

Kopja Informali ta' Sentenza



TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
PETER BORG COSTANZI**

Seduta tas-6 ta' Marzu, 2007

Talba Numru. 1096/2006

Talba Nru: 1096/06PBC

**Middle Sea Insurance plc (C5553) kif surrogata fid-
drittijiet tal-assigurati taghha Christian u Francesca
mizzewgin Ganado**

Vs

Alitalia – Linee Aeree Italiane S.P.A

It-Tribunal

Ra l-Avviz tat-talba li bih is-socjeta` attrici talbet li s-socjeta` konvenuta tigi kkundannata thallas is-somma ta` sitt mitt lira Maltin (Lm600) rapprezentanti danni kkawzati fis-16 ta` Gunju, 2006 lill-assigurati ta` Middlesea

Pagna 1 minn 5

Qrati tal-Gustizzja

Insurance plc, cjoè s-Sinjuri Christian u Francesca konjugi Ganado, permezz ta` dewmien ta` bagalji li kellhom jaslu ma` l-ajruplan li hadu l-istess sinjuri, cjoè minn Milan ghal Ruma mal-kumpanija konvenuta, liema bagalji ma waslux u wara sitt ijiem regghu ntbaghtu Malta. Peress li kien hemm *overbooking* da parti tas-socjeta` konvenuta tant li s-Sinjuri Ganado fuq struzzjonijiet tas-socjeta` konvenuta kellhom jaqbd u ajruplan aktar tard fl-istess gurnata ma` l-istess kumpanija.

Peress illi meta gara hekk is-Sinjuri Ganado nfirmaw lill-impjegati tal-kumpanija konvenuta illi fil-bagalji kien hemm il-bzonnijiet kollha necessarji ghaliex kienu ser jattendu t-tieg gewwa Ruma, liema mpjegati assigurat li illi l-bagalji kienu ser jaslu fil-hin tat-tieg.

Peress illi s-sinjuri ghamlu rapport dwar il-bagalji taghhom li ma nstabux gewwa l-ajruport ta` Ruma u kellhom jixtru l-bzonnijiet kollha sabiex jattendu dan l-imsemmi tieg ghaliex l-ilbies formali li kellhom kienu jinsabu f`dawn il-bagalji mitlufa izda nonostante li s-socjeta` konvenuta assigurat lis-Sinjuri Ganado li l-bagalji kienu ser jaslu ma` l-ajruplan sussegwenti, dawn baqghu ma nstabux.

Peress illi s-socjeta` attrici bhala socjeta` assiguratrici tal-konjugi Ganado rrifondati lis-Sinjuri Ganado l-ammont ta` sitt mitt lira Maltin (Lm600) ghad-danni kkawzati mis-socjeta` konvenuta wara li giet iffirmata d-*discharge and subrogation form* bejn is-Sinjuri Ganado u s-socjeta` attrici. Ghalhekk is-socjeta` attrici qeghda titlob li s-socjeta` konvenuta thallasha s-somma ta` sitt mitt lira Maltin (Lm600) ghar-ragunijiet premessi.

Ra li s-socjeta` konvenuta debitament notifikata ma pprezentatx Risposta formali ghalkemm fis-seduta tas-6 ta` Frar, 2007 deher Dr Chris Grima li rregistra oppozizzjoni.

Sema` x-xhieda ta` Christian Ganado, Francesca Ganado u Patrick Muscat.

Ra l-atti kollha tal-kawza.

Ikkunsidra

Illi mill-provi prodotti jirrizulta illi Christian u Francesca Ganado siefru minn Milan ghal Ruma permezz ta` titjira ta` l-Alitalia izda meta waslu Ruma, l-bagalji taghhom ma waslux. Huma kellhom jattendu tieg f'Ruma u l-ghada kellhom jigu Malta ghal tieg iehor. Huma lmentaw mar-rapprezentanti ta` l-Alitalia u dawn infurmaw lill-konjugi Ganado li l-bagalji ser jaslu mat-titjira ta` wara izda fil-fatt il-bagalji ma waslux ma` din it-titjira u sussegwentement gew infurmati illi l-bagalji ser jaslu 'l ghada izda dan kien tard wisq u ghalhekk il-konjugi Ganado ma kellhomx alternattiva hlief li jmorru Ruma u jixtru ilbies godda adatti ghall-okkazjoni u hwejjeg ohra ghall-bzonnijiet taghhom personali sabiex ikunu jistghu jmorru ghat-tieg li kien proprju dakinhar.

Effettivament il-bagalji ma waslux u gara illi 'l ghada huma kellhom imorru Malta fejn kellhom okkazjoni ta` tieg iehor u ghalhekk taw struzzjonijiet biex jekk il-bagalji jinstabu dawn jintbaghtu Malta u fil-fatt il-bagalji waslu Malta madwar sitt ijiem wara.

Il-konjugi Ganado kienu assigurati mas-socjeta` Middlesea Insurance plc u pprezentaw claim u b`rizultat ta` din it-talba s-socjeta` attrici kkompensathom fl-ammont ta` sitt mitt lira Maltin (Lm600) li huwa l-*maximum policy limit* ghall-kazijiet simili billi fil-fatt l-ispejjez inkorsi mill-konjugi Ganado kienu jissuperaw dan l-ammont. Is-socjeta` attrici giet debitament surrogata.

Stabbilit il-premess it-Tribunal huwa tal-fehma illi l-kwistjoni hija regolata bid-dispozzjonijiet tal-*Convention for the Unification of Certain Rules for International Carriage by Air* maghrufa bhala l-*Montreal Convention*. L-Artikoli rilevanti ghall-mertu odjern huma l-Artikoli 19 u 22.2 li jiddisponu hekk:

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 22.2

In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1,000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.”

A tenur tal-premess jidher car li l-carrier huwa prezunt responsabbli sakemm ma jirnexxilux igib prova kontrarja. L-oneru tal-prova jispetta lill-carrier biex juri li *“it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures”*.

Fil-kaz odjern tali prova difenzjonali assolutament ma saritx. Ma tressqu l-ebda provi biex juru ghaliex kien hemm delay u x'ghamlet is-socjeta` konvenuta biex twassal il-bagalji lill-konjugi Ganado mill-aktar fis possibbli. Ghalhekk it-Tribunal m'ghandux ghajr hlief li jikkonkludi li s-socjeta` konvenuta hija responsabbli ghad-dewmien (delay) mertu tal-kaz.

F'kaz simili, a tenur ta` l-Artikolu 22.2 tal-Montreal Convention, il-kumpens normalment pagabbli huwa sa massimu ta` 1000 SDRs (li jigu bejn wiehed u iehor erba` mija u disghin lira Maltin (Lm490)) ghal kull passiggier (mhux kull luggage). L-ammont mitlub mill-atturi fil-kawza

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odjerna huwa ta` tlett mitt lira Maltin (Lm300) ghal kull passiggier u cjoe` ammont inferjuri mill-limitu stabbilit fl-imsemmija konvenzjoni u ghalhekk it-talba attrici kif dedotta tisthoqq li tigi milqugha.

Ghal dawn il-motivi t-Tribunal jaqta` u jiddeciedi billi jikkundanna lis-socjeta` konvenuta sabiex thallas lis-socjeta` attrici s-somma ta` sitt mitt lira Maltin (Lm600) bl-ispejjez kollha tal-kawza u bl-interessi mit-18 ta` Dicembru, 2006 (data tal-prezentata ta` l-Avviz) sad-data tal-hlas effettiv.

< Sentenza Finali >

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