



QORTI TA' L-APPELL

**ONOR. IMHALLEF
PHILIP SCIBERRAS**

Seduta tad-9 ta' Mejju, 2007

Appell Civili Numru. 22/2006

FalcoTRANS Limited

vs

**The Cargo Handling Company Limited
u Salvu Meli & Sons Ltd**

Il-Qorti,

Fil-31 ta' Ottubru, 2006, l-Arbitru fic-Centru Malti ta' l-Arbitragg ippronunzja s-segwenti decizjoni fl-ismijiet premessi:-

“Claim

FalcoTRANS Limited - talbu lil intimati jew min minnhom biex ihallsu "damages caused to Trailer TR 431 ... property of claimant company following accident involving the said trailer on the 7th April

2003 at port whilst in the custody and under the responsibility of respondent company."

Fl-istatement Falcotrans spjegaw "Trailer was involved in an accident at the port on the 7th of April 2003 whilst in the custody and under the responsibility of respondent company. Damages were caused to the said trailer because of the negligence and or incompetence of the respondent company or any other person authorized by the said respondent company to handle the said trailer, for which damages the respondent company is therefore responsible and liable to pay".

Illi l-ewwel eccezzjoni ta' The Cargo Handling Company Limited giet michuda b'decisjoni datat 29 ta' April 2005.

L-eccezzjonijiet l-ohra tas-societa Cargo huma kif gej:

a) the claim is subject to the prescriptive period established by section 65 of Chapter 352 of the laws of Malta

b) without prejudice to the preceding defence, the respondent company is not responsible for the claim by the claimant company

c) without prejudice to the preceding defence, the respondent company is also contesting the quantum of the claim.

Illi s-societa Salvu Meli & Sons Limited rrispondiet kif gej:

"joined respondent rejects any responsibility for the accident to the trailer property of the claimant company as the cause of the accident cannot be imputed to any act committed by the joined respondent in breach of any of its duties and obligations under law or to any omission on the part of the joined respondent in breach of law".

L-arbitru

L-arbitru kiteb lil partijiet u zamm erba seduti fejn semgha x-xhieda u gew ezaminati d-dokumenti tal-partijiet.

Konsiderazzjonijiet

Illi l-ewwel eccezzjoni tal-Cargo Handling Company Limited hija li t-talba fil-konfront taghha hi preskritta ai termini tal-artikolu 65 tal-Kap 352.

Illi l-incident gara fis-7 ta' April 2003. Giet presentata ittra ufficjali fit-13 ta' April 2004 u l-"claim" gie presentat fil-21 ta' Frar 2005.

L-artikolu 65 tal-Kap 352 jipprovdi:
"Notwithstanding the provisions of any other law, no action shall lie against the Authority or a contractor in relation to their responsibilities under this Act, or for any loss or damage caused to any person, vessel, goods, vehicles or other things whatsoever on board a ship unless -

- a) a claim in writing, giving such particulars as may reasonably be necessary is given to the Authority or the contractor, as the case may be, not later than six months after the date on which the goods were accepted by the Authority or the contractor
- b) the action is commenced within twelve months from the date aforesaid.

Illi dan l-artikolu ma japplikax ghal fatti n-kwistjoni billi d-danni ma gewx kagjonati "on board a ship".

Illi ghalhekk l-arbitru jrid jezamina jew l-intimati jew xi hadd minnhom kien risponsabbli ghad-danni sofferti.

Illi hemm qbil li kien hemm incident u li Falco-trans soffrew danni. Illi Cargo tghid li l-incident gara ghaliex thallew is-saqghajn tat-trailer miftuhin fil-waqt li Meli tghid li l-incident gara ghaliex l-art fejn ghandhom jahdmu mhux tajjeb ghal dan ix-xoghol. Meli ssostni li l-art huwa mhaffar u sfundat.

Skond ir-rapport ta' Paul Cardona l-incident gara kif gej:

"The accident happened whilst the Cargo Handling Co. Limited tug master (belonging to Salvo Meli & Sons Limited) Reg. No. DGB958 was towing the trailer. At one stage the landing legs which were left in the extended position fouled the ground. This caused the 5th wheel of the tug master to disengage and the coupling end of the trailer collapsed. Evidence of this were the scratch marks in way of the landing legs that were noticed on the ground after the removal of the trailer the collapse of the landing legs had fouled the ground whilst the trailer was being towed in the forward direction. The length of scratching on the ground clearly indicated that the trailer was being towed at some speed. The trailer was being towed with the landing legs extended. Good practice requires that the landing legs are withdrawn in their folded position. This is not practical by the Cargo Handling and their contractors. To save time and exertion the drivers lift the trailers by means of the fifth wheel which raises the level of the towed end of the trailer further above the ground and thus removes the weight from the handling legs. This is a dangerous work practice due to the following:

- a) The distance of the landing legs from the ground remains minimal. Thus any protrusion on the ground or any pothole in the ground may foul the landing legs.
- b) Furthermore, if there are any leaks in the hydraulic system of the fifth wheel the height of

the landing legs will be reduced during the towing operation. This will also lead to the fouling of the laundry (sic) legs with the ground.

Good practice requires that the landing legs are folded whilst the trailer is being towed. This was not done in this case. The damaged landing legs were both in the extended position and bent backwards. They were thus left in the extended position against good practice.

Fis-survey Paul Cardona jikkonkludi:

"The Cargo Handling Co. Limited is solely responsible for the transportation of the trailers from the ramp of the vessel to the specific parking area within the port limits. The accident happened within that time frame. There was absolutely no evidence that trailer TR432 or the condition of any of its components could have been responsible for this accident and resulting damages."

Joseph Piccinino Superintendant f'Lab Wharf mal-Cargo Handling jghid li "naqbel li good practice hu li meta jipparkja t-trailer dak responsabbli jassikura li jitnizzlu s-saqghin u meta ser jirmunkah jerga itella s-saqghin".

Id-direttur ta' Salvu Meli Ltd. ikkonferma li l-prattika dejjem hi li ihallu s-saqghin mnizzlin. Meli qal li huma juzaw truck specjali biex jaghmel dan ix-xoghol u f'dan il-kaz ma hemmx ghalfejn toqghod itella s-saqghin.

Illi Salvu Meli Limited baqghu isostnu li ma hemmx ghalfejn jigu mtellghin is-saqghin u ppresentaw ittra minn Douglas Equipment Limited fejn jintqal kif gej:

"This type of Douglas Tugmaster tractor is designed to move semi trailers without the need to raise the trailer landing legs.

Working practices need to take into consideration the ground operating conditions and it is up to the driver to ensure that the semi trailer is correctly and securely attached by the fifth wheel coupling. The lift height of the fifth wheel and speed of operation need to be taken into consideration, depending on the site operating conditions."

Illi din l-ittra taghmel riferenza ghal "semi trailers". Illi t-trailer in kwistjoni huwa trailer ta' 13.66 m b'kapacita ta' 39 tons. Ma giex pruvat li t-trailer in kwistjoni hu Semi trailer.

Illi inoltre fl-istess ittra intqal li "working practices need to take into consideration the ground operating conditions and it is up to the driver to ensure that the semi trailer is correctly and securely attached by the fifth wheel coupling."

Illi hemm qbil generali li l-art fejn kellhom jahdmu mhux livellat u ghalhekk anki jekk t-tugmaster "is designed to move semi trailers without the need to raise the trailer landing legs" xorta minhabba l-"ground conditions" d-driver kellu joqghod ferm attent u kien ikun ahjar kieku assikura li t-trailer legs ma jtkaxkrux fl-art.

Illi ghalhekk jirrisulta li l-incident gara ghaliex d-driver tat-tug master, impjegat ta' Salvu Meli & Sons Limited naqas li itella s-saqghin meta kien qed isuq f'area mhux livellat. Illi Salvu Meli & Sons Limited huma risponsabbli ghad-danni ghaliex kienu jafu li d-drivers taghom kienu jagixxu hekk u ma itellghux s-saqghin. Kienu jafu li l-art fejn kellhom jahdmu mhux livellat.

L-artikolu 1031 tal-Kodici Civili jipprovdi li: "every person ... shall be liable for damage which occurs through his fault". L-artikolu 1032: "A person shall be deemed to be in fault if, in his own acts, he does not use the prudence, diligence, and

attention of a bonus pater familias". Skond Carrara "la essenza della colpa sta tutta nella prevedibilita`". Illi l-agir tas-societa Salvu Meli & Sons Co. Limited kienet negligenti ghaliex kellha tipprevedi li jekk ma itellghux is-saqghin fuq dan it-tip ta' livell setgha kien hemm xi incidenti.

Illi d-danni mitluba gew kkonfermati mis-survey u gew esebiti l-ircevuti.

Illi Cargo Handling Company Limited ma kienitx responsabbli ghal incident u ghalhekk t-talba fil-konfront taghha hija michuda bl-ispejjes kontra Falcotrans.

Ghaldaqstant l-arbitru jiddikkjara li Salvu Meli & Sons Limited huma responsabbli ghal incident in kwistjoni u ghandhom ihallsu lis-societa Falcotrans Limited l-ammont ta' Lm4908.78 u l-ispejjes hlief ghal dawk diga decizi."

Is-socjeta` Salvu Meli & Sons Ltd appellat minn din id-decizjoni Arbitrali fuq il-premessa li l-gudizzju fiha maghmul jinsab bazat fuq koncezzjoni zbaljata in tema ta' kolpa akwiljana. Hi ssostni, fuq it-tagħlim tal-**Chironi** ("**La Colpa nel Diritto Civile Odierno - Colpa Extra-Contrattuale**", Volum II pagna 314), illi l-previdibilita` f' materja ta' stharrig ta' din ix-xorta ta' kolpa ma ssib ebda applikazzjoni, ghax dak li hu meqjus aktar importanti fl-evalwazzjoni tar-responsabilita` delittwali huwa l-ezami tal-kawzalita` bejn l-ghemil taghha u d-dannu kawzat. Hu fuq dan il-binarju li s-socjeta` appellanti iprosegwiet biex taghmel l-analisi taghha tal-provi prodotti;

Qabel kunsiderazzjoni tal-gravam kif sottomess lilha, u ankorke s-socjeta` appellata ma ssollevatx il-punt, huwa xieraq li jigi mfakkar illi b' ligi ma hemmx appell minn sentenza f' procediment ta' l-arbitragg hlief "fuq punt ta' ligi" (Artikolu 70A). Dan qed jigi registrat ghaliex hu dover tal-Qorti illi, jekk jirrizultatla illi l-appell devout lilha mhux

hliet pretest għac-censura ta' l-apprezzament tal-provi, jkollha tghaddi biex tiddikjara *ex officio* l-inappellabilità tad-decizjoni. Bi gwida f' dan l-eżercizzju l-Qorti qed tirrikorri għal hsieb traccjat fis-sentenza "**Nikola Mallia - vs- Nikola Borg**", Appell, 20 ta' Marzu 1953 li tghid illi meta tribunal ikun sempliciment enuncja d-disposizzjoni tal-ligi ma hemmx punt ta' dritt li dwaru jista' jsir appell. Fejn imbagħad ikun enuncja skorrettement il-principju tal-ligi u in segwitu jaqta' l-kwestjoni ta' fatt in bazi għal dik l-enuncjazzjoni zbaljata allura jkun hemm sostanzjalment kwistjoni ta' dritt u l-appell jista' jsir u l-Qorti ta' l-Appell tista' tirrevedi dak l-apprezzament ta' fatt magħmul in bazi għall-ipotesi skorretta tal-ligi;

Premessa din il-preliminari, din il-Qorti ma tistax ma tinnotax bl-ewwel osservazzjoni illi, wkoll fuq l-insenjament tal-Chironi u ta' bosta awturi ohra, il-Qorti ta' l-Appell tagħna irrilevat illi n-nozzjoni tal-*colpa* tradizzjonalment accettata fis-sistema legali Malti hi dik bazata fuq il-prevedibilità ("**Annunziato D'Amato et -vs- Joseph Camilleri et**", 3 ta' Marzu 1958). Fiha ssokta jingħad illi "hu sewwa u logiku li jkun hekk għaliex il-prevedibilità, bhala distinta mill-previzjoni, isservi biex tiddistingwi l-*colpa* mid-*dolo*, u l-konkors tagħha jiddifferenza l-kolpa mil-kaz fortuwitu". Kompla jingħad f' sentenza ohra ta' l-istess Qorti in re: "**Francis Coleiro nomine -vs- Carmelo Cassar**", 24 ta' April 1964, illi "biex ikun hemm lok għad-danni jehtieg li wiehed seta' jipprevedi d-disgrazzja li kkagunat id-dannu. Il-prevedibilità trid tkun ta' probabilitajiet ragonevoli u mhux ta' possibilità remotissimi u inverosimili";

Fermi dawn l-enuncjazzjonijiet, din il-Qorti tikkoncedi illi f' dawn l-ahhar snin kien hemm fost bosta trattisti Taljani dibattitu dottrinali vivaci in tema ta' responsabilità extra-kontrattwali, u b' mod speċjali jekk il-fonti primarja ta' din ir-responsabilità għandhiex tkun necessarjament ravvizata f' imgieba mputabbli karatterizzata minn kolpa jew kellux ikun hemm kriterji ohra rilevanti għal fini li tigi akkollata l-incidenza ekonomika tal-fatt dannuz. Mhux il-

lok li wiehed jaddentra zzejjed f' ezercizzju akkademiku fuq dan il-punt ghax dan ma jidherx li hu hekk mehtieg li jsir hawnhekk u f' din il-kawza;

Tenut rigward tad-disposizzjonijiet rilevanti taht il-Kodici Civili, ex-Artikoli 1031 u 1032, jezisti indubbjament legam mal-koncett ta' kolpa. Din il-kolpa hi generata minn nuqqas ta' prudenza, tad-diligenza u tal-hsieb ta' missier tajjeb tal-familja, ossija minn imgieba koxjenti f' min jipprokura d-dannu li, anke jekk nieqsa minn volonta` li jigi arrekat dannu, hu qed jikkaguna event leziv lil haddiehor. Kif gja osservat, b' mod partikulari l-gurisprudenza taghna taghmel riferiment specifiku ghar-rekwizit tal-prevedibilita` ta' l-event dannuz bhala komponenti essenzjali tal-kolpa. Il-gudizzju ta' din l-prevedibilita` fil-konkret hu imbaghad effettwat skond il-kriterji ta' dik id-diligenza ta' attenzjoni tal-*bonus paterfamilias* li jippreciza l-Artikolu 1032. Fundamentalment, pero`, "hu imprexxindibilment mehtieg, biex ikun hemm lok ghad-danni, li jkun hemm in-ness ta' kawzalita` bejn il-fatt kolpevoli u l-konsegwenza dannuza" (**Kollez Vol. XLIV P I p 343**). Fi kliem iehor "*perche possa una persona ritenersi responsabile pei danni fa mestiere che chi reclama l' indennizzo riesca a provare non solo l' atto o l' omissione colposa del denunciato, ma altresì che l' atto o la omissione colposa abbia avuto il nesso di causa ad effetto col pregiudizio sofferto dall' istante*" ("**Giovanni Sare -vs- Carmelo Farrugia et'**", Appell Civili, 6 ta' Frar 1928);

Il-ligi taghna ma tipprovdi ebda definizzjonijiet la tal-*colpa* u lanqas tan-ness ta' kawzalita, anke jekk dawn huma kontenuti fl-espressjoni wzata fl-Artikolu 1031 li "kull wiehed iwiegeb ghall-hsara li tigrì bi htija tieghu". Tghin pero` ghall-intendiment tar-rapport kawzali din l-ispjegazzjoni ta' l-**Antolisei** ("**Manuale di diritto penali, parte generali**", Ed. Giuffre, 2000 para. 210) bir-riferiment li jaghmel ghaz-zewg elementi: wiehed pozittiv u l-iehor negattiv. "*il positivo è che l' uomo con sua azione abbia posto in essere una condizione dell' evento, e cioe un antecedente senza il quale l' evento non si sarebbe*

verificato. Il negativo è che il risultato non sia dovuta al concorso di fattori eccezionali”;

Dan premiss, jidher minn ezami tas-sentenza appellata illi l-Arbitru irrikonduca dan in-ness ta' kawzalita` f` dik l-imgieba omissiva tas-socjeta` appellanti tal-konduzzjoni mill-impjegati taghha ta' l-operazzjoni li wettqu u bil-mod kif din giet ezegwita. Dan fuq zewg livelli. Il-wahda, vizwalizzata minn dik il-kolpa omissiva ta' mizuri idoneji ta' kawtela u ta' prudenza, hekk necessariji ghall-evitar tad-dannu, meta kienu mis-socjeta` appellanti maghrufa l-*working practises* li kellhom jittiehdu in konsiderazzjoni ghal mobilita` tat-trailer fuq terren dizlivellat. Innegabilment, din l-ommissjoni ta' kawtela hi mplicita fin-nozzjoni ta' dik l-imprudenza u n-nuqqas ta' diligenza li jsemmi l-Artikolu 1032. Fi kliem **Alpa** (“**La responsabilita` civile, Trattato di Diritto Civile**”, Ed. 1999, p 261), l-ommissjoni ssir sinonimu man-negligenza “*o meglio, una espressione riassuntiva delle manchevolezze che contraddistinguono il compartamento negligente*”. Jinghad fid-decizzjoni riportata a **Vol. XXIV P I p 893** illi kien jaggrava fuq l-agent tad-dannu “*di dimostrare che egli nell’ esecuzione di quel lavoro aveva adoperato la diligenza, la prudenza e l’ attenzione da lui dovuta e che il danno fosse attribuito non a sua colpa ma al caso fortuito o ad altre cause estranee da lui indipendenti.*” Fuq it-tieni livell l-Arbitru ghamel valutazzjoni oggettiva tal-prevedibilita ta' l-event dannuz. B' dan il-mod hu rabat il-kondotta tas-socjeta` appellanti mad-dannu kawzat;

Il-Qorti ezaminat attentament l-atti tal-kaz u l-provi kollha attendibbli u hi tal-fehma illi, anke imprexxindibilment mir-regonament legali zvolt mill-Arbitru, xorta wahda l-ezitu finali ta' l-ezami taghha mhux tali li jgegghla titbieghed mill-konkluzjoni raggunta. Ir-responsabilita` tas-socjeta` appellanti tidderivi mill-fatt ta' dak in-nuqqas ta' l-obbligu guridiku li fir-regolamentazzjoni u ezekuzzjoni ta' l-operazzjoni tattiva dawk it-teknikalitajiet idoneji, skond id-dettami ta' l-*standards* ghal xoghol bhal dan u dawk tas-

sens prattiku, esigenti ta' skansar tad-dannu lil proprjeta` ta' terzi. Dan anke jekk wiehed jeskludi r-riferiment solitu ghall-parametri konswati tal-prudenza, tad-diligenza u tal-hsieb tal-missier tajjeb tal-familja. Huwa innutili li s-socjeta` appellanti tittanta ssib skuzanti fix-xorta ta' terren ghax kien dejjem jinkombi fuqha, meta kienet konsapevoli minn dan il-fatt, illi, b' obbligu, tadotta mizuri teknici approprijati u kapaci li jghelbu id-diffikoltajiet ta' din is-sitwazzjoni. Imbaghad, din il-Qorti, bir-rispett, difficili ssegwi l-argument ta' xi element ta' kontributorjeta` minhabba dik il-kondizzjoni tat-terren. Apparti li s-socjeta` appellanti ma tizviluppax sew dan l-argument, certament li kwalsiasi xorta ta' kontributorjeta` ma tistax tidderivi minn xi att jew ommissjoni tas-socjeta` appellata billi din bl-ebda mod ma kkonkorriet ghall-hsara sofferta minnha stess, u jekk, kif donnu accennat, tali kienet tal-proprietarju ta' l-art fejn kienet qeghda ssir l-operazzjoni huwa evidenti illi ebda kontributorjeta` ma tista' tigi akkollata lilu la dan lanqas biss ma kien parti fil-kontroversja.

Ghall-motivi kollha superjorment dedotti l-appell qed jigi michud u s-sentenza appellata, ikkonfermata, bl-ispejjez kontra is-socjeta` appellanti.

< Sentenza Finali >

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