Fil-Prim Awla tal-Qorti Civili

Onorevoli Imhallef Albert J. Magri B.A., LL.D.

Seduta ta' nhar il-Hamis 11 ta' Ottubru 2001

Citazzjoni numru 189/98 AJM

Kawza numru 31

Amabile u Joyce mizzewgin Borg

Vs

British American Insurance Company Limited

Il-Qorti,

Rat ic-citazzjoni presentata fit-28 ta' Jannar 1998 li permezz taghha l-atturi wara li ppremettew illi l-attur kien ghamel polza ta' assikurazzjoni (health & life) mas-socjeta' konvenuta; illi a termini ta' din l-assikurazzjoni, l-attur kellu jinghata kumpens jekk "he becomes totally unable by reason of sickness or accident to follow his or her own occupation or any other occupation"; illi fin-1996, waqt li kien qed jahdem fuq il-mina l-gdida fir-Regional Road, l-attur beda jhoss tingiz go dahru u mar ghal visita ghand Dr. Anthony Galea Debono li dahlu l-Isptar San Luqa ghall-testijiet; illi minn meta dahal l-Isptar l-attur ma hadimx izjed ghax ma setghax u fil-fatt gie certifikat minn Dr. Galea Debono

bhala “unfit for all types of work”; illi l-attur deher ukoll quddiem il-Bord Mediku tal-Gvern u gie dikjarat invalidu, tant li qed jircevi l-beneficcju tal-invalidita’ minghand il-Gvern; illi meta l-attur ghamel claim mal-kumpanija konvenuta din ma accettatx li thallas il-kumpens ghax, skond it-tabib imqabbad minnha, l-attur “has no disability as a result of the accident in question and is fit for normal duties”; illi l-attur ma jaqbilx ma din il-konkluzzjoni, anke ghaliex il-polza ta’ assikurazzjoni ma takkordax kumpens biss f’kaz ta’ incident, izda anke jekk, minhabba mard, l-assikurat ma jkunx jista’ jaghmel xoghol iehor; talbu li din il-Qorti:-

1. tiddikjara li l-attur huwa invalidat milli jaghmel tip ta’ xoghol, u dana fil-kuntest tal-‘protection plan’ tal-polza ta’ assikurazzjoni mad-ditta konvenuta, u
2. konsegwentement ghaliex m’ghandhiex is-socjeta’ konvenuta tigi kundannat thallas lill-atturi s-somma ta’ LM8,000, l-ammont ta’ l-insurance stabbilit fil-polza.

Bl-ispejjes u bl-imghaxijiet legali mid-data tal-claim ta’ l-attur, kontra l-konvenut li huwa ngunt ghas-subizzjoni.

Rat id-dikjarazzjoni, l-lista tax-xiehda u d-dokumenti ezebiti mill-attur.

Rat in-nota tas-socjeta’ konvenuta presentat fl-20 ta’ Ottubru 1998 li permezz taghha eccepiet:-

1. Illi d-domandi attrici huma nfondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjes stante li ma kienet tezisti ebda polza ta’ assikurazzjoni fil-mument tal-allegat incident. Meta l-attur mela

l-proposal form huwa halla barra, anzi ta' informazzjoni hazina ghad-domanda numru tlieta tal-proposal form u ghalhekk ma jezisti ebda kuntratt ta' assikurazzjoni validu bejn il-partijiet, billi l-kunsens tas-socjeta' eccipjenti kien gie karbit.

2. Illi fil-fatt, skond ma jirrizulta mic-certifikat mediku ta' Mr Frederick Zammit Maempel M.D. ma jezisti ebda ostakolu ghall-attur li jirritorna lura ghal xogholu billi ma huwa qieghed jbati minn ebda disabilita' ta' xejn.

Rat id-dikjarazzjoni w l-lista tax-xiehda tal-konvenut.

Rat il-verbal tal-udjenza tad-19 ta' Frar 1999 quddiem din il-Qorti diversament preseduta meta l-kawza giet mibghuta quddiem din il-Qorti ghas-seduta tat-12 ta' Marzu 1999 sabiex tigi trattata u deciza.

Rat id-digriet taghha tas-7 ta' April 2000 meta gie mahtur bhala espert mediku Mr Anthony Bernard biex jirrelata dwar l-kondizzjoni tal-attur. Rat ir-rapport tal-istess mahluf fl'udjenza tat-30 ta' Ottubru 2000.

Hadet konjizzjoni tal-provi prodotti u tas-sottomissjonijiet tad-difensuri tal-kontendenti.

Ittrattat il-kawza.

Ikkunsidrat:

Fid-9 ta' Frar 1996 l-attur talab u ottjena assikurazzjoni fuq sahtu maghrufa bhala Total Protection Policy minn ghand is-socjeta' konvenuta ghal perjodu ta' hmistax il-sena u bi beneficcju, f'kaz li tavvera xi wahda

mill-kondizzjonijiet imsemmija fil-polza ta' LM8,000 pagabbli darba biss.

Fost il-kazi li kienu jintitolaw lill-attur ghall-beneficcju taht il-polza l-paragrafu (c) tal-parti intitolata "Benefits" tghid hekk:-

"(c) Permanent and Total Disability

*If, before the Expiry Date and while this policy is in full force, the insured becomes totally unable by reason of sickness or accident to follow his or her own occupation or any other occupation and in the opinion of the Company is likely to remain so permanently, the Company will pay the Amount of Insurance (*cioe LM8,000*) shown in the Schedule and the policy will be terminated.*

Any such disability must have lasted for twelve months before a claim can be paid and must be substantiated by evidence acceptable to the company. This may include medical examinations."

Il-polza in kwistjoni fil-paragrafu (e) tikkontempla ukoll "Exclusions" fejn il-beneficcju ma jigiex mhallas f'kaz li javveraw ruhhom certa fatti. Dawn pero ma jikkoncernawx id-dibattitu quddiem din il-Qorti u ghalhekk mhux relevanti.

L-attur kien impjegat bhala 'Bull Dozer Driver' mas-socjeta' Carmelo Vella Ltd komunement maghrufa taz-Ziza. Fl-1996, meta din is-socjeta' kienet involuta fil-kostruzzjoni tat-tunnel ta' tal-Qroqq, l-attur kien qed jopera gaffa maghrufa bhala JCB u f'hin minnhom, meta waqghet jew iccaqlaq cangun kbir l-istess gaffa iccaqalqet f'daqqa u l-attur hass ugieh fis-sinsla ta' dahru. Hu baqa' jahdem u jissoproti l-ugieh izda wara certu zmien ma setghax jkompli u f'Dicembru tal-istess sena mar ghal vizta l-Isptar San Luqa fejn Dr. Anthony Galea Debono, in-neurologu

responsabbli, ordna li jinzamm l-Isptar ghat-testijiet necessarji u kuri mehtiega. Skond id-'Discharge Summary' li hemm fil-file ta' St. Luke's u ezebit minn Dr. Maria Sciberras, l-attur rega' hareg mill-isptar xi gimghatejn wara li gie ammess.

Meta l-attur gie rilaxxat mill-Isptar fit-18 ta' Dicembru 1996 Dr. Galea Debono ipprepara certifikat fejn gie dikjarat hekk:-

"Mr. Amabile Borg of 146, St. Rocco Str., B'Kara, I.D. No. 745949(M) has chronic back pain caused bu osteoarthritic changes in his dorsal spine.
He has been fully investigated with myelography and a bone scan.
In view of the severity of symptoms he is unfit for all types of work."

L-attur applika lid-dipartiment tas-Sigurta Socjali sabiex jigi Boarded Out u t-talba tieghu giet accettat u beda jircevi pensjoni ta' l-Invalidita' b'effett mill-15 ta' Frar 1997. Fis-sena 2000 id-dipartiment koncernat rega talab lill-attur jissottometti ruhu ghall-ezami mediku u fit-12 ta' Jannar ta' dik is-sena l-attur gie infurmat mid-Direttur tad-Dipartiment li t-tobba tad-dipartiment "*ghandhom tal-fehma li inti ghadek inkapaci ghax-xoghol xieraq."* Ghalhekk filwaqt li d-dritt tieghu ghall-pensjoni tal-invalidita' rega gie kkonfermat, l-attur gie mitlub jerga jissottometti ghall-ezami iehor fi zmien tlett snin.

In vista ta' dan l-attur ipprezenta "claim" lill-assikurazzjoni konvenuta taht il-polza fuq imsemmija. Din, skond ma hi intitolata li taghmel in virtu tal-polza, talbet lill-attur jissottometti ruhu ghall-ezami mediku ghand Mr. Frederick Zammit Maempel, il-konsulent tas-socjeta' konvenuta. Fir-referenza li saritlu minn Ramon Mizzi, Claims & Underwriting Manager tal-British-American Insurance Co. Ltd, Mr.

Zammit Maempel fl-ewwel lok gie infurmat li l-attur "*is allegedly suffering from 'chronic back pain caused by osteoarthritic changes in his dorsal spine.'*" U talbu lill-istess konsult biex jezaminah "*to determine whether he is totally unable to follow his occupation, or any other occupation, and whether he is likely to remain so permanently.*"

L-attur gie ezaminat darbtejn minn Mr Zammit Maempel. L-ewwel darba kien f'Mejju 1997 u fir-rapport tieghu tad-9 ta' Gunju ta' l-istess sena wara li elenka l-ezamijiet li kienu saru f'St. Lukes, u dak li huwa rriskontra, ikkonkluda hekk:- *"The nature of the back complaint and its distribution and radiation pathway are unusual. The clinical examination reveals no evidence of anatomical deficit. Significantly, there are findings suggestive of psychogenic overlay. The extensive and exhaustive radiological investigation has revealed no anatomical basis for the symptoms.* ***In my opinion*** *(enfazi tal-Qorti), Mr Borg's complaint is of a subjective nature. Unless the impending MRI reveals otherwise, Mr Borg is fit to return to work forthwith."*

L-attur rega' gie ezaminat minn Mr Zammit Maempel f'Novembru 1997 fuq talba tas-socjeta' konvenuta u wara li dan kien gie ezaminat taht l-MRI. Fir-rapport tieghu tal-25 ta' Novembru Mr Zammit Maempel rega' wasal ghall-istess konkluzzjoni tar-rapport precedenti billi qal "*The clinical examination undertaken for the purposes of this report reveals no objective, anatomical evidence of deficit or disability and findings are totally consistent with a* ***subjective aetiology.*** *X Rays, CT scans and MRI are completely normal. One can safely conclude that there is no anatomical basis for Mr Borg's alleged symptoms."* Pero' fl-ahhar zied hekk: *"He has no disability as a result of the accident in question and is fit for normal duties."*

Is-socjeta' konvenuta adotat l-ahhar parti tat-tieni rapport ta' Mr Zammit Maempel fejn jinghad li l-attur ma sofra ebda dizabilita' bhala rizultat tal-incident in kwistjoni u li huwa kapaci jattendi ghax-xoghol b'mod normali. Kien ghalhekk li fl-1 ta' Dicembru 1997 it-talba ta' l-attur ghal kumpens taht il-polza giet michuda.

L-attur rinfaccjat b'din ic-cahda tal-claim tieghu u bir-rapporti konfliggenti ta' esperti medici, istitwixxa dawn l-proceduri fejn talab li s-socjeta' konvenuta tigi ordnata tirrikonoxxi t-talba tieghu ghal hlas skond il-polza mahruga minnha.

Fil-mori tal-proceduri l-Qorti hatret lil Mr Anthony Bernard bhala espert mediku sabiex jirrelata dwar il-kondizzjoni ta' l-attur. Fir-rapport tieghu tat-30 ta' Ottubru 2000 l-espert tal-Qorti ikkonstata illi "*Mr Borg stood with a slight stoop and moved slowly and deliberately. The range of movement in the spine was somewhat limited in all directions and accompanied by pain. Pain was also provoked by whole body rotation. He was able to stand on tiptoes and to heel walk.*
Straight leg raising was limited to 45 degrees on both sides when supine and eighty degrees when sitting up. There was no waisting in any of the lower limb muscle groups. There is an appendectomy and midline laparotomy scar on the abdomen. There was tenderness over the lumbo-sacral junction on both sides, extending up to the mid-thoracic spine in the mid line. There was no neurological deficit in the upper and lower limbs." U in konkluzzjoni qal hekk: *"Mr Borg suffers from low back pain associated with mid degenerative chnages in the spine. There appears to be no casual relationship between the injury that occurred in November 1996 and the pain. Although temporary exacerbation of*

symptoms may have occurred following the incident at work there are no permanent changes that may be attributable to it."

Minn dan ir-rapport tal-espert tal-Qorti kif ukoll dawk ta' Mr Zammit Maempel jidher car li ghalkemm l-attur qed isofri minn xi forma ta' disabilita' li timmanifesta ruhha f'ugieh kbir ma movimenti tal-gisem, din il-kondizzjoni mhux necessarjament marbuta jew rizultat tal-incident ta' Novembru 1996. B'dana kollu huwa stabbilit li l-attur gie dikjarat mhux kapaci ghax-xoghol mid-dipartiment tas-Sikurta Socjali u in-neurologu Dr. Anthony Galea Debono ukoll iddikjarah mhux tajjeb ghax-xoghol. Infatti ghalkemm Dr. Galea Debono fir-rapport tieghu tas-6 ta' Jannar 2000 jsemmi li l-ugieh li jbati bieh l-attur beda wara l-imsemmi incident, bl-ebda mod ma jorbot dawn iz-zewg fatti bhala kawza u effett, tant hu hekk li jghid "no neurosurgical remediable cause was found."

Issa huwa minnu li l-attur fil-premessi tac-citazzjoni jorbot id-disabilita' tieghu ma l-incident ta' Novembru 1996 pero' jigi osservat li l-attur ma huwiex espert mediku u kull ma jista' jghid, kif qal Mr Bernard fir-rapport presentat lill-Qorti li seta kien hemm "exacerbation of symptoms may have occurred following the incident at work ..." Ghalhekk din il-Qorti mhux tenuta tichad it-talba attrici semplicement ghax ma hemm ebda relazzjoni bejn l-incident u d-dizabilita'. Dan qed jinghad partikolarment in vista ta' dak li hemm fil-paragrafu (c) tal-polza in kwistjoni kif gja riportat fuq. In effetti l-hlas taht il-polza lill-assikurat ma jsirx biss jekk l-assikurat jigi inkapacitat permanentement minhabba xi incident izda l-polza hija intiza sabiex tkopri ukoll il-possibilita' li l-assikurat jsir permanentement u totalment inkapaci li jahdem minhabba xi **marda** basta ma tkunx taqa taht l-eskluzzjonijiet imsemmija fil-paragrafu (E) tal-istess polza.

Mid-diversi opinjonijiet medici jidher bla dubbju li l-attur ghandu kondizzjoni medika li ma tippermettilux jahdem. Infatti hekk huwa certifikat mid-Dipartiment tas-Sigurta Socjali u anke minn Dr Galea Debono. Sfortunatament din il-kondizzjoni hadd mill-esperti medici ma irnexxielu jiddefinixxi u ghalhekk li wiehed jhares lejn il-kaz biss mil-lat ortopediku u jghid li ma hemm xejn hazin, ghax hekk juru l-X Rays u li Scanns, ma jfissirx li l-attur huwa kapaci jahdem. Konsegwentement din il-Qorti hija tal-fehma li l-attur issodisfa r-rekwiziti tal-klawsola (c) tal-Polza ta' Assikurazzjoni u ghalhekk ghandu jithallas a termini tal-polza.

Ikkunsidrat:-

Illi s-socjeta' konvenuta qeghedha ukoll teccepixxi l-inezistenza tal-polza ta' assikurazzjoni inkwantu kien hemm *a non-disclosure of a material fact*. Infatti s-socjeta' konvenuta tghid li l-konvenut irrisponda hazin ghal xi mistoqsija meta kienet qed tintela '*proposal form*' billi ma semma xejn dwar kondizzjonijiet ta' sahtu precedenti ghall-hrug tal-polza. Dwar dan jidher li hemm xi konfuzjoni billi filwaqt li gie prezentat il-file ta' St Luke's relattiv ghal Ammabile Borg fejn jirrizultaw diversi kondizzjonijiet medici, l-istess attur jichad kategorikament li dawn jirriferu ghalieh u jammetti biss li huwa dahal l-Isptar biex jkollu ntervent ghall-appendix u sussegwentement minhabba komplikazzjonijiet naxxenti mill-istess intervent. L-attur jghid li l-kazi imsemmija fil-file setghu kienu ta' kuginuh. Il-kwistjoni ma tidhirx cara izjed u izjed minhabba l-fatt li partijiet mil-file jirriferu ghall-attur bl-I.D. Card number tieghu mentri partijiet ohra ma jsemmu ebda I.D. Card.

Dana qed jinghad biss bhal kumment billi din il-Qorti hija tal-fehma li l-polza ta' assikurazzjoni hija dik li hi u tibqa' valida sakemm ma jkunx hemm dikjarazzjoni dwar in-nullita' taghha fuq talba 'ad hoc' tal-parti interessata. L-assikurazzjoni ma tistax tehles mir-responsabbilitajiet taghha semplicement billi tallega nuqqas tal-assikurat per via d'eccezzione. Kellha kull opportunita' li taghmel kontro talba izda ghazlet li ma tadottax din il-procedura. Din il-Qorti ghalhekk hija prekluza milli tippronunzja ruhha dwar il-validita' o meno tal-polza.

Ghar-ragunijiet fuq moghtija l-Qorti filwaqt li tichad it-tieni eccezzjoni tal-konvenut u tastjeni milli tikkunsidra l-ewwel eccezzjoni, tilqa' t-talbiet attrici billi tiddikjara li l-attur huwa invaliditat milli jaghmel kull tip ta' xoghol u dana fil-kuntest tal-'protection plan' tal-polza ta' assikurazzjoni in kwistjoni, u konsegwentement tikkundanna lill-istess socjeta' konvenuta thallas lill-attur is-somma ta' tmient elef lira maltin in forza tal-istess polza, bl-imghax legali mill-1 ta' Mejju 1997 u cioe meta saret il-claim.

Fl-ahharnett thalli inpregudikati d-drittijiet tas-socjeta' konvenuta dwar il-validita' tal-polza ta' assikurazzjoni.

L-ispejjes fic-cirkostanzi ghandhom jigu sopportati mis-socjeta' konvenuta.

Onor Imhallef Albert J. Magri