



**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
SILVIO MELI**

Seduta ta' l-4 ta' Dicembru, 2013

Citazzjoni Numru. 816/2008

**Elmo Insurance Limited
(C – 3500)
kif surrogata fid-drittijiet tal-assikurata taghha Lennie
Caruana**

vs

**Kenneth Grech
(karta ta' l-identita` numru 5875 (M))**

Il-Qorti,

1.0. Rat ir-rikors guramentat promotur datat il-11 t'Awwissu, 2008, li permezz tieghu s-socjeta` rikorrenti sintetikament esponiet is-segwenti:

1.1 Illi fis-27 t'Awwissu, 2006, waqt li l-intimat kien qed isuq *speed boat Chaudron 22* Numru S – 1482 fil-“Hofra l-Kbira” qrib Delimara, habat ma' *dinghy* Numru

S – 16869, proprjeta` ta' Lennie Caruana u misjuqa minnu;

1.2 Illi ghall-incident u rizultanti danni, kien jahti ghalihom unikament l-intimat minhabba imprudenza, imperizja u negligenza;

1.3 Illi Lennie Caruana kien assikurat mas-socjeta` rikorrenti skont polza assikurattiva bin-numru 902 – 00675;

1.4 Illi ghalhekk is-socjeta` rikorrenti hallset is-somma ta' erbatax –il elf, sitt mija u hamsa u sebgħin Ewro u hames centezmi, (€14,675.05), u giet surrogata fid-drittijiet tal-assikurat tagħha, (ara fol 6);

1.5 Illi ghalkemm interpellat biex jagħmel tajjeb għad-danni tas-socjeta` rikorrenti, baqa' ma ntlahaq l-ebda ftehim;

1.6 Illi konsegwentement is-socjeta` rikorrenti kienet kostretta taderixxi din il-qorti sabiex l-intimat ikollu l-opportunita` jwiegeb u jghid ghaliex din il-qorti m'ghandhiex:

1.6.1. Tiddikjara lill-intimat unikament responsabbli għall-incident *de quo* u għad-danni konsegwenza tal-istess, sofferti mis-socjeta` rikorrenti;

1.6.2. Tillikwida d-danni tas-socjeta` rikorrenti fl-ammont fuq indikat, (ara paragrafu numru wiehed punt erba' (1.4), aktar qabel);

1.6.3. Tikkundanna lill-intimat biex ihallas lis-socjeta` rikorrenti l-ammont hekk likwidat;

1.6.4. Bl-ispejjez kif dedotti fl-istess rikors guramentat promotur u bl-imghaxijiet legali skont il-ligi mis-7 t'Awwissu, 2007, kontra l-intimat;

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2.0. Rat ir-risposta guramentata tal-intimat datata l-24 t'Ottubru, 2008, li permezz taghha wiegeb sintetikament bil-mod segwenti:

2.1. Illi t-talbiet tas-socjeta` rikorrenti huma infondati;

2.2. Illi l-istess talbiet ghandhom jigu respinti bl-ispejjez;

2.3. Illi l-incident in dizamina sehh unikament tort u htija tas-sewqan traskurat ta' Lennie Caruana;

2.4. Salv risposti ulterjuri;

3. Rat id-digriet taghha diversament preseduta datat it-23 ta' Frar, 2011, li permezz tieghu hatret assistent gudizzjarju ghall-iskop hemm indikat, (ara fol 94);

4. Rat id-digriet taghha datat l-4 t'April, 2013, fejn wara talba ghall-istess mill-abbli rapprezentanti legali tal-partijiet, awtorizzat lill-istess biex jipprezentaw noti ta' sottomissjonijiet fil-modalita` hemm indikata, (ara fol 186);

5. Ezaminat id-dokumenti kollha esebiti;

6. Ezaminat ix-xhieda mismugha mill-qorti diversament preseduta u l-affidavitijiet ipprezentati;

7. Semghet ix-xhieda prodotta quddiemha kif preseduta;

8. Rat in-noti ta' sottomissjonijiet tal-kontendenti rispettivament datati l-25 ta' Gunju u d-9 ta' Lullju tal-2013;

9. Rat il-verbal tal-abbli rapprezentanti legali tal-partijiet datat il-11 ta' Lulju, 2013, li permezz tieghu infurmaw lill-qorti li ma kellhom xejn xi jzidu man-noti skritti taghhom;

Ikkunsidrat:

10.0. Illi l-fatti li taw lok għall-procedura odjerna jistgħu jigu sintetikament esposti bil-mod segwenti:

10.1. Illi għall-habta ta' l-erbgha u nofs ta' wara nofs inhar, (4:30pm), tas-27 t'Awwissu, 2006, fil-“Hofra l-Kbira”, limiti ta' Delimara, sehhet kollizzjoni marittima bejn *speed boat* tal-marka *Chaudron* bin-numru S – 4182 misjuqa mill-intimat Grech u *dinghy* bin-numru S – 16869 misjuq u proprjeta` ta' Lennie Caruana;

10.2. Illi fil-mument tal-kollizzjoni l-bajja fejn sehh l-incident *de quo* kienet mimlija dghajjes weqfin aktar 'il gewwa qrib l-art;

10.3. Illi fil-mument tal-incident Caruana li kien qed jikkonduci d-*dinghy* kien qieghed jipprepara biex jitrakka;

10.4. Illi Caruana kien għalhekk qed isuq bil-mod, b'wiehed miz-zewg passiggieri li kellu kien qed jipprepara biex jitfa' l-ankra;

10.5. Illi proprju f'dak il-mument indikat fil-paragrafu precedenti instemgħet għajta għal kawtela u x-*Chaudron* tidhol fuq id-*dinghy* minn naha tal-lemin – “*star board side*”;

10.6. Illi konsegwenza tal-istess impatt il-passiggier tad-*dinghy* li kien qed jipprepara l-ankra u z-zewg (2) passigiera l-ohra spiccaw il-bahar u d-*dinghy* garrbet il-hsarat sussegwentement riskontrati;

10.7. Illi wara dan l-impatt ix-*Chaudron* baqgħet hierga l' barra mill-bajja;

10.8. Illi l-konducent tad-*dinghy* – Caruana – kien assikurat mas-socjeta` rikorrenti, li wara kkonduci l-ezamijiet kollha necessarji hallset is-somma ta' danni kontestati mis-*surveyor* tagħha kif indikat qabel, (ara paragrafu numru wiehed punt erbgha, (1.4), aktar qabel);

10.9. Illi s-sahha tal-impatt tad-dghajsa *Chaudron* mad-*dinghy* in dizamina li spicca biex rema' l-bahar lit-tlett (3)

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okkupanti tad-*dinghy* jittradixxi velocita` eccessiva – tenut kont tal-fatt li d-dghajjes *de quo* kienu anke pjuttost qrib ix-xatt;

10.10. Illi ma jirrizultax li kien hemm xi ostakoli vizwali li kienu qed jimpedixxu l-vista tal-konducent tax-*Chaudron*, l-intimat Grech;

Ikkunsidrat:

11.0. Illi sintetikament l-intimat Grech isostni s-segwenti:

11.1. Illi fil-hin tal-incident kien qed ifittex post minn fejn seta' jinzel l-art biex jarma kamp ma' shabu;

11.2. Illi ghalhekk, u ghaliex kien hemm hafna dghajjes u hafna nies jghumu, isostni li kien qed isuq "bil-mod hafna", (ara fol 106);

11.3. Illi f'mument minnhom ra *dinghy* riesqa lejha b'velocita` qawwija u ma setax jevitah, (ara fol 107);

11.4. Illi *di piu`*, il-konducent tad-*dinghy* kien qed ihares lura ghalkemm kien miexi l' quddiem u b'hekk sehha l-incident *de quo*;

Ikkunsidrat:

12. Illi nonostante l-verzjoni kontradittorja fuq sintetikament riprodotti, l-verzjoni tal-intimat ma tirrizultax korraborata u ghalhekk din il-qorti ma tistax tistrieq fuqha stante li *unsafe*;

Ikkunsidrat:

13.0. Illi rigward id-danni tad-*dinghy* kif elenkati mis-*surveyor ex parte* involut jinghad sintetikament is-segwenti:

13.1. Illi preliminarjament jinghad li "survey" kongunt propost ma sarx b'nuqqas tas-socjeta` assikuratrici tal-intimat u konsegwentement kienu redatti zewg (2)

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“*surveys*” wiehed mis-socjeta` rikorrenti u iehor mis-socjeta` assikuratrici tal-intimat;

13.2. Illi mill-ezamijiet fizici tad-dghajjaes involuti fl-incident in dizamina gie stabbili li d-*dinghy* kienet id-dghajsa li ssubiet id-daqqa tal-kollizjoni in dizmaina u kwazi spiccat “*total loss*”;

13.3. Illi peress li d-*dinghy* kien ilu jintuza biss xahar, (ara fol 181), id-*dinghy* kien ghadu gdid u l-valur ta' sitt elef u tlett mitt Lira Maltin, (LM6,300.00), kien dikjarat bhala l-ammont ta' danni subiti minn Caruana stante li s-socjeta` assikuratrici iddikjarata “*total loss*” u ma kienx vijabbli li jigi msewwi;

Ikkunsidrat:

14.0. Illi *di piu`*, issir referenza ghas-segwent i indikazzjonijiet prodotta fil-konkluzjoni tar-relazzjoni *ex parte* prodotta mill-Inginier Paul L. Cardona u s-*surveyor* Joseph Briffa: (ara fol 113);

14.1. “The insured stated that while he was crossing the bay, his speed boat was hit by a dinghy that was entering the bay”;

14.2. “Now it is to be noted that the rules of the road – otherwise known as the International Regulation for Preventing Collisions at Sea – are designed to cover every type of confrontation between sea-going vessels, regardless of size, speed and purpose”;

14.2.1. Crossing situations are covered by Rule 15:

14.2.1.i. “When two power-boats are crossing, the vessel which has the other on its starboard side shall keep out of its way”;

14.2.2. “**Action to be taken by the give-way vessel** is laid down by Rule 16:

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14.2.2.i. "Every vessel taking avoiding action shall do so in plenty of time and keep well clear";

14.3. "In this particular case the speed boat was on the starboard side of the dinghy. Therefore, the dinghy owner had the obligation to give way and take the necessary action to avoid the collision", (ara fol 113);

Ikkonsidrat:

15. Illi fid-dawl tar-regolament riferit mill-inginier u s-*surveyor* riferit fil-paragrafu precedenti ghandu jinghad li s-sitwazzjoni li inholqot fid-dinamika riskontrata mhix dik semplicistika rilevata mill-istess inginier u *surveyor* in dizamina;

16. Illi fid-dinamika riskontrata ma jirrizultax li z-zewg (2) dghajjes involuti kienu mixjin fit-tul u parallalament ghal xulxin, izda riedu jaqsmu triq xulxin;

17. Illi li jirrizulta minflok kien li d-*dinghy* kien qed jipprepara biex jieqaf u jitfa' l-ankra waqt li ix-*Chaudron* kien qieghed jinstaq b'velocita` eccessiva f'area mimlija dghajjes u nies jghumu;

18. Illi konsegwentement qed tirrespingi l-konkluzjonijiet tal-imsemmija inginier u *surveyor* fuq riferiti;

Ikkonsidrat:

19.0. Illi in vista tal-premess din il-qorti hi sodisfatta li s-socjeta` rikorrenti ipprovat il-kaz taghha skont il-ligi, inkluz is-surroga *de quo*, (ara fol 6), fid-drittijiet tal-assikurat taghha u d-danni sofferti mill-istess li ghamlet tajjeb ghalihom l-istess socjeta` rikorrenti u konsegwentement, filwaqt li tirrespingi r-risposti tal-intimat Kenneth Grech, takkolji t-talbiet kollha tas-socjeta` rikorrenti u ghalhekk:

DECIDE:

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19.1. Tiddikjara lill-intimat unikament responsabbli ghall-incident *de quo* u ghad-danni konsegwenza tal-istess sofferti mis-socjeta` rikorrenti;

19.2. Tillikwida d-danni tas-socjeta` rikorrenti fl-ammont ta' erbatax –il elf, sitt mija u hamsa u sebghin Ewro u hames centezmi, (€14,675.05);

19.3. Tikkundanna lill-intimat Kenneth Grech biex ihallas is-somma hekk likwidata fil-paragrafu precedenti lis-socjeta` rikorrenti Elmo Insurance Limited;

19.4. Bl-ispejjez u bl-imghaxijiet kif indikati fir-rikors guramentat promotur kontra l-intimat fuq indikat.

Onor. Imhalledf Silvio Meli

< Sentenza Finali >

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