Finnish Supreme Court Case KKO 2017:44

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Introduction

- The scope of the presentation
  - A short overview of law of damages and insurance law in Finland
  - Facts of the case KKO 2017:44
  - Legal background of the core questions of the case
  - Summary of the judgment of the Supreme Court
  - Short comments

A short overview of law of damages and insurance law in Finland

- Generally on Finnish legal system
  - Part of the Roman law based, continental legal family
  - Part of the Nordic legal family
    - Historical roots in German law

- Law of damages in Finland
  - Resembles Swedish law of damages, with certain differing features
  - Tort Liability Act (*vahingonkorvauslaki* 412/1974)
  - Non-codified principles of contractual liability

A short overview of law of damages and insurance law in Finland

- Insurance law in Finland
  - The old Nordic insurance contract acts (from 1930's) were drafted in Nordic co-operation and were thus quite similar
  - The old acts have been replaced with new ones but without Nordic co-operation → divergence in details
  - Finnish Insurance Contract Act (*vakuutussopimuslaki* 543/1994)
    - Applicable to non-statutory insurance contract
  - Up to 1990's co-operation between insurers regarding policies in certain types of insurances (liability insurance, legal expenses insurance etc.)

Facts of the case KKO 2017:44

- A transportation firm (T) had subcontracted another firm (S) to transport chemical to a factory (F) with its tank truck
- In the tank there had been remnants of another chemical that had been mixed with the currently transported chemical
- F had used the chemical in its processes but because of the remnants, its products had been spoiled
- T had compensated F's loss and S had been obliged to compensate T's, but S had become insolvent

Facts of the case KKO 2017:44

- S had a business liability insurance
- T sued S's liability insurer
  - Such direct claim is possible by virtue of Section 67(1)(2) of the ICA inter alia in case of insured's insolvency
- Insurer objected the claim invoking a term in insurance policy, stating that the insurance covered only liability based on extracontractual liability
- T objected, stating that
  - The exclusion clause had not become part of the insurance contract
  - S was liable not only for breach of its contractual obligations but also for neglecting an extracontractual duty

Legal background of the core questions of the case

- Insurer's duty to give information
  - Section 5(1) of the ICA
    - Insurer's duty to provide the applicant with any information that the applicant may need to assess his insurance requirement and select the insurance
    - "When giving such information, the insurer shall point out all major exclusions in the cover provided."
  - Section 9(1) of the ICA
    - Legal consequence for a failure to inform
    - " – – the insurance contract is considered to be in force to the effect understood by the policyholder on the basis of the information received."

Legal background of the core questions of the case

- Possibility for concurrence of grounds for liability
  - According to an established view, extracontractual liability can occur regardless of a contract relating to the loss
    - between contracting parties; see KKO 1955 II 31, KKO 1981 II 109 and KKO 1984 II 225
    - in a contractual chain between parties who are not directly contracting parties; see KKO 2009:92
  - However, a breach of a contractual duty cannot be in itself regarded as an extracontractual act leading to liablity (*delict*); see KKO 2008:31 and KKO 2009:92

The decision in the case KKO 2017:44

- The district court and the court of appeal held S liable by virtue of the TLA

- The Supreme Court
  - Even though the exclusion clause was typical in business liability insurances (cf specific cargo insurances), its excluding effect to insurer's liability was essential, because S's business was based on contracts
  - The limitation clause had been mentioned sufficiently clearly in a brochure and thus was part of the contract

The decision in the case KKO 2017:44

- The Supreme Court (continued)
  - The concept ’extracontractual liability’ must be determined according to general doctrines
  - It is clear that S was in a breach of a contract towards is customer
  - The applicability of TLA provides that S had neglected a duty which had been in force regardless if there was a transportation contract or not
  - No one has a general duty to keep his truck’s tank clean in order to avoid causing damage to a third party
  - Thus, S was not liable on extracontractual basis

Comments

- The question of insurer’s duty to inform it’s customer
  - The desision of the Supreme Court was predictable
  - It seems clear that full exclusion of contractual liability must be regarded as ”a major exclusion in the cover provided” – if it was not, what would suffice?
    - Accordant with the view established in the Finnish Insurance Board
  - An established view, supported in legislative materials of the ICA and in praxis of the Insurance Board, has been that a major exclusion is ”pointed out” sufficiently if it comes out clearly in a brochure given to the customer
    - However, two of the five Supreme Court judges were dissenting

Comments

- The nature of S's liability as merely contractual liability
  - The view taken by the Supreme Court of the concept of contractual liability may be regarded as being predominant even before the Supreme Court's decision
    - Accordant to a view mainly followed in Insurance Board
    - There has been a competing view that "contractual liability" as typically described in the exclusion clause means only liability based on an excplicit indemnity clause → rejected
  - Also how the concept of contractual liability was understood in these kind of circumstances was accordant to previous praxis of the Supreme Court and Insurance Board