

Denmark

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Supreme Court decision of 14 September 2018, Weekly Law Report (U 2018.3783 H)

- The case concerns a caretaker who was attacked and harmed by an infantile autistic person (A) when he was at work at a public treatment facility (B) for people with autism where A lived.
- The caretaker claimed damages from A and B who were both covered by insurance.

Judgment of the Supreme Court

- The municipal court held A liable for the injury sustained by the caretaker while B was acquitted.
- On appeal, the High Court held that B was also liable for the injury and, therefore, the caretaker was allowed to claim damages from both A and B who were jointly liable.
- Moreover, the Court held that, according to the Liability for Damages Act Sec 25(1), B should bear the total amount of damages.
- Thus, if the caretaker should claim the damages from A, A should be reimbursed by B in full.

- The Supreme Court agreed with the High Court that A and B were jointly liable, but disagreed that B should bear the total amount of damages.
- Thus, the fact that A was not able to understand the full consequences of her actions due to her autism did not mean that she should be completely indemnified by B.
- In this regard the court said that, as a tortfeasor, A should be regarded as an ordinary (i.e. not autistic) person.
- However, to some extent, the reduced mental capacity of A could be taken into account and therefore, A (or rather her insurance company) should pay only 1/3 of the damages, whereas B should pay 2/3.

Analysis

- First, the case shows that a public employer, such as the treatment facility in question, may be held liable according to the basic rule of culpa if it does not make sure that the working conditions are sufficiently safe for its employees.
- In particular, the Supreme Court found
 - (i) that the facility as such was not fit for housing autistic persons
 - (ii) that the employer was aware that A at the time of the injury was prone to violence, and
 - (iii) that A was taken care of by two not very experienced employees at the time of the injury.

- Second, the case shows how the Liability for Damages Act Sec 25(1) should be interpreted.
- This section is very important in practice since it lays down the criteria for the allocation of the loss between two (or more) jointly liability tortfeasors.
- If both tortfeasors, as in this case, are covered by insurance, as a rule the damages are split 50/50 but the courts may decide on a different split if it is indicated by the degree of culpa of the tortfeasors and the circumstances of the case.
- As noted above, in this regard the Supreme Court (as apposed to the High Court) said that A should bear 1/3 of the loss since she, as a tortfeasor, should be assessed in the same way as an ordinary person.

- Moreover, the Supreme Court said that, when assessing whether A's action was culpable, it should be taken into account whether the action objectively speaking was of an intentional or accidental character.
- Last, as also noted above, the Supreme Court said that, even though A could not be fully exempt for paying damages, she should merely bear 1/3 of the costs due to her reduced mental capacity.
- In all, the case lays down how people with a mental illness such as autism should be assessed pursuant to the Liability for Damages Act Sec 25(1).