EN

Case law

Case Details

National ID: link

Member State: Spain

Common Name: Pedro Jesús R. S. C. v “Viajes Tivoli S.A.” and “Julia Tours S.A.”

Decision type: Other

Decision date: 23/07/2001

Court: Tribunal Supremo (Supreme court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Package Travel Directive, Article 1 Package Travel Directive, Article 2, 2. Package Travel Directive, Article 2, 3. Package Travel Directive, Article 2, 5. Package Travel Directive, Article 5, 1.

Headnote

1. Travel agents as retailers, do not act as agents of the travel’s organizers, but retailers sell directly to the consumer the products created by the organizers. The relationship between retailer and user is a contract of sale.
2. The liability of retailer and organizer of the package travel is joint and several vis-à-vis the consumer.
3. The burden of proof on the origin of the damages and the exception of the fault of the consumer is on the supplier of the services.
4. This judgment does not apply the package travel Directive –as the facts happened before it was in force–, but has had a great influence in later case law applying the transposition of the Directive as regards to shape of the liability of the contractors (against the wording of the rule transposed).

Facts

The appellant, Mr. Pedro Jesús R. S. C. requested a compensation of 90.150 euros for damages for the death of his wife, which occurred on a holiday agreed with “Viajes Tivoli, SA.” as retailer, and “Julia Tour, SA.”, as organizer. In the combined trip that the appellant agreed for him and his wife to the Dominican Republic between 29th September 1992 and 10th October 1992, she died in a plane accident, which fell into the sea, during a flight between two towns in the aforementioned country. The claim by the appellant was rejected in the Court of First Instance but accepted by the Court of Appeal by the Appeal Court of Zaragoza, which sentenced both the retailer and the organizer for joint and several liability. The Supreme Court ratified this sentence.

Legal issue

The travel agency adduced that it was just an agent of the organizer, so that it was not to be directly liable to the people it draw the contract of the trip with. The Supreme Court refers to the definition of “retail agent” of the Ministerial Order of 14th April 1988, on rules for the travel agencies and concludes that “these are not acting as commissioned by or as agents of the organizers, but they sell directly to the user or consumer the products created by the organizers, which according to the aforementioned art. 3, first paragraph, cannot offer their products to the user or the consumer”. Therefore, “the connection between the retail agency and the user is one derived from a sales contract, the agency being the seller, on his own name and behalf, of the products created by it or by a third wholesaler party “.

This judgment estimates that, despite of the art. 5 b) of the Order of the 14th April 1988 qualifying the liability of the agencies as direct or subsidiary, depending on whether their own resources are used or not in providing their services, this rule does no have enough range to alter the regime of liabilities established by regulations with law status, as the Civil Code or the Law for the Protection of Consumers (Law 26/1984, of 19th July). Therefore, the procedural relationship does not require to accuse the company that owned the airplane as well (there is not „litisconsorcio pasivo necesario”).

Therefore the article 25 of the law for the Protection of the Consumers and Users is applied The consumer has the right to be compensated for damages produced in the process of using products or services unless these damages are caused solely by his own fault. It is established a principle of inversion of the burden of proof, which makes the provider of the services responsible to present the evidence that the reason for the damages lies on the behavior of the user. The Supreme Court dismisses the argument that the trip in the crashed airplane was not included in the holiday package and was agreed directly by the claimant, due to the lack of evidence and the wording in the brochure.

To conclude, this judgment establishes the joint and several liability of retailer and wholesaler organizer towards the consumer and despite of the Directive not being applied since these are facts that occurred before the Spanish law of transposition was in force, it has been frequently quoted by subsequent judgments that did apply the art. 11 of the law 21/1995, of 6th July on package travels (for example, SAP Alava 1st April 1998, SAP Pontevedra 18th March 2003, SAP Zaragoza 22nd July 2003, SAP Murcia 9th September 2003, SAP Badajoz 21st December 2003, SAP Madrid 9th December 2004), as an argument to defend (against the literal interpretation of the rule) this type of responsibility.

Decision

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