



MALTA

QORTI CIVILI

PRIM' AWLA

ONOR. IMHALLEF

ANNA FELICE

Seduta tal-25 ta' Marzu, 2015

Citazzjoni Numru. 134/2013

Ventur Company Limited (C15832)

VS

**MelitaUnipol Insurance Brokers Limited u Middlesea
Insurance p.l.c.**

Il-Qorti:

Rat ir-rikors guramentat ta' John Grima f'isem Ventur Company Limited li permezz tieghu wara li gie premess illi:

Is-socjetà rikorrenti xtrat polza ta' assigurazzjoni maghrufa ahjar bhala Trial Run Insurance Policy li tkopri l-perjodu tas-sena 2008 inkluz Lulju tal-istess sena minghand is-socjetà intimata MelitaUnipol Insurance Brokers Limited.

Fit-23 ta' Lulju 2008 sehh incident stradali bejn il-vetturi Trial Run 180 misjuqa minn Ian Grima li jigi hu John Grima indikat fir-rikors u vettura ohra DBF 909 misjuqa minn Colin Attard ta' 1, Emerald, Triq l-Oratorju, Qormi u wara li saret claim mis-socjetà konvenuta in forza tal-istess polza t'assigurazzjoni indikata TR2008062001, is-socjetajiet intimati u in partikolari s-socjetà minghand min inxtrat il-polza indikata, s-socjetà MelitaUnipol Limited, irrifjutaw li jipprocessaw il-claim u dan wara li ghamlu referenza ghal endorsement li support tappartjeni ma l-istess polza liema endorsement qatt ma gie mgħoddi lis-socjetà attrici sal-gurnata ta' l-incident awtomobilistiku tat-23 ta' Lulju 2008 u liema endorsement gie mgħoddi lilhom wara d-data msemmija, liema endorsement jaqra hekk: *"It is hereby agreed and understood that the section headed Authorised Drivers in the Schedule and in the Certificate of Motor Insurance attaching and forming part of the above Motor Policy is deemed to be deleted from renewal date being 01/01/2008 and substituted by:*

The Insured, and any person over 18 years for the purpose of demonstration provided such person is accompanied by a person in the Insured's employ and is an authorised driver. It is also being understood and agreed that the person driving holds or has held a valid

driving licence to drive such vehicle and is not disqualified from holding or obtaining such a licence.

It is also being agreed that any person in the insured's employ and any relative of the insured who is under the age of 25 years is excluded from driving such motor vehicle unless such driver/s is specified by the insured."

Ghalhekk is-socjetajiet intimati ma jistghux japplikaw l-effett ta' l-endorsement indikat ladarba dan qatt ma kien parti mill-polza imsemmija u certament sad-data tal-incident tat-23 ta' Lulju 2008 meta sahsitra l-istess socjetà intimata MelitaUnipol Insurance Brokers Limited baghtu diversi dokumenti li jinkludu dan l-endorsement tal-polza lis-socjetà attrici (tramite John Grima) li jgib id-data tas-7 ta' Awissu 2008, u nonostante l-ittra interpellatorja biex jonoraw u jiprocessaw il-claim, is-socjetà intimata u cioè Middlesea p.l.c. u l-istess MelitaUnipol qeghdin jirrifjutaw li jaghmlu dan u dan skond l-ittra taghhom tat-28 ta' Awissu 2008.

Intalbet din il-Qorti biex:

1. Tiddikjara li l-endorsement li jaqra: *"It is hereby agreed and understood that the section headed Authorised Drivers in the Schedule and in the Certificate of Motor Insurance attaching and forming part of the above Motor Policy is deemed to be deleted from renewal date being 01/01/2008 and substituted by:*

The Insured, and any person over 18 years for the purpose of demonstration provided such person is accompanied by a person in the Insured's employ and is an authorised driver. It is also being

understood and agreed that the person driving holds or has held a valid driving licence to drive such vehicle and is not disqualified from holding or obtaining such a licence.

It is also being agreed that any person in the insured's employ and any relative of the insured who is under the age of 25 years is excluded from driving such motor vehicle unless such driver/s is specified by the insured", qatt ma kien parti mill-policy number TR2008062001 u PAL0880202154 sal-gurnata tat-23 ta' Lulju 2008; u

2. Tordna lis-socjetajiet intimati jipprocessaw il-claim għall-incident stradali tat-23 ta' Lulju 2008 bejn Trial Run 180 u l-vettura DBF 909 li sehh fl-Imtarfa fejn kienu involuti l-persuni ta' Ian Grima u Colin Attard minghajr l-effett ta' l-endorsement indikat fit-talba precedenti.

Bl-ispejjez u bl-imghax legali skond il-Ligi.

Rat ir-risposta guramentata tas-socjetà Middlesea Insurance plc (C5553) li in forza taghha eccepjet illi:

L-azzjoni odjerna hija improponibbli, u dana stante illi r-rikorrenti m'ghandhiex interess guridiku illi tipproponi tali azzjoni.

Il-mertu tal-kawza odjerna kienet già giet trattat u deciza fi proceduri oħra, liema proceduri gew decizi b'mod definittiv.

Fil-proceduri ta' Arbitragg fl-ismijiet M2121/09 Middlesea Insurance plc vs Ventur Company Limited li gew decizi fis-16 ta' Ottubru 2012, is-socjetà rikorrenti kienet già ssollewat l-eccezzjoni illi l-endorsement illi kien hemm fil-polza ta' assikurazzjoni relattiva ma kellu ebda effett fil-konfront tal-partijiet, eccezzjoni illi giet skartata.

Is-socjetà rikorrenti ghal ragunijiet maghrufa lilha biss ghazlet illi ma tintavolax appell mid-decizjoni imsemmija, bir-rizultat illi tali decizjoni illum hija wahda finali, u ghalhekk *res judicata*.

Huwa car illi r-rikorrenti intavolaw dawn il-proceduri ghaliex m'ghadx ghandhom il-possibilità illi jintavolaw appell mid-decizjoni imsemmija, procedura illi mhix legittima w ghalhekk ghandha tigi skartata, ghaliex altrimenti wiehed ikun qieghed jaghti lok illi jibdew isiru dan it-tip ta' azzjonijiet illi jkunu qed jistultifikaw l-procedura tal-appell.

In subsidium u minghajr pregudizzju ghas-suespost l-endorsement saret b'mod validu u ghalhekk kellha effetti legali fuq il-partijiet, u dana kif korrettement gie dikjarat mill-arbitru fil-proceduri imsemmija.

Il-claim bhala stat ta' fatt gie processat tant illi s-socjetà esponenti ghamlet tajjeb ghall-hsarat illi sofrew terzi bhala rizultat tal-incident ta-traffiku illi seh fit-23 ta' Lulju 2008, u dana skond kif kienet obbligata illi taghmel ai termini tal-Kap. 104 tal-Ligijiet ta' Malta, u ghalhekk it-tieni talba rikorrenti hija infondata.

Salv eccezzjonijiet.

Rat ir-risposta guramentata tas-socjetà intimata MelitaUnipol Insurance Brokers Limited li in forza taghha eccepjet illi:

In linea preliminari, s-socjetà esponenti MelitaUnipol Insurance Brokers Limited mhijiex il-legittima kontradittrici stante li mhijiex il-kumpanija li harget il-polza tal-assikurazzjoni fil-kaz mertu tal-proceduri odjerni.

Ukoll in linea preliminari izda minghajr pregudizzju ghas-suespost u in subordinazzjoni ghall-istess, jigi eccepjet li din l-Onorabbli Qorti m'ghandhiex gurdizzjoni sabiex tiddeciedi l-kaz odjern, stante li ai termini tal-Artikolu 1.2 tar-Raba' Skeda tal-Att dwar l-Arbitrabb, Kap. 387 tal-Ligijiet ta' Malta, kull kwistjoni dwar danni emergenti minn incident ta-ttraffiku li fih ma jkunx hemm hsara fuq xi persuna, liema danni ma jeccedux il-hdax-il elf, sitt mija u sitta u erbghin ewro u sebgha u tmenin centezmu (€11,646.87), ghandha tigi determinata b'arbitrabb.

Ukoll preliminarjament izda minghajr pregudizzju ghas-suespost u in subordinazzjoni ghall-istess, din it-talba hija ezawrita stante li l-validità o meno tal-polza tal-assikurazzjoni u l-fatt li din kienet imwassla lis-socjetà rikorrenti gja gie deciz permezz ta' proceduri ta' arbitrabb fl-ismijiet Middlesea Insurance plc et vs Ventur company Limited et (arbitrabb numru ARBM2121/2009), liema procediment huwa *res judicata*.

Ukoll minghajr pregudizzju ghas-suespost u in subordinazzjoni ghall-istess fil-mertu, il-claim bhala stat ta' fatt, gja gie processat mis-socjetà Middlesea Insurance p.l.c. intimata u d-danni thallsu u ghalhekk, it-tieni talba tas-socjetà rikorrenti hija nfondata.

Ukoll minghajr pregudizzju ghas-suespost u in subordinazzjoni ghall-istess, fil-mertu, is-socjetà eccipjenti ma ghamlet xejn hazin fil-proceduri u l-prassi li segwiet.

Ukoll fil-mertu, is-socjetà rikorrenti ghazlet hija stess li ma tappellax id-decizjoni tal-arbitragg fuq imsemmija.

Salv eccezzjonijiet ohra.

Rat id-dokumenti.

Rat in-noti ta' sottomissjonijiet tal-partijiet.

Rat li l-kawza thalliet ghas-setnenza fuq l-eccezzjoni ta' "res judicata".

Din il-kawza tirrigwarda polza ta' assikurazzjoni ghall-perjodu tas-sena 2008 u endorsement relatat mal-istess polza u li s-socjetà rikorrenti qeghda ssostni li ma jghoddx.

Jirrizulta illi s-socjetà rikorrenti xtrat minghand Melita Unipol Insurance Brokers polza ta' assikurazzjoni ghal vetturi li jkunu qed jintuzaw fuq bazi ta' "Trial Run". Sussegwentement sehh incident b'vettura tas-socjetà rikorrenti. Meta infethu proceduri ta' arbitragg skond il-ligi, Ventur Company Limited giet kundannata thallas lil MiddleSea Insurance p.l.c. a bazi ta' endorsement li kien jeskludi mill-kopertura:

"any person in the insured's employ and any relative of the insured who is under the age of 24 (sic) years is excluded from driving such motor vehicle unless driver is specified by the insured."

Permezz tal-proceduri odjerni s-socjetà Ventur Company Limited qeghda titlob dikjarazzjoni li tali endorsement qatt ma jista' jghodd fil-konfront taghha ghaliex hija qatt ma giet mgharrfa bih. Is-socjetà intimata Unipol teccepixxi "res judicata", fost eccezzjonijiet ohra.

Huwa ritenut illi:

"Ghad-decizjoni ta' domanda gudizzjarja jista' l-gudikat jekk gia kien hemm kawza ohra li kellha l-elementi ta' l-identità tal-oggett, l-identità tal-kawza, u l-identità tal-persuni." (Vol. XXXVI p.643).

Huwa stabbilit fil-kuntest illi:

"Il-ligi tiddistingwi bic-car bejn motivi u disposittiv u trid li kull dikjarazzjoni li fil-hsieb tal-Qorti hija deciziva u obligatorja ghandha tiffirma parti mid-disposittiv u ghalhekk biex jigi stabbilit jekk is-sentenza ta' qabel tiggustifikax eccezzjoni tal-gudikat ghandu jkun ezaminat id-disposittiv ta' dik is-sentenza u mhux il-motivazzjoni taghha (Vol. XXIX.I.1155)."

*Hu pacifiku ukoll li l-*exceptio indicati* bhala fundament taghha l-interess pubbliku u hija allura ta' nterpretazzjoni strettissima. F'kaz ta' dubbju l-gudikant ghandu jaqta' kontra dik l-eccezzjoni.*

Issa hu rilevanti ghal kaz taht konsiderazzjoni, ezami tattieni rekwiziti u cioe', dak tal-identità tal-haga mitluba. Hu pacifikament ammess li mhux necessarju li l-identità tkun assoluta u materjali izda hu bizzejjed li jkun hemm identità guridika (Vol. XXVII.III.900)". (Camilleri vs Mallia – Qorti tal-Appell 5.10.98).

Kif irriteniet il-Qorti fil-kawza Cortis vs Aquilina - Prim'Awla 25 ta' Settembru 2003:

"l-eccezzjoni tal-gudikat ghandha bhala sisien taghha l-interess pubbliku u hija mahsuba biex thares ic-certezza tal-jeddijiet li jkunu gew definiti f'sentenza, li tbieghed il-possibilità ta' decizjonijiet li jmorru kontra xulxin u li ttemm il-possibilità ta' kwestjonijiet li jibqghu miftuha bi hsara tal-jeddijiet stabbiliti bis-sentenza illi tkun inghatat."

Huwa ritenut inoltre:

"hu maghruf li, ghalkemm ma jistax jigi eccepit il-gudikat fid-difett tar-rekwizit tal-identità tad-domandi, il-gudikat hu valevoli biex jiddefinixxi d-domanda sussegwenti li, ghalkemm mhux identika ghal dik definita bil-gudikat, tkun fondata fuq l-istess `ratio petendi'; u hemm lok ghall-eccezzjoni tal-gudikat anke meta l-meritu tal-kawza, ghalkemm distint minn dak tal-kawza ta' qabel, jifforma parti mill-istess haga, jekk il-punt kontrovers ikun l-istess; u ghalkemm, biex jista' jigi nvokat il-gudikat hemm bzonn l-identità tal-oggett, din l-identità ma hemmx bzonn tkun assoluta, basta li jkun hemm identità fuq il-punt kontrovers, jew l-oggett fit-tieni citazzjoni jidhol bhala parti integrali tal-oggett aktar ampju dedott fl-ewwel citazzjoni."
– Cassar vs Zammit – Qorti tal-Appell – 10 ta' Dicembru 1956.

Fil-kaz in ezami din il-Qorti tqis li r-rekwiziti kollha tal-ligi sabiex tirnexxi l-eccezzjoni moghtija jinsabu sodisfatti.

Jirrizulta li l-partijiet fil-kawza odjerna kienu lkoll partijiet fil-proceduri ta' arbitragg Nru. 2121/2009 decizi fis-16 ta' Ottubru 2012 li kienu jirrigwardaw risarciment ghall-hlas wara incident tat-traffiku li dwaru nbdeu ukoll dawn il-proceduri. Inoltre, s-socjetà Ventur Company Limited f'dawk il-proceduri eccepjet testwalment illi:

"that respondent was driving Trail Run 180 which was covered by insurance policy which was purchased from Agent Melita Unipol Insurance Brokers and which agent

never informed respondent company or any of its directors of the endorsement which reads:any person in the insured's employ and any relative of the insured who is under the age fo 24 years is excluded from driving such a motor vehicle unless such driver is specified by the insured."

Din l-eccezzjoni giet michuda permezz fil-proceduri tal-Arbitragg.

Kif ritenut fil-kawza Abela vs Fenech (28 ta' Frar 1946):

"Kontra l-gudikat ma jistghux jingiebu deduzzjonijiet li jmisshom ingiebu u setghu jingiebu, fil-kawza irrevokabilment definitiva."

L-istess jinghad fis-sentenza tad-9 ta' Ottubru 1951, Michele Sammut vs James Bonnici, Qorti tal-Kummerc:

"il-gudikat jassorbixxi kull eccezzjoni li, in mertu ghall-azzjoni kien imissha jew setghet tigi sollevata in relazzjoni mal-azzjoni stess. U meta hemm il-gudikat mhumieq ammissibbli eccezzjonijiet godda li jkollhom bhala effett li jiddistruggu jew jirrestringu l-effett tal-gudikat." (Vol. XXXV p.649).

Fic-cirkostanzi, ghaldaqstant il-Qorti taqta' u tiddeciedi, billi tilqa' t-tieni eccezzjoni ta' Middle Sea Insurance p.l.c. u t-tielet eccezzjoni ta' MelitaUnipol Insurance Brokers Limited u

Kopja Informali ta' Sentenza

ghalhekk tillibera liz-zewg socjetajiet intimati mill-osservanza tal-gudizzju.

L-ispejjez jithallsu minn Ventur Company Limited.

< Sentenza Finali >

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