



QORTI TA' L-APPELL

**ONOR. IMHALLEF
PHILIP SCIBERRAS**

Seduta tat-12 ta' April, 2007

Appell Civili Numru. 21/2006

Middlesea Insurance plc

vs

**Schembri Infrastructures Limited,
Edward Anthony Schembri**

Il-Qorti,

Fit-30 ta' Ottubru, 2006, l-Arbitru fic-Centru Malti ta' l-Arbitragg ippronunzja s-segwenti decizjoni fl-ismijiet premissi:-

“Preliminary

This arbitration concerns a collision between a motor vehicle belonging to claimant Patrick Camilleri and assured by Middlesea Insurance plc, against concrete bollards placed in 25th November Avenue

Zejtun, allegedly by the Respondents. The amount being claimed by way of damages is Lm 1284.75. The Respondents excepted that the barriers were placed in order to close the particular road owing to road works which they were carrying out. The said barriers were placed within a few meters from a street light and could not have been missed unless claimant was not keeping a proper lookout.

The arbitrator held the following sittings:

- 1. 4th July 2006, evidence of Patrick Camilleri and Doris Raggio;*
- 2. 18th September 2006, no evidence heard as witnesses did not attend;*
- 3. 10th October 2006, evidence of John Borg Bellanti and Police Sergeant Major Angelo Curmi.*
- 4. The arbitrator attended on site on the same day, the 10th October 2006.*

The arbitrator also received in evidence as document JBB1 the surveyors report and details of damages and expenses incurred in Claimant's vehicle. Claimant had also exhibited a number of photographs taken subsequent to the accident showing the location of the barriers and other scenes of the immediate environment.

From the on site inspection the arbitrator determined that a driver turning off the roundabout in question into the road, does have to face a bend which would easily conceal or obstruct visual contact with the barriers.

It is worthy of note that respondents did not attend any sittings, and at the end of the sitting of the 10th October 2006, the arbitrator declared the stage of evidence as completed and adjourned to give the award.

The Evidence

Patrick Camilleri, the Claimant's assured driver testified that he crashed into concrete blocks placed behind a blind corner. The accident happened in the early morning before sunrise. He noticed the blocks when he was about 4 metres away, braked, but to no avail. He complained that these blocks were not indicated by a road sign. One of the blocks was fitted with a light, which he stated was not switched on. Camilleri was rigorously cross examined by opposing counsel, however in substance his evidence remained unchanged.

Doris Raggio representing the Claimant insurance and the surveyor John Borg Bellanti exhibited and explained the damages involved. The surveyor explained that apart from damage to the outer body, there was damage to the right front suspension and the steering box, which is why the amount of damage is relatively high.

The evidence of PSM Angelo Curmi, confirms first of all that the conditions on that morning were dark and wet. He further confirms that the barriers carried no signage to give warning, and were sprayed with luminous amber paint, AFTER the accident. There was a light on one of the barriers but he said that it was very weak and no use at all as a warning. He confirmed that after making due inquiries with the local council and the Malta Transport Authority, that no permits for road closure had been issued in this case. From investigations it transpired that the person responsible was a certain Edward A Schembri holder of identity card number 173681M. Mr. Schembri was a director of the company General Road Services Limited, which according to Claimant subsequently changed its name to Schembri Infrastructures Limited.

Considerations of Law

The matter of the liability of any contractor concerning road works has been dealt with by the courts in

previous cases. In a recent case¹ the following observations were made:

Huwa principju daqstant iehor importanti u maghruf illi, kif dixxiplinat minn disposizzjonijiet varji tal-Kodici tal-Ligijiet tal-Pulizija, min ikun qed jippresta xoghlijiet ta' kostruzzjoni ghandu jevita li jhalli material jew xkiel iehor li jkun ta' perikolu jew inkomodu lill-pubbliku. In-nuqqas tal-harsien ta' dawn id-dixxiplini ta' komportament igib b' rizultat mhux biss inkolpazzjoni f' sens penali izda wkoll responsabilita', f' sens civili, jekk jinstab li ma ttiehdetx kura u tutela sufficcjenti u adegwata biex tiskansa lil dak li jkun mir-riskji insiti u hekk estranei ghall-konducenti jew utenti ohra tat-triq. F' kaz bhal dan jekk jinstab li jezistu l-presupposti cari tar-responsabilita` il-kuntrattur jew min ikun fi htija jkollu jwiegeb ghad-danni rizultanti subiti mit-terz danneggjat; Biex jirnexxi fid-difiza tieghu li hu ma kienx fi htija, l-impreditur jehtiegilu jgib il-prova liberatorja ta' ezistenza ta' fatt idoneu, kapaci li jinterrompi n-ness kawzali bejn l-att jew l-ommissjoni taghha u l-event dannuz. Fi kliem iehor li hi ha l-prekawzjonijiet kollha necessari biex jiskansa d-dannu u allura wkoll, li dan id-dannu gie prodott indipendentement mill-imgieba tieghu. Dan billi juri pozittivament illi d-dannu kien ir-rizultat tas-sewqan kolpuz tal-konducenti jew, alternattivament, l-effett tal-kaz fortuwitu;

The above mentioned text leaves no doubt as to the duties of a contractor performing works on a public road consists of.

¹ Fogg Insurance Agencies Ltd Noe Et Vs Tal-Maghtab Construction Co Ltd, Court of Appeal (Civil, Inferior) Sciberras Philip, 03/11/2004

There are two respondents in this case. There is a company, and its director. Which of them is to be held liable? The fact giving rise to damages is a criminal offence under article 25 of Cap. 10. Under art. 13 of Cap.249 any offence committed by a moral person is attributable to its officers. Any criminal offence gives rise to a civil action according to art. 3 of Cap. 9. It follows that both the company and the director Edward Schembri are independently answerable for this tort.

Considerations on the Facts

It is the arbitrator's view that no explanation at all was given by the Respondents concerning their actions. The arbitrator is satisfied that the concrete barriers in question, apart from being unauthorised, carried no system of prior warning to traffic, were not properly illuminated or marked, and were placed in a position which constituted a hazard to traffic. The persons placing them carry responsibility for any accident arising out of such a hazard.

Conclusion

The arbitrator is therefore of the opinion that both respondents are jointly and severally liable for the accident in which the claimants car was involved. The respondents are jointly and severally liable to pay the sum of one thousand two hundred and eighty four Liri and seventy five cents (Lm1284.75), of which the sum of twenty five Liri (Lm25) is due to claimant Patrick Camilleri while the sum of one thousand two hundred and fifty nine Liri and seventy five cents (Lm1259.75) are due to claimant Middlesea Insurance plc. The amounts are due with interest at eight per cent per annum from the 27th February 2006, and with all costs associated with this arbitration, together with the costs of a judicial letter filed on the 29th November 2005."

Is-socjeta` Schembri Infrastructures Ltd appellat minn din is-sentenza ta' l-Arbitru u talbet ir-revoka taghha. L-ilment ewlieni taghha jikkonsisti fis-sottomissjoni illi fil-procediment quddiem l-Arbitru gie lez lilha l-principju ta' gustizzja naturali *audi alteram partem*;

Il-vjolazzjoni asserita mis-socjeta` appellanti hi f' dan is-sens:-

(1) Mhix korretta l-osservazzjoni ta' l-Arbitru fis-sentenza mpunjata illi hi naqset milli tattendi ghal kull wahda mit-tliet seduti li nzammu;

(2) Kien hemm malintiz da parti tar-rapprezentant taghha u ta' l-Avukat inkarigat dwar il-hin prefiss ghat-tielet seduta. Kien ghal din ir-raguni li permezz tar-rikors giet mitluba s-sospensjoni tal-prolazzjoni tas-sentenza;

(3) L-atturi qatt ma ddikjaraw li ghalqu l-provi taghhom meta l-Arbitru qabad u ddecieda li jghaddi ghas-sentenza;

(4) *Ergo*, tillanja illi ma nghatatx il-fakolta li tressaq il-provi proprji;

Ma jidherx li tezisti kwestjoni illi l-Arbitri, ukoll dawk dezinjati mic-Centru ta' l-Arbitragg, avolja ghandhom il-fakolta` li jirregolaw l-izvolgiment tal-gudizzju fil-mod li jidhrilhom hekk opportun u spedit, iridu dejjem jassenjaw lill-partijiet l-opportunita` shiha ta' difiza kompleta kemm jekk in sostenn tad-domanda kif ukoll ta' l-eccezzjonijiet opposti ghaliha. Bla dubju, il-principju invokat jesigi l-accertament illi l-partijiet mhux biss ikunu in grad li jressqu l-provi kollha taghhom imma wkoll li jkollhom il-possibilita` li jiformulaw is-sottomissjonijiet definittivi taghha fuq ir-rizultanzi akkwiziti. Hu sottintiz imbaghad skond l-Artikolu 41 (1) ta' Att ta' l-1996 dwar l-Arbitragg (Kapitolu 387) illi l-istess partijiet ikunu wkoll edotti mill-fatt illi l-Arbitru ikkonsidra maghluqa l-istruttorja;

Fir-rigward ta' dan appena espost jidher ben car minn ezami ta' bosta decizjonijiet tal-Qrati taghna matul izmenijiet illi tali principju, anke meta ma kienx ghadu jiffirma parti mil-ligi pozittiva, kostituzzjonali u konvenzjonali, minn dejjem tqis wiehed inderogabbli u motiv ta' nullita` tas-sentenzi fil-kaz tal-vjolazzjoni tieghu. Dan anke fejn l-organu gudizzjarju jew kwazi-gudizzjarju li jkun ma jkunx obligat japplika r-rigur u l-metikolozita` tar-regoli tal-Procedura Civili. Ara **Kollez. Vol. XXXIII P I p 648, Vol. XXXV P II p 514 u Vol. XLVIII P I p 509.** Minnhom hu b' mod generali u sintetiku ravvizabbli illi l-principju *audi alteram partem* jitqies li jkun gie rispettati mit-tribunal li jkun meta l-partijiet ikunu nghataw il-fakolta li jiproducu l-provi taghhom u li jesponu l-assunti rispettivi, kif ukoll, li jkunu jafu r-rizultanzi li fuqhom min irid jiddeciedi jkun behsiebu jezamina u jaccerta ghall-formazzjoni tal-konvinciment tieghu;

Dan premiss, hu spedjenti li l-Qorti tikkonsidra l-atti arbitrali biex tara u tassikura jekk fil-kaz in ispecje gewx rispettati d-drittijiet tas-socjeta` appellanti ghal difiza pjena;

Jirrizulta li l-Arbitru zamm tliet seduti, u precizament fl-4 ta' Lulju 2006, 18 ta' Settembru 2006 u l-10 ta' Ottubru 2006. Jigi mill-ewwel osservat, bil-kontra ta' dak li jinghad fis-sentenza appellata illi effettivament f' dik l-ewwel seduta sar il-kontroezami tas-sewwieq Patrick Camilleri, assigurat tas-socjeta` appellata, ankorke l-Arbitru ma ndikax l-ismijiet ta' min kien prezenti ghan-naha tas-socjeta` appellanti. Fit-tieni seduta imbaghad ma sar xejn ghaliex il-persuni mharrka mis-socjeta` appellata ma attendewx. Anke jekk mhux ta' importanza, ta' min jinnota illi l-att tat-tahrika tax-xhieda mahrug fit-12 ta' Settembru 2006 kien jispecifica l-jum tad-19 ta' Settembru 2006 u mhux dak tat-18 ta' Settembru. Barra minn dan ma jidherx li gie osservat it-terminu ta' hmistax-il jum qabel is-seduta preskritt mill-Artikolu 37 (2) ta' l-Att ghat-tahrika tax-xhieda. Kwantu ghat-tielet seduta nstemghu x-xhieda

precedentement imharrka u fl-assenza tar-rapprezentant tas-socjeta` appellanti u tad-difensur taghha l-Arbitru ddecieda li jghaddi ghas-sentenza. Anke hawn din il-Qorti ma tistax tonqos milli tirrileva illi nonostante li ma saret ebda dikjarazzjoni li s-socjeta` appellata kkonkludiet il-provi taghha jidher li effettivament kien f' din it-tielet u l-ahhar seduta li l-provi taghha gew minnha hekk konkjuzi. Irid jinghad ukoll ghax dan hu hekk indikat fis-sentenza appellata, u mhux ukoll minn xi verbal, illi l-Arbitru zamm sopralwog fuq il-post ta' l-incident. Fl-ahharnett, ghal kwadru komplet ta' dak li johrog mill-inkartament, jirrizulta li s-socjeta` appellanti pprezentat rikors fid-19 ta' Ottubru 2006 ghas-sospensjoni tal-prolazzjoni tas-sentenza li, ghalkemm mibghut mir-Registratur ta-Centru lill-Arbitru (u wkoll lill-kontroparti u d-difensur taghha) fl-20 ta' Ottubru 2006, baqa' ma giex degretat;

Fermi dawn l-aspetti saljenti li jemergu mill-atti tal-kaz, il-konsiderazzjonijiet li thoss li ghandha taghmel din il-Qorti huma dawn:-

(1) Ghalkemm hi disposizzjoni cara tal-ligi, ex-Artikolu 40 (2) ta' l-Att imsemmi, illi jekk xi wahda mill-partijiet tonqos li tidher u ma taghtix raguni valida sufficjenti ghal dik l-assenza taghha, l-Arbitru jista' jimxi 'l quddiem bl-Arbitragg, l-anqas li kien mistenni li jsir kellu, fil-fehma tal-Qorti, jkun dak illi, maghluqa l-provi tal-parti avversa fil-gudizzju fis-seduta tal-10 ta' Ottubru 2006, l-Arbitru jiffissa seduta ohra ghal provi tas-socjeta` appellanti. Huwa veru illi t-tmexxija tal-kaz hu rimess ghad-diskrezzjonalita` ta' l-Arbitru. Dan pero dejjem u, *fermo restando*, ir-rispett ghad-drittijiet tad-difiza;

(2) Mhux inverosimili li d-difensur tas-socjeta` appellanti tfixkel fil-hin ta' meta kellha tinzamm dik is-seduta. F' kull kaz kien mistenni illi, konformement ghal dak li jinghad fil-precitat Artikolu 40 (2), l-Arbitru kellu jiddetermina, fuq ir-rikors ghas-sospensjoni, jekk kienx hemm dik ir-raguni tajba u bizzejjed ghan-nuqqas ta' attendenza li jippreskrivi dan il-provvediment. Intant dak ir-rikors, kif fuq inghad, baqa' ma giex iddegretat

nonostante li kien hemm zmien, alkwantu sufficjenti, qabel l-ghoti tad-decizjoni;

(3) Hi wkoll il-fehma konsiderata ta' din il-Qorti illi l-Arbitru ma kellux jaghmel l-ispezzjoni minnu kondotta fuq il-lok ta' l-incident minghajr ma qabel jassikura li l-partijiet ikunu debitament avzati. Aktar minn kwestjoni ta' ekonomija processwali, in-notifika li kellha ssir dik l-ispezzjoni kienet hekk indotta minn esigenza ta' razzjonalita` u ta' dik in-necessita` li l-partijiet jikkontrollaw dak li jkun qed jigi spezzjonat. Ara f' dan il-kuntest id-decizjonijiet a **Vol. XXXII P II p 350** u **Vol. XXXVII P II p 675**. A propozitu f' din ta' l-ahhar gie ritenut, b' riferenza ghall-Bord tal-Kera, illi s-sentenza moghtija minn dan il-Bord, meta wahda mill-partijiet ma kienetx prezenti fl-access tal-membri tal-Bord fuq il-post, ghax ma kienetx avzata li kellu jsir l-access, ghandha titqies nulla in kwantu tilledi l-principju hawn trattat;

Maghmula dawn il-kunsiderazzjonijiet, u dawk l-ohra generali minn din l-istess Qorti zvolti fis-sentenza taghha tal-10 ta' Marzu 2004 u re: "**Nazzareno Zammit -vs- Joseph Falzon nomine**", citata wkoll mis-socjeta` appellanti fir-rikors ta' l-appell taghha, din il-Qorti tara li jezistu elementi sufficjenti li jsostnu l-aggravju interpost u li jwasslu biex is-sentenza arbitrali tigi annullata. Hu l-kaz allura li l-atti jigu rimessi lura lic-Centru ta' l-Arbitragg biex l-Arbitru jisma l-provi tas-socjeta` appellanti u jiddeciedi dwarhom fil-kumpless tal-provi l-ohra gja akkwiziti.

Ghal dawn il-motivi din il-Qorti qed tilqa' l-appell u b' hekk thassar u tannulla s-sentenza arbitrali. Tirrimanda l-atti lura lic-Centru biex wara li jinstemghu l-provi tas-socjeta` appellanti u t-trattazzjoni skond il-ligi, il-kwestjoni tigi regolarment deciza mill-Arbitru. Fic-cirkustanzi, l-ispejjez ta' din l-istanza jibqghu bla taxxa bejn il-partijiet. Dawk ta' l-istanza quddiem l-Arbitru skond kif ikun stabbilit fid-decizjoni definittiva tieghu.

Kopja Informali ta' Sentenza

< Sentenza Finali >

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