



**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
TONIO MALLIA**

Seduta tal-5 ta' Lulju, 2007

Citazzjoni Numru. 1034/2003

Francis Gauci

vs

Jimmy Bugeja

Il-Qorti:

Rat ic-citazzjoni pprezentata mill-attur fit-8 ta` Ottubru, 2003, li in forza taghha, wara li ppremetta illi:

1. F`incident li gara fl-20 ta` Novembru, 2001 ghal habta tas-saghtejn u nofs ta` wara nofsinhar (14.30), fuq il-post tax-xoghol, cioe` Portomaso fejn l-attur kien dettaljat biex jahdem mill-konvenut waqt il-hin tax-xoghol u matul il-qadi tad-doveri tieghu, l-attur soffra ferita sostanzjali f`idejh il-leminija li b`konsegwenza taghha tilef ix-xoghol u soffra dizabilita` permanenti u danni ohra konsegwenzjali.

2. Għall-istess incident u danni konsegwenzjali huwa responsabbli unikament il-konvenut minhabba li naqas li jiehu dawk il-mizuri u dawk il-prekawzjonijiet necessarji li setghu jevitaw l-incident in kwistjoni.

3. Għalkemm interpellat biex jersaq għal likwidazzjoni u hlas tad-danni kollha sofferti mill-attur, anke permezz ta' ittra ufficjali datata 17 ta' Lulju, 2003, il-konvenut baqa' inadempjenti.

4. L-attur meta gara l-incident fuq ix-xogħol kien impjegat biex ihaddem makkinarju kbir u kull generu, komprizi cranes kbar u ngenji oħra speċjalizzati, kif jigi pruvat minnu bil-gurament, xogħol speċjalizzat li kien jirrendilu paga, medja ta' iżjed minn disghin liri maltin (Lm90) fil-gimgha u minhabba l-incident hu sofra dizabilita' permanenti ta' iżjed minn tlieta u għoxrin percentagg (23%).

5. Minhabba dan l-incident l-attur ma jistax jkompli f' dan ix-xogħol li għalih huwa speċjalizzat u minhabba l-ferita f'idejh il-leminija huwa prekluz għal dejjem milli jagħmel xogħol manwali, bhal qabel.

6. L-attur m'għandux preparazzjoni letterarja idonea li jista' jsib xogħol mhux manwali.

7. Premessi id-dikjarazzjonijiet necessarji u mogħtija l-provvediment opportuni.

Talab lill-konvenut jgħid għaliex din l-Onorabbli Qorti m'għandhiex:

1. Tiddikjara illi l-konvenut huwa unikament responsabbli għall-incident fuq iriferit li gara fl-20 ta' Novembru, 2001 waqt il-hin tax-xogħol, f'liema incident l-attur sofra danni fuq il-persuna, u dana għar-ragunijiet fuq indikati u kif jigi pruvat waqt it-trattazzjoni tal-kawza.

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2. Tillikwida d-danni kollha sofferti mill-attur b`konsegwenza tal-imsemmi incident, anke permezz ta` periti nominandi.

3. Tikkundanna lill-istess konvenut ihallas lill-attur dik is-somma li tigi hekk likwidata, bl-imghax legali mid-data tan-notifika tal-ittra ufficjali tas-17 ta` Lulju, 2003 sad-data tal-effettiv pagament.

Bl-ispejjez inkluzu dawk tal-ittra ufficjali, harrek lil konvenut li jibqa` ngunt ghas-subizzjoni.

Rat in-nota tal-eccezzjonijiet li in forza taghha l-konvenut eccepixxa illi:

1) L-ewwel talba tal-attur ghandha tkun michuda stante li l-incident *de quo* ma garax htija tal-konvenut izda unikament htija tal-attur innifsu.

2) It-tieni talba tal-attur ghandha tkun respinta wkoll billi ma hemmx danni x`jigu likwidati favur l-attur.

3) Isegwi ghalhekk li anke t-tielet talba ghandha tigi rigettata stante li l-konvenut m`ghandux ikun ikkundannat ihallas danni lill-attur.

Salv eccezzjonijiet ulterjuri.

Rat id-dikjarazzjonijiet guramentati tal-partijiet;

Rat id-digrieti precedenti ta` din il-Qorti;

Semghet il-provi li ressqu l-partijiet;

Rat l-atti kollha tal-kawza u d-dokumenti ezebiti;

Semghet lid-difensuri tal-partijiet;

Rat in-noti tal-osservazzjonijiet tal-partijiet;

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

Ikkunsidrat;

Illi jirrizulta li l-attur kien jahdem mal-konvenut fuq xoghol tal-bini. Hu kien jigi mqabba l-aktar biex isug tower-cranes u vetturi ohra kbar. Ghal habta ta` Novembru tas-sena 2001, l-attur kien qiegħed jahdem fuq bini 7 sulari għoli. Hu kien qed jahdem fus-sular ta` fuq nett, u kien qed ihaddem tower-crane, bir-remote control, permezz ta` kaxxa li kellu marbuta ma` zaqqu. F`hin minnhom, dar u għamel xi pass lura, inqasmet gebla tal-bricks taht saqajh, waqghu xi pipes tal-hadid, u dawn wadbu l-isfel seba` sulari. L-attur ma kellu ebda safety rope jew harness marbuta mieghu, u kien fi stat ta` free walking fuq il-bini l-għoli meta sehh l-incident. Jidher li l-attur kien qed jigbor il-hadid f`bundles, jorbothom mal-crane u jnizzilhom fejn mehtieg. Huwa kien qed jigwida l-crane, meta serrah il-hadid fuq speci ta` sodda mistrieħa fuq bricks. Il-forza tal-mazz tal-kannen li kien tefa` fuq il-bricks kienet tant, li brick xpakkat. L-attur kien qed jimmanuvra l-crane waqt li hu stess kien fuq l-ispeci ta` 'lqugh li għamel fuq il-bricks. Bil-piz tal-kannen u l-agitazzjoni tieghu fuq il-bricks, brick tkissret, u l-mazz tal-kannen sfaxxa. Parti minn dawn il-kannen waqghu għall-isfel, u waqghu lill-attur għal isfel ukoll.

Il-principji li jirregolaw ir-responsabilita` ta` sid ta` intrapriża biex iħares is-saħħa tal-impjegati tieghu huma ben stabbiliti fil-gurisprudenza. Fil-kawza Ingliża “Wilsons and Clyde Coal Co. VS English”, deciza mill-*House of Lords* fil-1937, Lord Maugham osserva:

“In the case of employments involving risk ... it was held that there was a duty on the employer to take reasonable care, and to use reasonable skill, first, to provide and maintain proper machinery, plant, appliances, and works; secondly to select proper skilled persons to manage and superintend the business, and thirdly to provide a proper system of working”

Fil-kawza “Calleja vs Fino”, deciza minn din il-Qorti fl-10 ta` Ottubru, 1980, gie kwotat b`approvazzjoni li:

"It is the employer's duty to provide a safe system of work. Any injury to which the employee has not contributed would be the sole responsibility of the employer. The fact that the system adopted had been in use for years without incident, is not proof that the system is safe: the accident in question justifies this".

Fil-kawza "Borg vs Wells et" deciza mill-Onorabbli Qorti tal-Kummerc fid-9 ta' Settembru, 1981, kompli jizdied li: *"In planning a system of work the employer must take into account the fact that workmen become careless about risks involved in their daily work"*. Fil-kawza "Grech vs Ellul", deciza minn din il-Qorti fis-27 ta' Gunju, 1996, intqal: *"It is the duty of every employer to take all reasonable care for his employee's safety in all circumstances at their place of work"*. Fil-kawza "Grech vs Farrugia", deciza mill-Onorabbli Qorti tal-Appell fis-7 ta' Dicembru, 1994, intqal li: *"Il-makkinarju ghandu jkun imhares b`mod illi ma jirrekax hsara lil min qed jahdem fuqu, jew qed jadoperah anke meta dan ma jkunx qed jahdem fuqu, jew juza dak il-makkinarju minghajr dik l-attenzjoni u prudenza li wiehed jistenna bhala normalita` u dan biex jaghmel tajjeb ghal dik l-aljenazzjoni tal-attenzjoni, prudenza u ghaqal li jsofri haddiem industrijali, proprju ghaliex dik l-aljenazzjoni tkun, fil-maggoranza tal-kazijiet, indotta mill-istess natura tal-attivita` industrijali"*, (ara wkoll "Bugeja vs Montanaro Gauci noe", deciza mill-Onorabbli Qorti tal-Appell fl-14 ta' Mejju, 2004).

Ghar-rigward ta' safety equipment u armar Prattiku u sikur ghall-haddiema, l-Onorabbli Qorti tal-Appell Kriminali fil-kawza "Pulizija vs Attard", deciza fit-2 ta' Settembru, 1999, osservat illi minn ihaddem mhux biss ghandu jara li jkun hemm available l-apparat ta' safety (bhal harness u scaffolding), izda ghandu jinsisti mal-foreman li ma jsirx xoghol minghajr l-uzu ta' safety equipment, u jara li din l-ordni tiqi segwita.

F`dan il-kaz, jidher car li l-konvenut naqas bis-serjeta` milli jiehu hsieb is-sahha tal-haddiema, u donnu l-attitudini tieghu kienet li jhalli lill-haddiema ghal ghomq it-triq billi jahsbu huma kif u b`liema mod iwettqu xogholhom. Il-

konvenut ma hax hsieb li jara li x-xoghol li jwettqu l-haddiema jkun “*properly superintended*”, u lanqas ma inkariga foreman bi dmir precis u specifiku li jara li l-haddiema ma jiehdux riskji zejda u ma jahdmux minghajr safety equipment.

Fil-kuntest tal-obbligu ta` min ihaddem intqal li “*There are then a number of clearly identifiable factors which the judge will have in mind in deciding whether an employee`s claim should be successful – in effect the ‘ingredients’ of reasonable care*” – *Whincup, “Modern Employment Law” (6th Edit. P. 198)*. L-ingredjenti li jilenka dan l-attur, huma s-segwenti:

“(1) First and foremost is the question of the likelihood or otherwise of injury. The more likely or probable an accident is, the greater the duty to guard against it. But, if there is only a remote possibility of danger, the need for precautions is usually much reduced.

(2) The second factor helping us to decide whether an employer took reasonable care is that of the potential seriousness of injury. If a certain process or product could cause a disastrous accident, any reasonable employer would take the greatest possible care to avoid it. Such stringent precautions would still be necessary even though the chances of the accident happening were in fact quite small.

(3) The third ‘ingredient’ is the obviousness of the danger. Since an employer can only guard against hazards he knows or ought to know about he cannot usually be blamed for injuries caused by hidden or unexpected dangers. But on the other hand he might be held liable if a proper research, training or information-flow system would have revealed the risks in question.

(4) The fourth factor is the cost of safety. Essentially the law`s task is to balance out society`s desire for profit and the individual worker`s demand for safety and welfare. It rarely resolves a safety problem by forbidding work to be carried on at all or by requiring precautions so expensive

as to drive the employer out of business – though such a conclusion may possibly be reached if the danger is extreme and there is no other way of avoiding it.

(5) Lastly we should recognize the inherent risk factor. All kinds of work involve varying degrees of risk about which little or nothing can be done. This is well recognized in the context of mining, steeple-jacking, oil rig work, and the like, but the point is equally true of much more humdrum jobs”.

F`dan il-kaz, ghalkemm ix-xoghol tal-attur kien jinvolvi certu riskju, kellu jidher car ghal min ihaddem li x-xoghol kellu “*likelihood*” li jwassal ghal incident, u li dan l-incident, meta jsehh, kien ikun wiehed serju u li, ghalhekk, hu kellu jiehu prekawzjonijiet stringenti biex ihares kontra xi incident ta` dik in-natura. Kif intwera, huwa dmir ta` min ihaddem biex ihares anke kontra xi att negligenti u traskurat tal-haddiem, ghax hu maghruf li n-nuqqas ta` attenzjoni u ghaqal mill-haddiema, hija, fil-maggoranza tal-kazijiet, rizultat tal-istess hidma industrijali, hafna drabi ripetitiva u monotona, li jaghmel il-haddiem. Ma kellux ikun mistenni li l-attur kellu jaghmel kalkolu hu ta` kemm kannen jifilhu l-bricks, u lanqas ma kellu jkun mistenni li jkun jaf is-sahha tal-bricks. Ma jirrizultax li l-imghallem ghadda xi informazzjoni f`dan is-sens lill-attur, u dan kien mistenni jopera bl-intuwitu tieghu. Hu dover ta` min ihaddem “*to leave nothing to chance*”, u kellu jghaddi lill-attur istruzzjonijiet precizi ta` kif kellu jahdem.

Il-Qorti, ghalhekk, issib li l-konvenut ghandu jerfa` r-responsabbilita` kollha ghall-incident, peress li naqas li jipprovdi nies mistharga biex isegwu x-xoghol tal-haddiema tieghu, u, anke jekk ipprovda safety equipment (dak li ma jirrizultax), talli naqas li jassigura li ma jsirx xoghol minghajr l-uzu ta` safety equipment; huwa ukoll naqas li jqies il-probabilita` u l-gravita` tal-incident u per konsegwenza naqas li jiehu passi preventivi kontra kull incident.

Ghar-rigward tal-likwidazzjoni tad-danni jirrizulta li l-attur kellu 26 sena meta sehh l-incident, kellu paga ta`

Lm194.50 gross kull hmistax, u ma jidhirx li kellu livell ta' edukazzjoni gholja tant li ma jafx jaqra u jikteb regolarment, izda bil-kemm jiddobba. B`rizultat tal-incident, l-attur baqa` immankat f`idu l-leminija, u ma jistax jaghmel l-istess xoghol li kellu qabel, tant li issa fetah hanut tal-haxix (*green grocer*). Jidher pero`, li ghal xi zmien wara l-incident baqa` jahdem mal-konvenut peress li baqa` jircievi salarju minghand il-konvenut zgur sa Novembru 2002.

Dwar il-multiplier, dan il-Qorti, wara li qieset il-gurisprudenza ricenti fir-rigward (ara, per eżempju, “Caruana vs Camilleri”, deciza mill-Onorabbli Qorti tal-Appell fis-27 ta` Frar, 2004), u c-“*chances and changes of life*”, sejra tadotta figura ta` 28.

Dwar id-dhul tal-attur, kif inghad, ma jidhirx li l-attur kellu wisq prospetti li javvanza f`xi karriera, pero`, li hu zgur hu li hu seta`, bl-esperjenza, javvanza fix-xoghol u d-dhul tieghu kien jizdied; dan kien isehh anke b`rizultat taz-zidiet li jkun hemm fil-pagi regolarment minhabba ziedet fir-rata tal-inflazzjoni. Il-Qorti, fid-dawl ta` dawn il-konsiderazzjonijiet, sejra tadotta dhul annwali ta` Lm6,000, mil-liema somma m`ghandu jsir ebda tnaqqis, la minhabba t-taxxa (ara “Muscat vs Schembri”, deciza minn din il-Qorti fis-27 ta` Jannar, 1972), u lanqas minhabba l-hlasijiet tal-P.A.Y.E. jew il-kontribuzzjonijiet tas-sigurta` nazzjonali (ara “Caruana vs Farrugia”, deciza minn din il-Qorti fit-23 ta` Novembru, 1983).

Dwar ir-rata ta` dizabilita`, l-attur jallega li kellu dizabilita` ta` izjed minn 23%. L-espert mediku nominat mill-Qorti, pero`, stima d-dizabilita` li qed isofri l-attur kagun tal-incident li kellu ta` 12%, b`dana li ladarba jitnehha l-pjanca u il-viti mill-*‘humerus’* tal-lemin, id-dizabilita` tonqos ghal 4%. Ma jirrizultax jekk l-attur ghamilx l-operazzjoni biex inehhi l-pjanca u l-viti, u lanqas jekk tali operazzjoni ghadiex vijabbli. Fic-cirkostanzi, u mehud kont tal-fatt li l-espert mediku ma setax jelimina kompletament ir-riskju ta` infezzjoni fid-driegh tal-lemin, anke jekk jitnehhew il-pjanca u l-viti, din il-Qorti thoss li ghandha tadotta percentagg ta` dizabilita` ta` 8%.

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Ghalhekk, il-kumpens dovut lill-attur ghandu jigi kkalkulat kif gej:

$$\text{Lm}6,000 \times 28 \times 8\% = \text{Lm}13,440$$

Peress li l-attur sejjer jiehu l-kumpens f`daqqa, ghandu jsir tnaqqis biex taghmel tajjeb ghall-fatt li se jgawdi l-flus millum ("*lump sum deductions*"). Peress li l-incident sehh sitt snin ilu, dan it-tnaqqis ghandu jkun ta` 14%. B`hekk, il-kumpens ghandu jkun ta` Lm11,558.

Ghaldaqstant, ghar-ragunijiet premessi, tiddisponi mill-kawza billi tilqa` t-talbiet tal-attur, tiddikjara li l-konvenut huwa unikament responsabbli ghall-incident in kwistjoni li fih wegga` l-attur, u tikkundanna lill-istess konvenut ihallas, in linea ta` danni, s-somma ta` Lm11,558 (hdax il-elf, hames mija u tmienja u hamsin liri Maltin), bl-imghax legali millum sal-pagament effettiv.

L-ispejjez tal-kawza jithallsu kollha mill-konvenut.

IMHALLEF

DEP/REG

< Sentenza Finali >

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