

Norway

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**Norwegian Supreme Court,
1 March 2018, HR-2018-403:
Strict liability for injury by animals -
acceptance of risk by the victim.**

Summary of the facts :

A woman, a quite experienced horse rider, was permanently injured after having been thrown off a horse rented at a horse centre.

After the accident, the woman was informed by a friend that the horse in question had a reputation of doing a so called bowing while riding, the movement that was the cause of the accident. The victim filed a claim of damages against the riding centre based on the strict liability for animals according to the Norwegian Act of Compensatory Damages (*skadeserstatningsloven, skl*) sec 1-5 no. 1.

The insurance company of the riding centre denied the claim based on the concept of acceptance of risk by the injured.

The judgement of the Supreme Court:

- The text of skl. sec 1-5 no. 1 did not itself contain a reservation regarding acceptance of risk by the victim.
- However, such a reservation could be made based on two Supreme Court cases regarding the predecessor of skl. 1-5 no. 1, NL-6-10-2 (from 1687) and also four other Supreme Court cases.
- In addition, the preparatory works of skl. sec 1-5, and of skl. sec 5-1, treated the contributory conduct of the victim, and the acceptance of risk by the victim, as two separate rules. Thus, the introduction of skl. sec 5-1 in 1985, did not eliminate the concept of acceptance of risk by the victim.

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The judgement of the Supreme Court (continued):

- Still, in order to be coherent with skl. sec 5-1, the threshold for establishing acceptance of the risk by the victim, had to be very high.
- Also, the grounds of the liability had to be considered. With a reference to the doctoral thesis of professor Frøseth, the Supreme Court noted that the concept of acceptance of risk by the victim, is a label used as a reference to broader considerations of the rules of liability in Scandinavian legal theory, and not to a separate consideration apart from these rules.

The judgement of the Supreme Court (continued):

- The Supreme Court found that reasonable expectations from the victim regarding the activity in question, was a core element when deciding if the risk was accepted. As a commercial activity, the riding centre satisfied the traditional grounds for strict liability, namely that the one benefiting from an activity also should be liable for the risks related to that activity.

The judgement of the Supreme Court (continued):

- The Supreme Court noted that riding a horse at a riding centre, usually would not result in injuries serious enough to be the cause of economic loss. Such losses can normally not be considered accepted by the victim. It is especially so when the behaviour of the horse deviates from the norm. Such injuries are predictable in general and typical results of the riding activity from the point of view of the riding centre, the Supreme Court argued. In addition, the centre in addition had a better opportunity to establish insurance against injury, compared to the victim.
- Based on this, damages was awarded.

Comments:

- It is especially important that the Supreme Court emphasizes the importance of coherence with skl. sec 5-1 and also the connection to the common broader considerations of liability in tort law. Otherwise, the concept of acceptance of risk by the victim, could become an arbitrary element of tort law, with its own deviating approach to the question of liability.
- The court case also to a certain extent clarifies, at least indirectly, to what extent we need acceptance of risk by the victim as a concept at all, in Norwegian tort law.

Comments (continued):

- The broader considerations of the different rules of liability, both the ones based on negligence and the ones based on strict liability, often directly and indirectly takes into account the general expectations toward potential victims regarding avoidance of the risk. Substantial deviations from these expectations by the victim, will in itself result in no liability for the tortfeasor. In such cases there is no reasonable expectation of compensation.
- At the same time, the rules of contributory conduct by the victim addresses the role of the individual victim in a more flexible way than the binary approach of the concept of acceptance of risk. What is reasonable compensation in such cases is regulated directly by skl. sec 5-1.

Comments (continued):

- Thus, the common rules of liability in tort law often makes the concept of acceptance of risk superfluous.
- However, certain more specific rules of strict liability, as in this court case, does not address the general expectations toward potential victims. In such cases, even if there is no contributory conduct by the victim, one can ask if there still should be a loss of compensation, because the risk was an integral part of the activity in question, so that no compensation can be expected.
- Still, based on the reasoning of the Supreme Court it is not clear how the existence of an integral risk is supposed to be balanced against the broader considerations of liability that are considered important by the Court. Under what circumstances does the victim have a reasonable expectation of compensation by the tortfeasor, despite the internal risk?