

Case Details

Case Details

National ID	6 Ob 11/02i
Member State	Austria
Common Name	link
Decision type	Other
Decision date	10/10/2002
Court	Oberster Gerichtshof (Supreme court)
Subject	
Plaintiff	
Defendant	
Keywords	

Directive Articles

Package Travel Directive, [Article 5, 1](#).

Headnote

1. In determining the level of a price reduction for package travel, the Frankfurt Table can also be used as a guideline tool in Austrian law.
2. It is widely held that a contract for package travel is a mixed contract, containing elements of a contract of work, a service contract and an agency contract. In such a contract, the traveller's guarantee rights are based essentially on the version of § 1167 ABGB applicable here, ie before the amendment to the law governing guarantee rights.
3. § 31e KSchG contains a special guarantee provision for a package travel contract. This does not annul the general regulations laid down in § 1167 ABGB (old version), but rather supplements them.

Facts

The plaintiff made a claim for compensation for the expenses he had incurred in trying to locate his suitcase and also claimed for a 50% price reduction of the trip cost, arguing that he had explicitly made the opportunity to dive a condition of the contract. Moreover, since he was unable to take underwater photographs that he required for a presentation, he also claimed further compensation for lost earnings. He argued that the Warsaw Convention was not applicable as his luggage was not delayed, but rather did not arrive at all.

The defendant and co-intervener asked that the case be dismissed. They argued that the Warsaw Convention did apply to the case in question and that the plaintiff had already received his due compensation calculated according to the Convention. They also objected that the plaintiff had failed to perform his duty of limiting the damage suffered since he could readily have procured diving equipment at the resort.

The Court of First Instance ruled that the plaintiff was entitled to a 40% reduction of the package price, as well as to compensation for the expenses he had incurred in trying to locate his suitcase. However, it rejected the plaintiff's claim for loss of earnings. The Court of Appeal upheld the Court of First Instance's verdict. The plaintiff did not appeal the rejection of his claim for loss of earnings. On the other hand, the defendant challenged the Court of Appeal's decision to uphold the verdict and lodged an appeal with the Supreme Court.

Legal issue

Furthermore, in assessing whether the plaintiff was entitled to a price reduction, the OGH examined only the “old” guarantee law applicable to cases before the end of 2001. In this context, it stated that a contract for package travel is a mixed contract, containing elements of a contract of work, a service contract and an agency contract. In such a contract, the traveller’s guarantee rights are based essentially on the version of § 1167 ABGB relevant in this case. § 31e KSchG does contain a special guarantee provision for a package travel contract, though this does not annul the general regulations laid down in § 1167 ABGB, but rather supplements them. The plaintiff had complied with his duty to report the incident immediately on arrival at the Egyptian airport. Thus, his guarantee rights were assured. The OGH also explored the question of whether the plaintiff was entitled to alter the contract under the (old) provision contained in § 1167 ABGB. It argued that the plaintiff was not entitled to do so because he had never claimed that, contrary to the promises of the defendant or the local travel agent acting as his auxiliary, there was no opportunity to dive at the resort. He had also never stated at the time of agreeing the contract that it was absolutely essential for him to use his own diving equipment and that his holiday would be pointless if the equipment was not transported to his resort. There was therefore no reason to presume that diving with his own diving requirement was guaranteed as a “particular feature” as per § 1167 ABGB.

Thus, the OGH held that a price reduction could only be considered on the basis of the defendant’s having failed to provide an adequate service. It stated in this regard that the value of a price reduction for package travel is always dependent on the facts of the individual case. Thus, the level of the price reduction did not hinge simply on the organiser’s financial calculation, but rather it depended on the severity, extent and duration of the disruption to the trip. In addition, in determining the level of a price reduction for package travel, the Frankfurt Table can also be used as a guideline tool in Austrian law. In view of all these elements, the OGH considered a price reduction of 40% to be appropriate.

Decision

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