

SPAIN

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Spanish Supreme Court Decision 7 March 2018

- Facts
 - Real Zaragoza vs. Atletico de Bilbao football match (May 2013)
 - Harm to a spectator
 - Claimant was sitting behind one of the goals
 - No goal net
 - Loss of one eye's vision (approx. € 31,000)
 - Claim against Real Zaragoza FC (La Romareda stadium)
- Claim dismissed by First instance Judge and Appellate Court

Court's reasoning

- Assumption of risk
 - Spectators know and assume such a risk
 - Whether harm occurs before or during the match is irrelevant
 - Risk cannot be the only basis for liability to be established (the 'doctrine of risk')
 - Risk is not unusual or unexpected
 - Public order considerations prevail
- Causation in a legal sense
 - Legal causation is excluded
 - Adequate causation is required

Comments

- Tort/contract divide
- Assumption of risk (cf. Art. 7:101 PETL)
 - By sportsmen, unless
 - *negligence of fellow sportsmen*
 - *negligent organisation*
 - By the public attending the event
 - *previous cases, compensation awarded: harm by a falling chair (Real Valladolid); bad fall due to wet floor in the bathroom (Real Madrid); rally cases (contributory activity of the victim)*
- Public order considerations should prevail?