti (3/4).

Rigward l-ammont ta' danni, qed jigi invokat mill-konvenuti li *limitation of liability clause* inkorporata fir-regoli tas-CMR, partikolarment l-artikoli 17 sa 29 tar-*Rules*. Din il-limitazzjoni ghall-hlas ta' danni giet meqjusa operattiva minn din il-Qorti fil-kawza "Thos. Smith Insurance Agency Ltd vs M.D. Trucking Ltd et'", deciza fit-18 ta' Frar, 2004. Jinghad, *pero'*, fl-artikolu 29 tar-*Rules*, li l-kuntrattur ma jistax jinvoka dik il-*limitation clause* f'kaz ta' "*wilful misconduct*" (fit-test Franciz, f'kaz li n-nuqqas tkun rizultat ta' "*dol ou d'une faute qui lui est imputable et qui, d'apres la loi de la jurisdiction saise, est consideree comme*

equivalente au dol). Fl-Ordinament Guridiku Malti ma hemmx in-nozjoni ta' "wilful misconduct", pero', jezistu l-kuncetti ta' dolus u ta' gross negligence li hija ekwiparata ghad-dolus, (ara "Zammit vs Petrococchino", deciza mill-Onorabbli Qorti tal-Appell fil-25 ta' Frar, 1952). Fil-fehma tal-Qorti, l-agir ta' Filippo Zisa hu ekwivalenti ghal-kolpa gravi, meta xjentement "abbanduna" is-semi-trailer f'post miftuh ghall-pubbliku, li mhiex gwardjanata u minghajr ma nnewtralizza il-vejikolu kontra serq.

Din il-Qorti taghmel referenza ghall-kawza "Jones vs Bencher", deciza fl-Ingilterra fl-1986, u kwotata estensivament minn Malcolm A. Clarke, fil-ktieb tieghu, aktar qabel kwotat. B'referenza ghal dan il-kaz jinghad hekk:

"In Jones v. Bencher Popplewell J. held that a driver, who, in the hope of being able to spend the night at home, exceeded the length of time permitted for continuous driving and fell asleep at the wheel, committed wilful misconduct. He accepted the argument of counsel for the defendant carrier that the driver "must have appreciated that, by reason of his conduct, he increased the risk either to himself, or his load, or other drivers"; that "it is not enough simply to say that he acted contrary to the regulations even though they must be shown to have adverted to the increased risk". On the facts of the case, however, the judge concluded that "the driver was well aware of the regulations. ... He chose to ignore them and did so deliberately. He knew that, by ignoring them, he exposed the load that he was carrying, the vehicle he was driving, himself, and other road users, to a greater risk than if he had complied with the regulations. ... In my judgement he appreciated that he was acting wrongfully, persisted in so acting and was wholly indifferent to the consequences".

Din il-Qorti taqbel ma dan it-taghlim, u tqies li l-awtista *in kwistjoni* jaf x'inhuma l-obbligi tieghu, u kien jaf li jekk jinjorhom kien qed jesponi l-merkanzija "to a greater risk than if he had complied with the regulations". Kwindi, peress li fil-fehma taghha l-agir tas-sewwieq jammonta

ghall-kolpa gravi, li hi ekwivalenti ghad-dolo, il-limitazzjoni tad-danni kontemplata fis-CMR, ma ssibx applikazzjoni f'dan il-kaz.

Dwar l-ammont tad-danni, is-socjeta' importatrici *Moda in Pelle (1975) Ltd*, giet kompensata fil-valur tas-selling price tal-merkanzija, u *cioe'*, Lstg.53,725. Il-Qorti, *pero'*, ma tqies li l-ammont ta' danni ghandu jkun ekwivalenti ghas-selling price tal-merkanzija, u dan peress li l-iskop tad-danni huwa biex tpoggi lid-danneggjant fis-sitwazzjoni li jkun kieku ma garrabx it-telf. Kieku ma sehhiex is-serqa, dik id-ditta kien ikollha konsenja ta' zraben li setghet tbiegh bi qliegh ghaliha; flok iz-zraben, issa se jkollha l-valur taghhom, li s-socjeta' tista' tinvesti wkoll bi qliegh ghaliha. *Kwindi*, dak li ghandu jinghata bhala kumpens huwa l-valur imhallas tal-merkanzija, *cioe'*, Lit49,188,690 (ara affidavit ta' Stephen Buck, Managing Director tas-socjeta' *Moda in Pelle (1975) Ltd*), ekwivalenti ghal Lm10,285.57 f'Settembru, 2001.

Is-socjeta' konvenuta tecepixxi wkoll illi ebda *survey fees* ma huma dovuti. Fir-rigward, il-Qorti taghmel referenza ghal-gurisprudenza lokali dwar il-hlas tas-*survey fees* f'kaz ta' hsrat jew nuqqasijiet f'merkanzija trasportata bil-bahar. Il-gurisprudenza hi fis-sens li s-*survey fees* huma rekuperabbli – ara "Micallef Stafrace noe vs Abela noe", deciza mill-Onorabbli Qorti tal-Appell fil-15 ta' Mejju, 1998, "Atlas Insurance Agency Ltd vs Sea Malta Co. Ltd et", deciza minn din il-Qorti fit-2 ta' Ottubru, 2002, u "Micallef Stafrace noe vs Abela noe", deciza wkoll minn din il-Qorti fit-18 ta' Frar, 2004. Dan il-principju ghandu japplika anke ghall-kaz ta' trasport fuq l-art. Dawn is-*survey fees* jammontaw ghal Lstg2,104.23, ekwivalenti ghal Lm1,424.60.

L-ewwel eccezzjoni tas-socjeta' konvenuta *Concorde International Freight Forwarding Ltd* giet determinata blesebizzjoni *da parti* tal-attrici ta' prokura mahruga favur taghha u datata 30 ta' Mejju, 2002.

Ghaldaqstant, ghar-ragunijiet premissi, tiddisponi mill-kawza billi tilqa' t-talbiet attrici billi tastjeni milli tiehu

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konjizzjoni tal-kawza fil-konfront tas-socjeta' *Concorde International Freight Forwarders Ltd*, stante cessjoni, u tiddikjara s-socjeta' konvenuta *Malta Express Ltd* fi grad ta' tlett-kwarti (3/4) responsabbli ghad-danni konsegwenza tas-serqa ta' konsenja zraben li sehhet fis-27 ta' Mejju, 2001, f'Genova, l-Italja, u tikkundanna lis-socjeta' *Malta Express Ltd* jhallas lis-socjeta' attrici s-somma komplessiva ta' Lm8,782.63 (tmien t'elef, sebgha mija u tnejn u tmenin liri Maltin u tlieta u sittin centezmu) *in linea* ta' danni, bl-imghax legali ta' 8% kif mitlub, u *cioe'*, mit-23 ta' Mejju, 2002, data tal-lttra Ufficcjali interpellatorja, sal-pagament effettiv.

L-ispejjez tal-kawza, hlief ghal dawk relattati mas-socjeta' konvenuta *Concorde International Freight Forwarders Ltd*, ghandhom, fic-cirkustanzi, jithallsu mis-socjeta' konvenuta *Malta Express Ltd*.

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