The liability of companies for work accidents in the São Paulo labor judiciary - TRT15

A responsabilização de empresas por acidentes de trabalho no judiciário trabalhista de São Paulo - TRT15

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Abstract

The risk theory or objective liability dispenses proof of guilt or intent and requires only the occurrence of damage and the causal link. Although the constitution establishes the responsibility for work accidents as subjective, it has been observed in the doctrine and in the judiciary the adoption of objective liability in some cases of accidents and occupational diseases. This study aims to analyze the decisions of the Regional Labor Court of the 15th Region - São Paulo to know in which situations the court has used objective liability. The quantitative-qualitative, exploratory and descriptive research was developed based on document analysis and literature review. The document research was carried out in judgments that contained the descriptor "work accident," available in the database of the Regional Labor Court of the 15th Region, judged between 11/11/2015 and 10/11/2017. The results indicated that, of the total of 559 cases judged, in 275 the decision was founded, being 15% by objective liability. Considering only the founded cases, objective liability appeared in 30.5% of them. This percentage reveals that decision-making based on the notion of objective liability is already expressive in this court, and that such adoption has the potential to affect accident prevention practices.

Keywords: Civil Liability; Workers' Compensation; Case law; Occupational Health.

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Resumo

A teoria do risco ou da responsabilidade objetiva dispensa a comprovação da culpa ou do dolo e tem como requisitos a ocorrência do dano e o nexo causal. Embora a constituição disponha a responsabilidade por acidente de trabalho como subjetiva, se tem observado na doutrina e no judiciário a adoção da responsabilidade objetiva em alguns casos de acidentes e doenças ocupacionais. Este estudo tem por objetivo analisar decisões do Tribunal Regional do Trabalho da 15ª Região - São Paulo para conhecer em que situações a corte tem utilizado a responsabilidade objetiva. A pesquisa quanti-qualitativa, de caráter exploratório e descritivo, foi desenvolvida com base em análise documental e revisão bibliográfica. A pesquisa documental foi realizada em acórdãos que continham o descritor "acidente de trabalho", disponíveis na base de dados do Tribunal Regional do Trabalho da 15ª Região, julgados no período entre 11/11/2015 e 10/11/2017. Os resultados indicaram que, do total de 559 casos julgados, em 275 a decisão foi de procedência, sendo 15% por responsabilidade objetiva. Considerando apenas os casos procedentes, a responsabilidade objetiva apareceu em 30,5% deles. Esse percentual revela que já é expressiva nessa corte a tomada de decisão com base na noção de responsabilidade objetiva, e que tal adoção tem potencial para afetar práticas de prevenção de acidentes.

Palavras-chave: Responsabilidade Civil; Indenização aos Trabalhadores; Jurisprudência; Saúde do Trabalhador.

Introduction

Art. 7, item XXVIII, of the Federal Constitution (Brasil, 1988) ensures civil liability for accidents at work, with the employer having to pay appropriate compensation. The rule in this field is subjective liability, in which the duty to compensate requires proof of three requirements: damage, causal link, and the company's fault. Therefore, there is a need to prove fault, including intent (intentional activity) or fault in the strict sense (negligence, imprudence, or malpractice), so that the duty to compensate arises.

According to legislation, the burden of proving the accident and subjective liability lies with the injured party. If there is no proof, the court will dismiss the claim. This result seems to encourage employers to think that it is "worth it" to not invest in prevention, after all, filing reparation actions does not necessarily mean the obligation to pay compensation.

The defense of this approach is historically supported by traditional practices of analyzing workplace accidents that ascribe blame to the victims themselves. In recent decades, however, there has been growing criticism of traditional security policies and practices and the role of institutions involved in the training of security professionals. The emphasis on persistence in causal explanations of accidents, based on the dichotomy of acts and unsafe conditions, is justified as a strategy to facilitate the company's legal defense. In this context, accidents are described as simple, with one or few causes, generally attributed to faulty behavior by the operators involved, who would have done something improper or failed to do what they should have done. Supposed human errors were then assumed to be the cause of accidents, which did not need to be explored in search of clarification of their origins (Binder; Almeida, 1997).

However, scholars highlight the importance of investigations that do not limit themselves to the first stories told after the accident and adopt an active search for second stories, exploring more information about what happened (Woods; Cook, 2002). In the wake of these criticisms, the diffusion of new concepts and techniques for accident

analysis is also growing. In Brazil, a proposal developed in the early 1970s in France became widespread and, inspired by the idea of change analysis, became known as the INRS (*Institute National de Recherche et Sécurité*) model, the causal tree method - CTM (Binder; Almeida, 1997) or tree of variations.

More recently, maintaining the pillar of change analysis and incorporating barrier analysis, ergonomic analysis of the activity and support from other concepts already used in accident investigations, the Model of Analysis and Prevention of Accidents - MAPA has become more widespread (Almeida et al., 2014). These new instruments explore accidents as phenomena with history, originating in networks of multiple **proximal and distal aspects** in interactions. Decisions and strategic choices, incubated in the history of the system, can act at the origins of **active failures** that trigger accidents, giving rise to immediate and late consequences. Accidents are now thought of from an organizational and socio-technical perspective, with three dimensions represented in the bow tie model: antecedents (the bow's left side), unwanted event (the bow's knot), and consequences of the accident (the bow's right side), as presented in Almeida et al. (2014).

When evaluating the accident's tree of causes, it is necessary to examine in what situation and under what circumstances the event occurred, as well as whether the worker acted consciously or unconsciously, whether they were using appropriate protective equipment, as well as whether they received it and whether it was within its useful life. Melo (2012) also exemplifies that it is important to know the pace of work, the company's production requirements, whether the worker had technical training for the activity and, if not, whether they received authorization from above to do so, as well as whether they were working under some type of psychological or economic pressure.

These concepts are in opposition to traditional behaviorist explanations adopted in the unsafe act/unsafe condition model, which sees behaviors at work as rational, free, and conscious choices of workers who would act in contexts in which they could easily choose safe behaviors (Woods et al., 2010; Amalberti, 2016). Blaming the victims of accidents is a practice with historical roots already pointed out in public health, either as a factor that inhibits prevention or as an incentive for impunity (Binder; Almeida, 1997).

The fact that one of the exclusions of the causal link is precisely the proof of **the victim's exclusive fault** is explored, in its possible relationships, with that of a factor that fuels disputes over explanations about the origins of accidents in the professional teams involved in analyzing these events. If the accident is explained as being associated with an unsafe act, human error or faulty behavior on the part of the victim, the product of its analysis can be used in the company's legal defense.

However, in the world of knowledge production on the subject of accident analysis, concepts and practices are accumulating that make it increasingly difficult to accept explanations that ascribe the accident to the victim's exclusive fault and pave the way for court decisions based on the adoption of subjective responsibility. This is a movement that combines the production of authors from different fields of knowledge and that introduces a series of concepts and even new research techniques into the field of analysis. In a quick overview, the following can be mentioned: man-made disasters, incubated accidents, organizational accidents, active failures and latent conditions; accident as a socio-technical phenomenon, normal or systemic accident, cognitive traps, psychic control of action, situated action, margins of maneuver, strategies and operational methods, cognitive commitment or necessary compromise solutions, decision-making processes, among others (Binder; Almeida, 1997; Woods; Dekker; Cook; Sarter , 2010; Amalberti, 2016).

Among those studying the topic of accidents at work, there is a growing response to systemic approaches to these events in Brazil, providing opportunities for their use in attempts to hold employers accountable. This movement may have also contributed to the growth observed in recent decades in the country, in the adoption of strict civil liability in actions involving workplace accidents (Bertotti, 2014; Diniz, 2018; Salim, 2005).

A study showed that, although issues on Occupational Health and Safety have not found an adequate approach in Brazilian labor case law—as preventive protection against accidents and illnesses is timidly used by legal entities—in the higher court, the results indicate its uniformity, in the sense of using the theory of risk (strict liability) in segments or functions with high risk and applying the theory of fault (subjective liability) in other cases, but with the employer's presumed fault (Cavalcante, 2016).

The transition from subjective to strict liability occurs simultaneously with this movement of emergence and diffusion of new concepts and practices adopted in investigations of work accidents and disasters. This transition has not been easy or quick.

> No compensation, no matter how high its value, is capable of repairing physical or psychological damage to a human being. For the victim, it is always small. For those who pay, it is always big. Therefore, the best solution is to prevent environmental risks and avoid workplace accidents (Melo, 2012, p. 285; our translation).

This study assumes that the process of moving from subjective to strict liability is already underway, and assumes particularities and specificities with repercussions both in the legal sphere and in the collective health/worker's health, especially with regard to prevention of work accidents. It explores aspects of rulings adopted in the Regional Court of the country's most developed state, deciding reparatory actions for work accidents based on the understanding of strict liability. How important are these decisions in the Court's practices? What are the main arguments adopted in decisions based on this understanding? In what types of accidents is this understanding being adopted? Are they restricted to activities already identified as carrying dangers and risks or are they already used in other types of situations? To what extent are decisions more supported by essentially legal concepts, such as the principle of equity (whoever benefits from the activity assumes its burden), or do they already emerge in dialogues with the movement of conceptual changes regarding the accident phenomenon highlighted above?

Methods

Quantitative and qualitative research, of an exploratory and descriptive nature, was developed based on **thematic documentary analysis** (Bardin, 1977) and bibliographic review. The documentary research was carried out on judgments that contained the keyword "work accident," available in the database of the Regional Labor Court of the 15th Region (TRT15), judged in the period between 11/11/2015 and 10/11/2017. The objective of the survey was to identify the actions in which strict liability was adopted, for subsequent in-depth analysis. The chosen court is located in the city of Campinas and is the 2nd largest Labor Court in Brazil, second in number of cases and magistrates only to the other regional court in the same state of São Paulo, located in the capital (TRT15, 2021).

The work began with a prior search for judicial decisions in a public domain database, with unrestricted access to the entire population, of judicial decisions handed down by the TRT15. On the court's website, the "Case law" option was selected and then the "Decisions" option; then, in the "Exact section" field, the expression "work accident" was searched; in the "PJe judging body" field, the option "1st Chamber" was selected; and in the "Publication date" field, dates from 11/11/2015 to 11/10/2017. The same procedure was followed for the other Chambers. The research and storage of the decision lists were carried out on 12/27/2018.

The data obtained was organized in an Excel spreadsheet, from which actions unrelated to the objectives of the study were removed (occupational illnesses and other non-reparatory actions), reaching 559 decisions. This study refers to cases in which the court's decision was based on strict liability for the reasons previously discussed. The strategy used was a **sequential explanatory** one, in which quantitative data is collected and analyzed and, based on the results, a qualitative approach is used to deepen the understanding of the object under study (Holloway; Wheeler, 2010).

Configuration of strict liability

In the field of Law, the theory of strict liability was born from French law, mainly among the

scholars Raymond Saleilles and Louis Josserand. Saleilles interpreted the word "*faute*" in art. 1,382 of the French Civil Code, understanding that it replaces the idea of fault with that of causation (Silva, 2008). Josserand analyzed the practicability of civil liability and reparation to the victim, understanding that the effectiveness of reparation for the victim or their heirs lies in removing from them the burden of proving damage, fault, and causal link. He also points out that the multiplicity of accidents generates anonymity, revolt, and moral discomfort (Pereira, 2002).

Strict responsibility is a social theory that considers man as part of a community, who needs to have any damage caused to it repaired. On the other hand, in order to avoid unlawful enrichment of the victim, it is important that, even if strict liability is admitted, the duty to repair/compensate can be excluded when the defendant proves that they complied with all the precautions assigned by law or the contract and thus did not contribute to the event (Melo, 2012).

To establish strict liability for the risk created, the occurrence of two requirements is sufficient: **damage** (bodily injury or functional disturbance that leads to the worker's death or inability to work) and **causal link** (relationship between the harmful event and the work activity). Therefore, three requirements are not necessary, as occurs in subjective liability, as **the employer's culpable conduct is not analyzed**. In other words, the employer responds **regardless of fault**, if their work activity is considered **risky**. If the employer subjects their employee to a danger or risk, typical of their work activity, they are liable for compensation, even without acting with fault (Oliveira, 2019).

According to Brandão, the concept of risk activity is deliberately open-ended, so that the legislator and case law can adapt it to changes in work relations caused mainly by technological advances, in favor of the dignity of the human person, the social value of work, the protection of the work environment, the reduction of work risks and the right to full compensation for damage caused to the employee (2010). Armond adds that the characterization of risky activity depends on an express judicial manifestation (2011).

The novelty associated with the application of strict liability is the defense that the demonstration of civil liability is no longer based on the elements of fault, damage and the causal link between them (Bertotti, 2014; Salim, 2005; Pereira, 2002; Oliveira, 2019). According to many authors, the idea of liability based on fault left unresolved a large number of cases created in modern society, whose approach required addressing problems of liability from the point of view of repairing losses (Salim, 2005).

Strict liability is based on the principle of equity: it is up to those who profit from a situation to answer for the risks or disadvantages resulting from it (Diniz, 2018; Oliveira, 2019). The basis of liability is now seen in the activity carried out by the agent, due to the danger that could cause damage to life, health, or other property. The theory of **created risk** is seen as best suited to this situation (Salim, 2005). Before being applied to actions arising from work accidents, strict liability had already been legally provided for in Brazilian law, mainly in environmental and consumer law (Cavalieri Filho, 2019; Rossi, 2009; Franco, 2017; Leite and Ayala, 2020; Khouri, 2013).

The following legal provisions can be mentioned, among others:

- Art. 37, § 6, of the Federal Constitution – liability of legal entities under public law and legal entities under private law providing public services for damage caused by their agents;
- Art. 225, § 3, of the Federal Constitution – liability for damage to the environment;
- Art. 14, § 1, of the National Environmental Policy Law (Law No. 6,938/81) – liability of the person causing environmental damage;
- Art. 12 of the Consumer Protection Code (Law nº 8,078/90) – liability of the supplier for damage caused to the consumer of a product or service (Melo, 2012).

With the advent of the 2002 Civil Code, strict liability was duly incorporated into the legislation, in the sole paragraph of article 927 (Brasil, 2002).

Results and discussion

Of the 559 decisions identified during the study period, 275 (49.14%) were considered well-founded or partially well-founded. Of these, 191 (34.16%) were decided in line with the notion of subjective responsibility and 84 (15.03%) with that of strict responsibility.

Table 1 – Distribution of judicial decisions according to results and reasoning. Study TRT. Campinas, state of São Paulo. 11/11/2015 to 11/10/2017. N = 559.

Result of the court decision	Freq	%
Dismissed	284	50.8
Partially well-founded	270	48.3
Well-founded	5	0.9
Total	559	100
Reasoning in upheld/partially upheld	**Freq**	**%**
Subjective Liability	191	69.5
Strict Liability	84	30.5
Total	275	100

The figures indicate that, in the court in question, the process of shifting from decisions based on subjective liability to others based on strict liability does not develop quickly and easily, as Cavalieri Filho (2019) has already pointed out, and that the majority of decisions continue to be based on subjective liability.

Despite its use, including in different TRTs across the country and in the Superior Labor Court, in their initial petitions lawyers rarely commented on the possibility of this decision-making strategy. In all cases in which it was adopted, strict liability arose from the judge's sovereign choice. These are choices that may signal that a process of change is underway in the attitude of judges towards the phenomenon of death at work in Brazil. In particular, silence, indifference and, in the worst-case scenario, attributing blame to victims already associated with these events. Such a movement seems to us to be in line with aspects already pointed out by Leplat (1997), in a discussion about event analysis and liability in complex systems, and by Rovelli (2008), when discussing deaths at work in Italy, defending access for victims and/or family members to reparation rights. For Rovelli, this would be part of the path to overcoming the silence and indifference that surround deaths at work.

Notably, almost all of the cases in which strict liability was adopted (84 cases) the decision was partially upheld (contained in the 270 cases) for the claimant's request. This is mainly explained by the fact that the judge agreed with the compensation request, but not with the values initially suggested by the lawyer. In the pre-labor reform situation, the lack of guiding parameters for arbitration of these values and the non-obligatory settlement of claims contributed to a greater frequency of this type of decision (Silva, 2017; Cassar, 2017).

The qualitative approach was adopted to highlight characteristics revealed in decisions supported by the notion of strict liability.

As expected, the judges highlight the degree of danger to which the injured person was exposed in the work environment, as in the following case:

> **Case 1 - Process 00101**-**.2016.5. 15.* *****
> "And it could not be otherwise given the blatant risk inherent in the worker's current activities to ensure the development of the activity carried out by the employer. The worker had an accident due to the failure of equipment used during the course of his employment contract. It is a circular chainsaw. There is no way to exclude

the defendant from strict liability, because, even if the employer's preponderant activity does not pose risks to the physical health of its employees, it is undeniable that the distortion of worker functions by imposing on the worker the use of equipment that generates risk, ended up attracting the applicability of article 927, sole paragraph of CC/02."

The activity of operating a machine described as an obvious risk can be seen as an example of risk exposure:

Case 2 – Process 00102-**.2015.5. 15.* *****
"In this case, the activity carried out by the plaintiff in the service of the defendant, which obviously involves the operation of cutting machines, such as the one that victimized him, entails a differentiated risk for injuries caused by the tools. It is therefore mandatory to recognize the risk activity carried out by the defendant, and its consequent strict liability for compensation."

The decisions value the danger and risk present in activities already demonstrated in epidemiological studies and in decisions of the Superior Labor Court as being of high risk of accidents, notably those carried out by: truck drivers, bank guards/use of motorcycles in professional practice, and security guard/armed escort in the transport of valuables. An already relatively extensive list organized by Oliveira (2019) is highlighted below and can be seen as a warning to judges, who should consider the application of strict liability in cases of accidents involving:

1. Truck driver and their helpers;
2. Sugar cane cutter;
3. Cash-in-transit driver in armored vehicles;
4. Garbage collector;
5. Professional motorcyclist;
6. Stevedore;
7. Underground mine worker;
8. Worker with company motor vehicles;
9. Security guard;
10. Carrier of cargo subject to robbery;
11. Bus toll collector;
12. Steel mill rolling machine operator;
13. Turner;
14. Mailman;
15. Workers traveling by vehicle provided by the employer (Oliveira, 2019).

It should be noted that the dynamism of society and work relations, in environments characterized by technological advances, make what is new today obsolete tomorrow. Therefore, it is impossible for the legislator to regulate all norms characterized by precise and defined content (Brandão, 2010). The consequence is that case law must adapt to these changes, expanding strict liability to other activities.

In this study, one of the questions explored was the extent to which the court rulings under study adopted the strict liability thesis also in cases of accidents occurring in activities other than those mentioned above. This possibility was demonstrated in two cases.

Initially, in the activity of aircraft inspector:

Case 3 – Process 00125-**.2014.5. 15.****
"The plaintiff alleged in his complaint that on 09/12/2013 he suffered a serious accident at work, on the premises of the first defendant, when one of his employees failed to comply with safety standards, spinning the engine of an aircraft called Ultraleve TRAIKE, in inappropriate location, not marked and without proper isolation of the aircraft by warning protection chains. The plaintiff stated that he was inside hangar 14 and needed to inspect the second defendant's aircraft that were in hangar 13, but that the TRAIKE had the wheel of nose pressed against the hangar column, preventing passage, forcing circulation from one hangar to the other to take place behind the aircraft...in an act of reflex, he raised his left arm which collided with the propeller, which led to immediate amputation of his limb ...The dynamics of the accident combined with the author's professional experience prove that the activity carried out by the defendant was risky and that there was no protection sufficiently capable of preventing accidents like the one that affected the plaintiff."

In another case, in the activity of flooring production:

> **Case 4 – Process 00100**-**.2014.5. 15.****
> "On the other hand, the existence of an accident at work is uncontroversial, and the activity carried out in connection with the production of flooring imposes on the worker a risk of physical safety above normal , applying the sole paragraph of art. 927 of the Civil Code. Therefore, the accident in question and the burn marks leave no doubt about the existence of non-pecuniary damage, observing the extent of the damage and strict liability."

The highlighted cases show that they are, in general, situations in which the strategies and operating methods effectively adopted by workers result in exposure situations that simple visual inspection allows recognition as a dangerous operating method. Thus, the list of activities seems to serve more exemplary purposes and can, as in the case above, be expanded when the analysis highlights an imminent risk situation.

It is worth mentioning the fact that, in the court in question, the cases judged and decided in line with the idea of subjective liability did not refer to accidents occurring in activities included in the list that should be considered in the application of strict liability. This finding reinforces the idea that the list of activities in which the judge must use the notion of strict responsibility, in reparatory actions for work accidents, should also be used as a stimulus for the adoption of prevention policies and practices, in order to avoid future judicial convictions.

The reassignment of workers to different jobs, exposing them to risks different from those of their regular jobs, was also considered in these decisions. This is an important aspect, since the analysis considers work as what is actually carried out by the employee in the system in question (Brito, 2020), rather than the so-called "prescribed work."

Notably, there is a relative harmony between compensation interests claimed by the injured party with those of health promotion and accident prevention considered in the court decision, which values information about the company's history in terms of health and safety management. In doing so, the Court goes beyond the defense of indirect prevention, supposedly encouraged by establishing compensation to be paid by the company. This is an important path, the existence of which deserves to be explored in subsequent studies. After all, what is the scope of accident prevention associated with the adoption of compensation actions for work accidents in the country?

In its decisions, the Court also values the principle of equity. In other words, those who benefit from the activities must bear the burden resulting from harmful events related to their exercise:

> **Case 5 – Process 00110**-**.2016.5. 15.****
> "Thus, whoever professionally carries out an economic activity, organized for the production or distribution of goods and services, must bear all the costs resulting from any harmful event inherent to the productive or distributive process, including damage caused by employees and agents, as anyone who benefits from a lawful activity that is potentially dangerous (to other people or to the environment) must bear any harmful consequences (sole paragraph of art. 927 of CC/02).

The same ruling also criticizes the notion of the **victim's exclusive fault**, which is so common in decisions based on the notion of subjective liability. On this point, the decision is in line with the debate in the literature on accidents at work, in particular with studies by authors who discuss conceptions of accidents and already disseminate knowledge related to the idea of accidents as a socio-technical, psycho-organizational phenomenon, with origins in a network of multiple interacting factors (Binder; Almeida, 1997; Woods; Cook, 2002; Woods; Dekker; Cook; Sarter, 2010; Amalberti, 2016). The causal tree technique, developed in the early 1970s in France and relatively widespread in Brazil (Binder; Almeida, 1997), is mentioned by name:

> It should also be clarified that there is no talk of the victim's exclusive fault, since the work accident always has to be analyzed based on all the acts that preceded the misfortune, according to the causal tree theory, and the blame for the event cannot be ascribed to the employee, who is most interested

> in their life and safety. The only exception is proof of intentional conduct on the part of the employee to commit the accident. In this case, we speak of direct intent, which must be fully proven by the employer. In this sense: WORK ACCIDENT. GENERATING FACT. THEORY OF THE "CAUSAL TREE THEORY." The characterization of work accidents, as it involves multiple factors, cannot be done in light of the dichotomy of unsafe conditions and unsafe acts. It involves a complex analysis of the factors that, directly or indirectly, closely or remotely, contributed to its occurrence, which is done in light of the causal tree theory.

The adoption of strict liability in the court studied, in line with the understanding of the Superior Labor Court, reveals the change in position of this court, in the sense of detaching itself from the classical doctrine by focusing on subjective liability, which can lead to dismissals due to the burden of proof. However, this had not been the uniform understanding across the country's labor courts. Even in the Regional Labor Court of the 15th Region, there was no uniformity of understanding across the 11 Chambers.

In this sense, we understand that:

> Given the characteristics of Brazilian law, the legislator may be aware that the normative text is not capable of completely determining jurisdictional decision-making. We have already seen that a closed normative text does not guarantee legal certainty by providing unique answers: this also applies to Brazil. In addition, the standardization of case law is done by the result and not by the reasoning. There is no system of organized precedents in Brazil, and, furthermore, cases and doctrine are used to support certain legal positions on an ad hoc basis (Rodrigues, 2013, p. 229; our translation).

Everything indicates that the support given by the Superior Labor Court has been reflected in the results obtained and in this change in the position of the TRT-15.

There is a long way to go. The risk theory should be applied to all compensation actions resulting from an accident at work, given that worker health, as a human right, deserves such legal protection, in addition to labor liability having a contractual nature, similar to that which occurs in consumer law (Silva, 2008).

Reflecting the advances in this line of understanding, in March 2020, the Federal Supreme Court established the thesis of general repercussion, determining that strict liability is constitutional in the case of an accident at work occurring in a work activity with habitual risk (topic 932). From then on, this understanding began to be used in all cases dealing with the matter. Below is the text of the thesis:

> Article 927, sole paragraph, of the Civil Code is compatible with article 7, item XXVIII of the Federal Constitution, making the employer's strict liability for damage arising from work accidents constitutional in cases specified by law or when the activity normally carried out by its nature presents habitual exposure to special risk, with harmful potential and implying a greater burden on the worker than on other community members (STF, 2020).

From the same protective perspective, the International Labor Organization, in its 110th session, in June 2022 (ILO, 2022), recognized safety and health at work as fundamental rights, making it possible, therefore, to expect new advances in meeting workers' demands related to situations of violations of this right in the workplace.

Final considerations

The upholding of strict liability in 30.5% of the well-founded and partially well-founded cases, of compensation actions for work accidents explored in this study, is seen with optimism by law enforcers and professionals in the field of worker health. This finding already indicated, in the initial assessments of the results of this research, that a process was underway of a slow but progressive increase in the number of judges who decided this way, a movement that culminated in the establishment of the general repercussion thesis

in the STF. Apparently, this is an advance based not only on the critical perception of the limits of subjective liability for decisions in cases involving work activities with a high prevalence of exposure to dangers and risks, but also by the increase in the number of judges adopting decisions in line with the principle of equity, whose use has been growing in areas such as consumer and environmental law.

The optimism in question resonates with the findings of this study. After all, in two cases there was a decision to apply strict liability for accidents that occurred in work situations that were not on the well-known list, whose application should be considered.

The option for strict liability also occurs amidst the growth, in specialized literature, of the use of concepts and techniques that conceive the accident as an organizational and systemic phenomenon, and strong antagonism to approaches that explained the accident in a way centered on the victims' behavior. A path that denounces as reductionist and anachronistic the theoretical basis adopted in the idea of "exclusive fault of the victim" widely used as excluding strict liability.

The findings suggest that there is an apparent convergence of two movements in favor of possibly encouraging accident prevention policies and practices. On the one hand, a movement in the legal world in favor of expanding the use of the notion of strict liability and, on the other, the emergence and dissemination in the accident literature of strongly criticism of approaches that explain the phenomenon in a way focused on the individual's characteristics, in line with its replacement by psycho-organizational and/or systemic approaches. The convergence in question still seems embryonic, in other words, there is still little dialogue between these two movements.

How will this process evolve? The answer to this question will depend on how these disputes are resolved. If the influence of what is observed in consumer and environmental law prevails, if the dialogue between labor law and concepts adopted in systemic and organizational theories of accidents grows, the tendency is for the adoption of strict liability in sentences and rulings in the Judiciary to increase. On the other hand, the opposite could happen, in the case of an increase in explanations of accidents as individual phenomena.

This study sought to investigate this topic, but one of its limitations is that it explored decisions adopted in just one of the country's courts and with access only to the text of the rulings and sentences. Further studies are needed to explore multiple courts, gain access to more information on the processes, and address the impacts of changes ("labor and social security reforms," as well as the thesis of general repercussion) that have occurred in the country's legislation and case law.

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Contribution of the authors

Arruda and Cavalcante participated in all stages involved in the creation of this article, including: discussion of the results, writing of the manuscript and critical review of the content. Almeida guided the study, helping with its design, analysis and discussion of the data. He participated in all stages of writing the submitted text.

Received: 5/22/2023
Resubmitted: 05/22/2023
Approved: 03/07/2023