

Sudska praksa**Detalji predmeta**

Nacionalna osobna isprava: Gžnš-325/14

Država članica: Hrvatska

Uobičajeni naziv: N/A

Vrsta odluke: Sudska odluka u žalbenom postupku

Datum odluke: 11/02/2016

Sud: Županijski sud u Splitu

Predmet:

Tužitelj: M.G.

Tuženik: E. o. d. d.

Ključne riječi: insurance contract, unfair terms

Članci Direktive

Unfair Contract Terms Directive, [link](#)

Uvodna napomena

The provisions of the insurance requirements which limit the risk in insurance contracts are not considered as unfair provisions with regard to consumers, where the purpose of such requirement is to determine the risk as precisely as possible

Činjenice

The plaintiff filed a claim for compensation of non-pecuniary and pecuniary damages as a result of injury sustained in an accident that occurred on 30 January 2011, as well as the payment of the insured amount arising under the contract on insurance of passengers in case of an accident. In the respective accident the plaintiff sustained multiple body injuries while driving as a passenger in his own car which was driven by another person who did not have a driving licence.

The first instance court ordered the defendant to pay the plaintiff damages for the non-pecuniary and pecuniary damage. However, the first instance court dismissed the plaintiff's claim in which he asked for compensation in the higher amount as well as the insurance compensation. Both the plaintiff and the defendant appealed.

In the appeal procedure the objection of co-responsibility on side of the plaintiff had to be discussed and determined, as well as the existence of preconditions for the payment of the insured amount based on the contract on insurance of passengers, which contract the plaintiff had concluded with the defendant as the insurer.

Pravno pitanje

Can the general terms of the insurance contracts, such as the insurance requirements which limit the risk in insurance contracts, contain provisions which are considered as unfair provisions of the consumer contracts?

Odluka

(1) The court held that the provisions of the insurance requirements which limit the risk are not considered as aggravating or unfair provisions because their purpose is not contractual limitation or avoidance of the insurer's liability, but to determine the risk as precisely as possible or the object of insurance, i.e. the subject of the contract. Further, the court held that the term "unfair provisions" as defined in the Consumer Protection Act does not encompass legal provisions of compulsory nature which are inserted in the agreement as contractual terms (e.g. driving a vehicle without a driving licence or under the influence of alcohol over the limits provided by law).

(2) Furthermore, the court held that the national courts when interpreting rules of national law which implement certain EU directives, shall, to the extent possible, interpret these regulations in the light of the expression of certain directives and the objectives these directives want to achieve. In this regard, the concept of unfair contract terms within the meaning of the Consumer Protection Act does not include contractual provisions inserted in the contract, i.e. legal provisions of compulsory nature.

URL: <https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba8064953f&q=G%C5%BEn%C5%A1-325%2F14>

Cjeloviti tekst: [Cjeloviti tekst](#)

Povezani predmeti

Nema dostupnih rezultata

Pravna literatura

Nema dostupnih rezultata

Rezultat

The court overturned both the plaintiff's and the defendant's appeal and upheld the first instance court's judgement due to the fact that the appeals were groundless.