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Liability for Damages in Labor Law In the Light of Court Practice

LÁSZLÓ SCHMIDT

ABSTRACT
According to Act XXII of 1992 (old Labor Code), the employer was liable (objectively) for the damage caused to the employee in connection with the employment relationship, regardless of fault. He could only be exempted if he proved that the damage was caused by an unavoidable cause outside his sphere of activity or solely by the unavoidable conduct of the injured party.
However, Act I of 2012 (Act I of the Labor Code) has partly put the system of liability under labour law on a new basis by bringing it closer to the rules of the new Civil Code in terms of the method of liability and the level of compensation, and by creating a new definition of exemption. Under the new rules, the employer will be exempt only if he proves that the damage was caused by a circumstance beyond his control which he could not have foreseen and could not reasonably have been expected to avoid or prevent, or was caused solely by the uncontrollable conduct of the injured party.
Several positions have emerged in connection with the interpretation of the new regulation, which has caused legal uncertainty in the application of the law, and in view of this the Curia adopted the KMK Opinion 1/2018 (VI.25.).
In my presentation and in my study I want to compare the two regulations - mainly from the point of view of law enforcement.

Key words: labour law, compensation, liability, foreseeability

Introduction

In general, liability means a failure to comply with a behaviour that is considered to be acceptable, in legal terms, a breach of a legal provision. It is therefore always necessary to have breached an obligation, which can be both active (i.e. by action) and passive (i.e. by omission). Liability is a secondary obligation imposed on a natural or legal person who breaks social and legal rules, and arises in the event of failure to carry out the conduct primarily required. The adverse legal consequence of liability is a (civil) sanction. Its purpose is not only to repair the breach (reparation) but also to prevent it (prevention). There are two types of liability regime.
The objective liability system does not take into account the psychological factors behind the breach of duty, the state of consciousness of the offender. The aim is to repair the disturbed relations. Objective liability systems therefore do not examine the subject of the offender, his relationship to his offending behaviour, but merely seek to remedy the harmful consequences of the offence. Objective liability plays an important role in civil liability cases, whereas the modern concept of liability in criminal law explicitly rejects the concept of objective liability. The application of objective liability to certain forms of liability is justified when the primary legal policy objective is reparation. On the other hand, the subjective liability regime, in contrast to the former, attaches particular importance to the psyche of the offender, to the circumstances in which the offending conduct occurred. The subjective liability regime is based on the indeterminism of the possibilities of action of persons. The choice is given and the causes leading to the breach of the obligation are therefore relevant. If it is accepted that the important aim of legal liability is prevention, there must be subjective circumstances -

grounds for exemption - which mean that the sanction cannot be applied even in the case of apparent breach of duty. The sanction of liability for damages must be such as to meet societal expectations and to serve reparation adequately.[1]
Although the liability regime in labour law is based on the liability rules of civil law, it has a number of specific features. The main reason for this is that, although labour law is a branch of private law, the juxtaposition of the parties, which is the general rule of civil law, is disrupted despite the contractual relationship under labour law, creating an inequality between the employee and the employer. The basic element and function of liability in labour law varies depending on whether the conditions of liability are considered from the employer's or the employee's side.[2]
The necessary legal elements for civil liability are the existence of a causal link between the wrongful conduct, the damage (or the adverse result) and the existence of a causal link between the two. A possible element is imputability. In comparison, the legal basis for liability under employment law - the existence of an employment relationship - is merely a technical condition for a different regime. The link between civil liability and liability under labour law can also be traced in the Western European system of liability for labour law. In contrast to the existing domestic liability for damage under labour law, both continental European and Anglo-Saxon law start from general civil liability.[3]

1. The theory and judicial practice of liability for damages in the old Labor Code

1.1. The employer's liability for damages under the old Labor Code

The employer's liability for damages is not limited, it must pay compensation for the entire damage: in addition to material damage, it must also pay compensation for non-pecuniary damage, and within material damage, it must pay compensation for both the damage suffered and the loss of profit. The employer's objective liability for damages is conditional on the existence of an employment relationship between the parties, the damage suffered by the employee and the causal link between the employment relationship and the damage. Fault is not a precondition for establishing liability, i.e. liability is objective; and, the employer can only be excused within a very narrow range.[4]
Sections 174-176 of Act XXII of 1992 (hereinafter referred to as the old Labor Code) provide for the employer's liability for damages. According to these, the employer is fully liable for any damage caused to the employee in connection with the employment relationship, irrespective of fault. The employer is exempted from liability if he proves that the damage was caused by a cause beyond his control or solely by the negligence of the injured party. No compensation is payable for the part of the damage caused by the employee's negligence. The employee shall prove that the damage was caused by his employment. The employer's sphere of activity includes, in particular, causes arising from conduct connected with the employer's performance of his duties, the nature, condition, movement and operation of the materials,

[1] Csécsy Andrea, Fézer Tamás, Havasi Péter, Tóth Endre Tamás, Varga Nelli: Nagykommentár a kártérítési joghoz. https://uj.jogtar.hu/#doc/db/318/id/A10Y2147.KK/ts/20130701/lr/chain1 2022. 11. 14.
[2] Fézer Tamás, *A kártérítési jog magyarázata*. Budapest: Wolters Kluwer Kft., 2019).DOI: 10.55413/9789632958248.
https://mersz.hu/fezer-a-karteritesi-jog-magyarazata/ 2022. 11. 16.
[3] Kiss György: *Munkajog*. Budapest: Osiris Kiadó Kft., 2000, 226. o. https://www.szaktars.hu/osiris/view/kiss-gyorgy-munkajog-osiris-tankonyvek-2000/?pg=229&layout=s 2022. 11. 16.
[4] Petrovics Zoltán: *Munkajog*, Budapest: L'Harmattan Kiadó, 2006, 168. o. https://www.szaktars.hu/harmattan/view/munkajog/?pg=169&layout=s 2022. 11.16.

equipment, installations and energy used. The employer shall be liable under Section 174 for any damage to the employee's belongings brought into the workplace. The employer may require that the items brought into the workplace be placed in a locker or that the entry be reported. The employer may prohibit, restrict or impose conditions on the bringing in of items that are not necessary for going to work or for work. If the employee breaks the rules, the employer is liable for the damage caused only in the case of intentional damage.[5]

Liability for damages under employment law can arise if there is an employment relationship between the parties and one party to the employment relationship causes damage to the other party in connection with the employment relationship. However, while the employee is only liable to the employer for damages in the case of negligence, the employer's liability is objective, irrespective of fault.[6] It is clear from the above rules that under the rules of the old Labor Code the employer was subject to objective liability. According the Commentary on the old Labor Code if the employee suffers damage in connection with the employment relationship, there is no need to examine the employer's state of mind, i.e. the employer need not be charged with intent or even negligence.[7] According to Peter Sipka, liability regardless of fault on the part of the employer can be attributed to two causes. One reason is the emergence of the so-called "principle of interest", which means that the duty to take responsibility for the risk is incumbent on the person for whose benefit it was created, and the other reason is prevention, since the employer, in the knowledge of objective liability, is presumably acting with greater care to prevent accidents. However, the employer's liability does not only exist under the rules of labour law, but also, for example, under the rules of criminal law.[8]

According to the Ministerial Explanatory Memorandum to the proposal for the old employment relationship, "The proposal establishes objective liability for damage caused in connection with the employment relationship, irrespective of the employer's fault, as in the current legislation. The reason for this is to force employers to develop an organisation or to use technology that ensures the safety of workers' health, physical integrity and other property interests. The rules on health and safety at work positively define the employer's duties in this area, and the rules in this chapter essentially provide for sanctions for breach of these rules where the breach causes harm to the worker. From the employee's point of view, he has a claim for compensation against the employer if he has suffered damage which is connected with and causally linked to the employment relationship. The term "in connection with the employment relationship" in the Proposal contains two essential elements. First of all, it indicates that this strict liability of the employer only applies to the person in the employment relationship. On the other hand, it implies that the damage suffered by the worker must be in some way connected with the employment relationship which he has entered into. In this respect, the concept used in the Proposal is somewhat broader than the term "in the context of an employment relationship" as used in the existing law. In judicial practice, the term 'employment relationship' covers any event occurring to the employee in connection with, or in relation to, the establishment, performance or termination of the

[5] Act XXII of 1992 (old Labour Code) §§ 174-176 https://uj.jogtar.hu/#doc/db/1/id/99200022.TV/ts/20120301/lr/chain751 2022. 01. 15.

[6] Dr. József Radnay (ed.), *A Magyar Munkajog- Kommentár a gyakorlat számára* (Budapest: Hvg-Orac, 1995), 248.

[7] Commentary to Act XXII of 1992 on the Labour Code https://uj.jogtar.hu/#doc/db/311/id/A08Y4818.KK/ts/20090817/ 2022. 01. 15.

[8] Péter Sipka, *A munkáltatói kárfelelősség elmélete és gyakorlata* (Budapest: Hvg-Orac, 2021), 28.

employment relationship. The wording of the proposal thus essentially brings the legislation into line with current practice."[9]

1.2. Relationship to employment

According to Resolution No. 29 of the Supreme Court of Hungary, the employer is liable for the damage (health damage) caused by the accident and illness of his employee under the Labor Code. 174 of the employer's liability for the injury or illness of the employee if it arose in connection with the employment relationship. The burden of proving that the injury occurred in the context of the employment relationship lies with the employee. The employer bears this liability irrespective of fault, unless the employer is a private individual with no more than ten full-time employees, who is liable for the injury caused to the employee only if he is at fault.[10] According to the explanatory memorandum, 'the reference in the legislation to "in connection with the employment relationship" implies, on the one hand, that there must be an employment relationship and, on the other hand, that the damage suffered by the worker must be in some way connected with the employment relationship which he has entered into. There must therefore be a link or connection between the activity arising out of the employment relationship and the injury. This link also exists in the case of injuries caused by preparatory activities for the work, personal needs that cannot be separated from the work (meals, cleaning, etc.) and the performance of tasks connected with the completion of the work. Injuries occur in the context of the employment relationship even if the worker is employed outside the employer's premises, e.g. during a posting. In the context of the employment relationship, it is not only the position held that is relevant, but also the extent to which the employee could have been expected to perform an activity not strictly related to his or her job in the interests of the employer (e.g. Duties arising from the employment relationship include, for example, attending work-related meetings during, before or after working hours and performing duties imposed on the employer by law. Injuries sustained by an employee (driver, conductor, etc.) assigned to work in connection with the operation of means of transport operated by the employer in the course of or in connection with the performance of duties arising from the employment relationship shall also be considered to be sustained in connection with the employment relationship. The same applies to injury to an employee performing a task on the means of transport which falls within the scope of activity of another employer (canteen worker, sleeping car driver, etc.)."[11] In line with this, the Hajdú-Bihar County Court stated in its case decision No. 3.Mf.21.248/1992/2, published under No. BH1993.269, that an employer is liable for damage caused to his employee in connection with an accident if it occurred in the context of his employment. The facts of the case were that the (later deceased) worker was working on secondment for the employer, who accommodated him in a workers' hostel. However, in the hostel, the worker was poisoned by carbon monoxide and died. Subsequently, the worker's widow brought an action against the employer for property and non-material damages. The Court of First Instance dismissed the action on the grounds that the accident had occurred outside the employment relationship. The court of appeal held that the earlier court was correct in its decision. It pointed out that, according to the established case-law of the Supreme Court, the employer is not liable for the stay and use of the workhouse, irrespective of fault. He stressed that, according to Resolution No 29 of the Court of Justice, the link between the activity of the employment relationship and the injury exists only in the case of an injury arising in connection with tasks which

[9] Explanatory memorandum to Act XXII of 1992 on the Labour Code https://uj.jogtar.hu/#doc/db/4/id/99200022.TVI/ts/10000101/ 2022. 01. 15.
[10] MK No 29 a) https://uj.jogtar.hu/#doc/db/1/id/00000029.MK/ts/20090817/ 15.01.2022.
[11] MK No 29 a) Explanation.

cannot be separated from the work, which are part of the sequence of the worker's daily activities, which are connected with the needs of the worker and which are connected with the completion of the work. The employer shall not be liable without fault for an accident occurring outside the workplace after the completion of the day's work and the activities connected with the completion of the day's work.[12] The Supreme Court, in its case law decision Mfv.I.10.804/2000, published under No. BH2002.331, ruled in principle that an employer is liable for an injury suffered by an employee if the injury occurred in the context of the employee's employment. The injury must therefore be connected with the activity arising out of the employment relationship, and the employer is not liable for the damage resulting from the accident if the accident occurred during the employee's unauthorised private work (fusizia). According to the facts, the employee was carrying out unauthorised work on a night shift, contrary to the instructions of his supervisor: he used a forklift truck to transport a board to the cutting workshop, where he and his colleague cut it into three pieces. After the forklift had left, the applicant tried to close the door of the workshop, the diagonal hinge of which broke and the iron door, weighing several tonnes, fell on the applicant. As a result of the accident, the plaintiff sustained a fractured pubic symphysis, an abdominal wall and a contusion of the chest. The courts of first and second instance upheld - in part - the worker's claim for compensation. The court of second instance found, inter alia, that the worker did not suffer the accident while working in the black without authorisation, but that his injury was caused by a defective door in the cutting room, which the employer had failed to repair. In the review proceedings, the Supreme Court held that in the case at issue, the worker was not injured in the course of his employment, but was engaged in the cutting of a board without the employer's permission, in the course of his own interest, instead of carrying out the required work as instructed. According to the claimant's own statement, the accident occurred away from the place where he was supposed to be working, where he went solely to work without authorisation. Therefore, the falling of the workshop door, which directly caused the accident, was not causally linked to his employment relationship but to the unauthorised work.[13] The Supreme Court held in its case law decision Mfv.11.202/2011, published under No. BH2003.264, that where the manager of an employer engaged in substantial logging operations had transported the employee to the workplace, provided him with a chainsaw and protective equipment, and the employee accepted this, an employment relationship had been created between the parties. The accident which occurred in the context of the employment relationship is an industrial accident for which the employer is fully liable to pay compensation. In other words, the existence of an employment relationship does not require the parties to have formally concluded an employment contract, either orally or in writing, but only if the circumstances are such that it can be clearly inferred.[14]

1.3. Employer's exemption - scope of action

As can be seen from the above, the employer is objectively liable, but this does not mean that it cannot be exempted from liability under certain conditions. One possibility is for the employee to prove that the damage was caused by a cause beyond his control. According to MK 29, cited above, if the damage was caused by a cause outside the employer's sphere of activity, the employer is liable even if the cause was not preventable. In assessing whether the cause of the accident and illness in a particular case falls within the employer's sphere of activity, the nature of the work performed and the working conditions must also be taken into

[12] Judgment of the Hajdú-Bihar County Court No.3.Mf.21.248/1992/2- BH1993.269. https://uj.jogtar.hu/#doc/db/1/id/993H0269.MK/ts/20120301 15.01.2022.
[13] BH2002. 331. https://uj.jogtar.hu/#doc/db/1/id/A02H0331.MK/ts/20120301 15/01/2022.
[14] BH2003. 264. https://uj.jogtar.hu/#doc/db/1/id/A03H0264.MK/ts/20120301/ 2022.01.15.

account. The cause of the injury shall be considered to be outside the employer's sphere of activity if it is independent of the employer's activity, i.e. if there is no causal link between the cause and the employer's activity. Whether the cause of the damage in a particular case is outside the employer's sphere of activity must be assessed in relation to the employer's activities and on the basis of objective criteria. Even in the case of a cause outside the scope of activity, the provisions of the Labor Code shall apply, the employer is liable if the cause of the damage was objectively avoidable by the employer.[15]

The Explanatory Memorandum also stresses that "in the context of an employment relationship" and "scope of activity" are not the same concepts. The term "in the context of the employment relationship" refers to the subject matter within which the employer is liable for the damage, whereas the term "scope of operation" is closely linked to the employer's exemption from liability. The basis of the exemption is that the damage in the context of the employment relationship was caused by a cause which was not connected with the employer's operations and which the employer could not have prevented. The limitation of the exemption to the scope of the employment relationship means that if the damage was caused by a cause within the scope of the employer's operations, the employer is liable even if the cause could not have been prevented. In general, the scope of the employer's activities includes causes arising from the conduct of persons in the performance of their duties, the nature, condition, movement and operation of the materials, equipment, installations and energy used.

The scope of activity is not limited to the employer's premises, and there may be a link between the scope of activity and the cause of the damage in the case of damage caused by work carried out outside the premises. This link is specific where the worker carries out his work outside his place of work and the nature of the work and the circumstances of the work expose him to the risk of accident from causes beyond his control. The employer may not be exempted from liability for an accident occurring in the course of such work on the grounds that the accident was caused by a cause outside his control. In the case where the injury was caused by a cause outside the employer's control, the employer may be exempted from liability if the cause of the injury was objectively unavoidable. For example, lightning is a force majeure outside the employer's control, but the employer may be expected to remedy the damage by installing a lightning arrester. It is therefore relevant for the employer's exemption from liability whether a causal link between the cause of the damage and the employer's operations can be established. If such a causal link can be established, the employer cannot be exempted from liability, and if there is no causal link, the question is whether the cause of the damage was preventable. The link between the scope of the activity and the cause of the damage must be assessed in relation to the employer and on the basis of objective criteria. An impact which cannot be prevented is one which, given the objectively given state of the art, cannot be prevented within the time available.[16]

According to the case-law published under the number BH1992. 611, in the case of work performed outside the employer's premises, possibly abroad, the causal link between the employer's scope of activity and the cause of the accident can be established on the basis that the worker is obliged to perform the work under the conditions prescribed for him. The employer must also take account of the accident hazards involved. According to the facts on which the decision was based, the employer sent the worker abroad on a posting order, where he was involved in an accident with a car driven by a driver from the partner company. The courts of first and second instance dismissed the employee's claim on the ground that, although the accident occurred in the context of the employment relationship, the employer

[15] MK No 29 (b).
[16] MK No 29 (b) Explanation.

was not liable because the cause of the accident was outside the scope of its activities. However, the Supreme Court found that the employee had used the vehicle of a partner company with which he had a contractual relationship in the course of the posting, in the interests of the employer and with his knowledge. That vehicle must therefore be regarded as a means used by the employer in the performance of its tasks and, consequently, as falling within the scope of its activities. Indeed, in the case of work carried out outside the employer's establishment, possibly abroad, the causal link between the employer's sphere of activity and the cause of the accident can be established on the basis that the worker is obliged to carry out the work in the conditions prescribed for him. The employer must also take account of the accident hazards associated with this.[17]
This was also confirmed by the case decision under case number BH2000.422, where the worker was working on a construction site as an employee of the employer, when a crane fell during dismantling by third party's workers, causing injuries to the claimant worker. The labour court at first instance dismissed the claim on the grounds that the accident had occurred for reasons beyond the control of the employer. However, the court of appeal found the employer liable. According to the Supreme Court, the employer had to take into account circumstances that could have been caused by third parties and, consequently, the court of appeal was right to find that the plaintiff's injury was caused by a cause within the employer's sphere of activity. There is therefore a causal link between the cause of the injury (dismantling the crane) and the employer's activities (participation in the construction work), and the defendant employer cannot be exempted from liability.[18]
As can be seen, under the old Labor Code, the courts in practice only established "outside the scope of operation" in actual force majeure situations.

1.4. Employer's exemption - employee's contribution

Another case of employer's exemption under the old Labor Code is if the damage was caused by the unavoidable negligence of the injured employee. In this case, however, there may also be a possibility of damage sharing. There is also a very rich case-law on this ground of compensation.
In labour law, there are two types of workers' compensation liability. The first is the form of liability based on the fault of the employee, the essence of which is that the employee causes the damage by failing to comply with his or her obligations arising from the employment relationship, by his or her wrongful conduct (intentional or negligent), by not acting in a way that is normally expected in the given situation. The liability of an employee under the general rules therefore requires the following four conditions to be met: the employee's breach of duty, fault, the occurrence of the damage and the causal link between the employee's conduct and the damage.[19]
The Resolution MK No. 31 of the Hungarian Supreme Court was of assistance in this respect, according to which "in the event of an injury to the employee's health in connection with the employment relationship, the employer may be liable to pay compensation for the injury in accordance with the provisions of the Labor Code of Hungary. The liability of the employer based on § 174 (1) of the Labor Code is not measured according to whether the employer is also at fault and in what proportion to the employee's fault. The proportion of liability is determined by the extent of the employee's culpable contribution. However, in determining

[17] BH1992. 611 https://uj.jogtar.hu/#doc/db/1/id/992H0611.MK/ts/20120301/ 2022.01.15.
[18] BH2000. 422 https://uj.jogtar.hu/#doc/db/1/id/A00H0422.MK/ts/20120301/ 2022.01.19
[19] Hanyu Henrietta (2019):*Munkajogi kárfelelősség a gyakorlatban* [Digitális kiadás.] Budapest: Wolters Kluwer Kft. 10.55413/9789632958569 Letöltve: https://mersz.hu/hanyu-munkajogi-karfelelosseg-a-gyakorlatban/ (2022. 11. 16.).

the degree of fault on the part of the employee and, by comparison, the proportion of the damage, it is relevant whether the employer himself was at fault in causing the damage." According to the explanatory memorandum, the employer may be relieved of liability, in whole or in part, only if the conditions laid down in the Labor Code are met. To do so, however, he must prove that the damage was caused by an unavoidable cause outside his control or solely by the unavoidable conduct of the injured worker. Even in the absence of such proof, he is exempted from bearing that part of the damage caused by the employee's negligence. In the latter case, the damage may be shared. The employer is obliged to pay compensation for the damage caused. 174 (1) is objective, whereas the employee's contribution to the damage is legally relevant only if the contributory conduct was also at fault. In comparison, the proportion of liability for the damage is determined by whether the employee's culpable conduct contributed to the damage and, if so, to what extent. The measure of the employee's objective liability is therefore not determined by the proportion of fault between the employee and the employer in causing the injury, because the employer is liable for the employee's injury even in the absence of fault. In determining the proportion of the liability to the employee's fault, all the circumstances of the case must be taken into account. The fact that the employer may have contributed to the damage by his own negligent conduct cannot therefore be disregarded.[20]

For example, a case decision published under BH1993. 270 ruled that if the accident was caused solely by the negligence of the injured party, the employer is exempt from liability for compensation in the case of a fatal accident at work.[21]

According to the decision in case BH2005. 192. the negligent performance of the injured worker with blatant disregard for everyday life experience may constitute a basis for fault-based contribution - and thus for the application of damage sharing. The facts of the case are that the employer employed the late employee, the claimant's husband, as a public servant in a maintenance position. The deceased employee was responsible for the maintenance of the institution, which included the so-called "pruning" work. On one of these occasions, the deceased started sawing a tree limb at a height of approximately 3 metres with his own chainsaw, without securing himself and without using personal protective equipment. During the sawing operation, the branch, which had moved, hit him, causing him to fall to the ground and suffer serious injuries, which he later died from. The deceased's spouse brought an action before the Labor Court for compensation for non-pecuniary and maintenance damages in connection with the accident. The employer admitted 70% of its liability for damages, while 30% of the liability was based on the negligence of the deceased employee. In its judgment, the Labor Court applied a damage apportionment test and found, inter alia, that the deceased worker had failed to exercise due care and diligence and had failed to refuse to carry out a manifestly unlawful instruction, the execution of which had directly endangered his physical integrity. He was therefore at fault in causing the accident. The judgment of the court of appeal was upheld. In the review proceedings, the Supreme Court explained that the court of first instance had correctly applied Resolution MK 31 in finding that the deceased worker was at fault for his negligence, his disregard for everyday life experience and his failure to recognise the danger of the operation (cutting a tree branch while standing 3 meters above the ground without being anchored). This is without prejudice to the fact that the content of the instructions given by the person exercising the employer's powers could not be established with absolute certainty, in particular because the manager, who had only started work a few days previously, had obviously not given detailed instructions covering everything, relying on

[20] Supreme Court Resolution MK 31 https://uj.jogtar.hu/#doc/db/1/id/00000031.MK/ts/20120301/ 2022. 01. 19.
[21] BH1993. 270 https://uj.jogtar.hu/#doc/db/1/id/993H0270.MK/ts/20120301/ 2022.01.19.

the experience of the deceased worker and the correctness of his previous similar work. By correctly applying Resolution MK 31, which constitutes a decision in principle, the final judgment, also upholding the proper assessment of the court of first instance, assessed the late worker's culpable conduct: lack of training in safety at work, improper use of his own work equipment, failure to comply with safety rules. The correct interpretation of the law is that, in the context of the employer's objective liability for damages, the proportion of the damage is determined by the employee's fault. The existence of objective liability on the part of the employer cannot lead to a finding that he is liable for full compensation if the employee is found to have been at fault, in this case grossly negligent.[22]

The Supreme Court, in its decision BH2007. 241., considered the application of the apportionment of damages to be justified even where it could not be established that the illnesses causing the applicant's disability arose during the period of his employment with the employer, but the adverse employment circumstances may have contributed to the development of the condition leading to his disability. According to the facts, the employee was employed by the employer as a power machine operator, performing heavy manual and mechanical agricultural work with a tractor. Four years later, the worker was assessed as having a 40% reduction in working capacity and 1 year later he became disabled with a 67% reduction in working capacity.

According to the employee's claim, his illness was caused by excessive and unilateral strain on his bony joints, muscles and tendons in connection with his work. The court of first instance found that the employee, who had been performing manual work since the age of 15, had degenerative musculoskeletal conditions in which the work performed in the lawsuit was of minor importance, regardless of the subsequent inability to work. The impact of his work in the lawsuit on the change in the worker's capacity to work cannot be precisely determined, but does not exceed 16%. In view of this, the Court of Appeal dismissed the worker's action, which was upheld. However, according to the decision in the review proceedings, even though it cannot be established that the employee's illness which caused his disability arose at the employer's premises, the adverse employment conditions there contributed to the development of his condition (partial causation). According to the decision, 'the employer's liability for compensation must be determined in proportion to the contribution of the employee's health impairment arising out of his employment to the damage suffered. Consequently, there must be apportionment of damages."[23]

The Supreme Court in a case decision published under EBH2008. 1902. emphasized that "the fault of the employer mitigates the assessment of the employee's culpable conduct, but in the case of serious or repeated employee negligence, a higher proportion of the damage may be attributed to the employee." According to the facts, the employee was working for the employer as a printing machine setter, and on the day of the lawsuit, he noticed a belt failure on one of the production lines several meters above the ground and reported the problem to his supervisor. While the foreman and the mechanic went to prepare for the repair, the worker noticed that a chain had fallen off a sprocket on the equipment at a great height. Without waiting for the foreman, he attempted to remedy this by placing an aluminium ladder on a two-meter high rolling platform, which one of his co-workers, standing on the platform, supported by hand at his request. The structure overturned, the employee and his colleague fell to the ground, and the employee suffered serious injuries. The employer admitted that the accident was an operational accident, but in its view, it was not liable for the accident because the accident was caused by the employee's solely unavoidable conduct, because he was not

[22] BH2005. 192. https://uj.jogtar.hu/#doc/db/1/id/A05H0192.MK/ts/20120301/ 2022. 01. 21.
[23] BH2007. 241. https://uj.jogtar.hu/#doc/db/1/id/A07H0241.MK/ts/20120301/ 21/01/2022.

using the equipment available for safe working and did not wait for the foreman to carry out the operation. The Labor Court ruled, in an interlocutory judgment, that the employer was liable for 40% of the damage caused by the accident of 23 March 2006. It also found that the worker had breached the rules in force and which the employer had taught him in safety training, by starting to correct the defect on his own; however, instead of using a three-section extension ladder for working at height, the worker started to correct the defect from an unprofessional, unstable device. Since the accident also occurred for reasons within the employer's sphere of activity, linked to the normal operation of the plant and arising from the specific nature of the technology used, the labor court did not find that the employee's conduct was solely attributable to his own negligence, but applied a 60-40% apportionment of the damage, which was more onerous, in view of the employer's serious and culpable negligence. The Court of Appeal upheld the interim judgment of the Court of First Instance, holding that the accident could also have been caused by specific causes within the employer's sphere of activity. The Supreme Court found that the remedy at issue was not the same as that for which the employee had previously sought assistance. When the chain fell off, the worker had a work obligation to remedy the fault and did not need to ask the foreman for permission or instructions to do so, i.e. he had to remedy the fault on his own. It is not disputed that a suitable ladder was available at the employer's premises, but it was only found after a lengthy search after the accident, as it was located in a fenced-off area. According to the decision of the review process "the 174(1) of the Labor Code on the liability of the employer for damages, liability in the case of fault on the part of the employer is not determined by the proportion of that fault to the fault of the employee. The fact that the employer's fault substantially reduces the weight of the employee's culpable contribution mitigates the assessment of the employee's culpable conduct, but in the case of serious (and repeated) employee misconduct and omissions, a higher proportion of the liability for the employee is not excluded. This can be determined on the basis of a careful assessment and weighing of the circumstances."[24]

As can be seen from the above, the old Labor Code allowed an employer to be exempted from the obligation to establish liability for damage(s) suffered by the employee in connection with the employment relationship and thus from the obligation to compensate for the damage. The employer could hardly ever prove that the damage was not related to the employment relationship or the scope of its activities, and even in the "best" cases the courts applied a damage apportionment.

2. The theory and judicial practice of liability for damages in the New Labor Code

2.1. The employer's liability for compensation under the New Labor Code

According to Article 166 of Act I of 2012 (New Labor Code), the employer is obliged to compensate the employee for any damage caused in connection with the employment relationship. The employer is exempted from liability if it proves that the damage was caused by a circumstance beyond its control which it could not have foreseen and could not reasonably have been expected to avoid or prevent, or that the damage was caused solely by the uncontrollable conduct of the injured party.[25]

[24] EBH2008. 1902. https://uj.jogtar.hu/#doc/db/1/id/A08H1902.EBH/ts/20120301/ 2022. 01. 21.

[25] Act I of 2012 (Labour Act) § 166 (1) - (2) paragraphs https://uj.jogtar.hu/#doc/db/1/id/A1200001.TV/ts/20210708/lr/chain944 2022. 01. 22.

In accordance with the New Labor Code according to the commentary, "the object of the employer's liability is the reparation of the damage suffered by the employee in connection with the employment relationship. Employer's liability is a strict, so-called objective liability, which is similar in legal nature to civil liability for dangerous works. Employers' liability is characteristically of an indemnity or risk bearing nature. The worker (or the worker's dependants) is afforded increased protection." It also stresses that liability is objective, and that fault on the part of the employer is not a prerequisite. To establish liability, three conditions must be met, plus one conjunctive condition. The three positive conditions are: the occurrence of the damage, the existence of an employment relationship, the causal link between the employment relationship and the damage, while the fourth, negative condition is that the employer cannot excuse himself. The employee has to prove the causal link between the injury and the employment relationship, the extent of the injury and the extent of the damage. In cases of exculpation (as to whether the grounds for exculpation exist), it is of course the employer who proves. The grounds for exemption are, if the employer proves, that the damage was caused by a circumstance beyond its control which it could not have foreseen and could not reasonably have been expected to avoid or prevent, or that the damage was caused solely by the uncontrollable conduct of the injured party.[26]
Thus, as in the old Labor Code, the Labor Code establishes a strict, objective liability for the employer with regard to liability for damages. The employer's obligations in relation to prevention are defined by the rules on occupational safety and health. It is important to underline that the employer is only liable for damages caused in the context of the employment relationship according to the rules of the Labor Code, if the damage is not related to the employment relationship, the question of liability must be decided on the basis of the rules of the Civil Code.[27] This is also expressly provided for in § 177 of the Labor Code.[28]

2.2. The employment relationship

The above-mentioned judicial decisions based on the rules of the old Labor Code remain largely applicable. Thus, for example, the employee must at least establish a probable link between the injury and the employment relationship, indirect causation alone does not exclude the employer's liability, the absence of an employment contract is not in itself sufficient to exempt the employer, training, sporting events etc. organised by the employer are also linked to the employment relationship, but unauthorized work is not.[29] Furthermore, e.g. a fatal, natural disease is not linked to the employment relationship within the scope of the employment contract.[30]

2.3. Scope of operation - scope of control

The New Labor Code replaced the concept of the scope of operation by the scope of control. The legislator's intention was to narrow the scope of judicial practice, which interpreted the concept of the operational scope broadly, and the legislator's express intention was to narrow the very broad scope of employers' liability for damages that had developed in judicial

[26] Commentary to Act I of 2012 on the Labour Code https://uj.jogtar.hu/#doc/db/331/id/A12Y1290.KK/ts/20210301/lr/166 2022. 01. 22.
[27] Tamás Gyulavári (ed.), *Munkajog* (Budapest: Elte Eötvös Kiadó, 2019), 366.
[28] Mt.177.§ : The compensation for damages is governed by the Ptk. 6:518-534 shall apply.
[29] Dr. István Horváth and Krisztina Szladovnyik, *Munka Törvénykönyve 2014 – Az Mt. és a Ptk. munkaviszonyra vonatkozó szabályai* (Budapest: Vezinfó, 2014), 262.
[30] Dr. István Horváth, *Az új Munka Törvénykönyve- értelmezés és alkalmazás a gyakorlatban* (Budapest: Vezinfó, 2012), 180-181.

practice. The scope of control covers all the circumstances over which the party in breach of contract has influence or control. This includes, for example, organisational or other disturbances in the company's own internal organisation, the conduct of the employer's employees, difficulties in obtaining supplies on the market. In other words: outside the scope of control are circumstances over which the party in breach of contract has no control or influence. This includes, for example, the traditional cases of force majeure, specific government measures, import and export bans, currency restrictions, embargoes and boycotts. This may include serious breakdowns and radical market changes which make it impossible to perform the contract as agreed, such as an extreme weakening of the currency of payment.[31]

According to the decision of the Curia published under EBH2016.M.9., in the case of an accident at work, the burden of proof is on the employer to prove that the damage occurred due to a circumstance beyond its control, which it did not have to foresee and could not have been expected to avoid or prevent, and that the cause of the accident is solely attributable to the employee's conduct. It therefore maintained its previous practice that the mere performance of work or services outside the employer's premises does not result in the occurrence of an injury outside the control of the employer.[32]

The Court of Appeal also included in the scope of control the assurance of the adequacy of the working method, work equipment, materials, number of employees and professional skills, given that this is the employer's obligation and therefore within its control.[33]

The Curia also held that the scope of control must be understood to include all objective facts and circumstances which the employer has the power to shape. The direct cause of the accident and the entire work process leading to the accident must be examined: the choice of the work method, the work equipment provided, the number of employees, the professional skills, because the employer is obliged to ensure these, and thus has influence and influence on them.[34]

In order to ensure the uniformity of jurisprudence, the Administrative-Labor Chamber of the Curia adopted Opinion 1/2018 (VI.25.) KMK on certain issues of the liability of employers for damages caused to the health of their employees.

According to point II of the KMK opinion, "the employer's control includes the performance of his duties, the related personal conduct, the organisation of work; the quality, condition, movement, operation of materials, equipment, installations, energy and, in general, the risks of production. In general, the employer's control includes the designated, delimited place of work outside the premises (headquarters, etc.), including its conditions; the circumstances relating to the object, plant, animal, soil, and the conduct or omission of the driver of the vehicle kept or actually used by the employer and the driver of the vehicle entrusted by the employer. Circumstances relating to transport, other than the foregoing, are not normally within the employer's control. In applying the "no reason to expect" test, the court will decide whether the employer exercised due care and could reasonably have foreseen the likely occurrence of the harmful circumstance in the exercise of its rights and in the performance of its duties. A harmful circumstance is not considered to be avoidable if the employer could not have influenced its creation or elimination by using ordinary efforts and applying the average results of technology."[35]

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[31] Commentary to Act I of 2012 on the Labour Code.
[32] Curia EBH2016. M.9. https://uj.jogtar.hu/#doc/db/25/id/A16H0009.EHM/ts/20151215/ 2022. 01. 22.
[33] Curia EBH2016. M.10. https://uj.jogtar.hu/#doc/db/1/id/A16H0010.EHM/ts/20210708/ 2022. 01. 22.
[34] Curia EBH2018. M.20. https://uj.jogtar.hu/#doc/db/25/id/A18T2106.KUR/ts/20180517/ 2022. 01. 22.
[35] KMK Opinion 1/2018 (VI.25.) on certain issues of the employer's liability for damage to the health of his employee, point II.2-4. https://uj.jogtar.hu/#doc/db/1/id/A18V0001.KK/ts/20180625/ 2022. 01. 22.

According to the explanatory memorandum to the KMK opinion, in the absence of a provision in the Labor Code, the scope of control - which is the main feature of the legislator's different concept of dismissal - is defined by the employer's ability to influence or lack thereof. The scope of control is not identical to the scope of the old Labor Code, although there may be overlaps. "The employer, for example, obviously has influence on the organisation of work, but cannot influence the behaviour of road users (car drivers). Therefore, if the employee typically performs his work outside of the „office" and suffers damage on the road in the process (hit by a third party at a pedestrian crossing), he cannot claim compensation from the employer. On the other hand, if, for example, the accident is suffered as a passenger in a car provided by his employer solely because of the negligence of his co-worker, the employer cannot claim that the damaging circumstance (the driver's fault) is outside his control. Indeed, the employer has control over the way in which the driver carries out his work (e.g. driving in a fit condition to drive). Therefore, the normal circumstances of driving on the road, on public transport, in connection with that transport, are not normally within the employer's control. "Therefore, if the injury is caused by a circumstance within the employer's control, the employer may be relieved of liability for damages if it proves (on a joint and several basis) that the injury was caused solely by the employee's negligence. In order to be exempted from compensation for damage caused by a cause beyond the control of the employer, the employer must prove that the three cumulative conditions set out in the Act have been met. It also follows from the above that if the damage was caused by a circumstance beyond the employer's control, the other conditions laid down in the Act ("he did not have to reckon", "could not be expected") are irrelevant. In the assessment of the employer's exemption from liability, in view of the special rules of the Labor Code, the Civil Code's rule of exemption from tort liability - based on the absence of fault - is not applicable.[36]

The KMK opinion shows that there is a broader scope of control, by which the employer actually prepares the employee for the work. This includes, for example, medical fitness tests, training, instruction, supervision, etc. These must be carried out in order to ascertain the physical and mental fitness of the worker. If he fails to do so, he must run the risk that, in the event of injury to such a worker, the court will not find that he was outside the scope of control, i.e. the employer cannot be exempted from liability. The second, physical scope, is that the employer must create an environment for the worker where his physical protection is fully ensured regardless of the actual place of work.[37]

In the context of the scope of control, the Curia stated in its case decision published under EBH2019. M.20, that "the catering provided by the employer to the knowledge of its partner in connection with the performance of the contract between them, i.e. the participation of the employee in the dinner given at the customer's place in accordance with local customs, is in the employer's business interest and the risk of its economic operation. In the case of a related illness of an employee, the employer cannot legitimately claim that the injury was caused by a circumstance beyond its control." According to the facts, the employee worked for the employer as a driver. The employer's partner company invited its employees to dinner at a canteen on its foreign site. The employee suffered food poisoning at this dinner, as a result of which his health declined to 45%. In his amended claim, the employee sought damages for loss of earnings and damages for his health impairment. The court of first instance dismissed the claim. The Court of Appeal upheld the judgment of the Court of First Instance. The Curia pointed out that it could be established that the employees had accepted the invitation to

[36] 1/2018 (25.VI.) KMK opinion Explanation of point II.
[37] Sipka, *A munkáltatói kárfelelősség elmélete és gyakorlata*, 53-55.

dinner from the employer's economic partner in a foreign country because the employer would have been disadvantaged if they had refused, and that the employer's economic interests would clearly not have been served by the client's infringement. The catering provided by the employer's business partner to the customer's employees to attend a dinner given in accordance with local customs was clearly in the employer's commercial interest and, where applicable, related to the full performance of the job. The attendance at the dinner was in the context of the employment relationship and it reasonably follows that it was within the employer's control. The Curia further held that "it is undisputed that the quality of the food served is beyond the employer's direct control and influence, but that the dinner in the present case must be assessed as a fact falling within the risk of production. However, despite the fact that the employer was aware of the procedures and habits of the foreign customers, it did not carry out a risk assessment in this context, did not prescribe a procedure for its employees to follow, and did not draw their attention to the dangers arising from the consumption of food which it could not control."[38] In my view, however, and in agreement with the opinion of Péter Sipka,[39] the Curia did not necessarily correctly determine the scope of control on the basis of the above facts, which, in my view, could have been assessed in the foreseeability context.
As can be seen from the above, the Labor Code has not only made a terminological change, but has also clarified and narrowed the scope of events that can be included in the scope of the employer's control, which is still significant, however, and the employer can still only exempt itself on this basis within a narrow scope.

2.4. Foreseeability

According to the Labor Code, the employer is exempt if he proves that the circumstance outside his control is also a circumstance which he did not have to foresee and could not have been expected to avoid the occurrence of the damaging circumstance or to prevent the damage. According to points II.3-4 of the KMK opinion, in applying the "could not have foreseen" condition, the court will examine the care taken by the employer in exercising its rights and performing its obligations, whether it could reasonably have foreseen the likely occurrence of the harmful circumstance. A harmful circumstance is not considered to be avoidable if the employer could not have influenced its creation or elimination by using ordinary efforts and applying the average results of technology. According to the opinion, 'in the case of damage caused by a cause beyond the employer's control, a further condition for exemption from liability for damages is the absence of foreseeability, i.e. the fact that the employer could not have foreseen the harmful event. It is necessary to assess whether, in the ordinary, common-sense sense, the employer concerned could reasonably have avoided the cause of the damage by using all available means, whether it was avoidable, and what could have been expected of him in the given situation. In assessing the condition in question, it must be taken into account whether, at the time the damage occurred, foreseeability could have existed in the light of the knowledge of the parties at the time of the conclusion of the employment contract giving rise to the legal relationship and of the information they had exchanged during the legal relationship. The inevitability of the harmful circumstance (third cumulative condition) must be assessed in relation to the employer in question, on the basis of the average results of the technique and the average effort that the employer could be

[38] EBH2019. M. 20. https://uj.jogtar.hu/#doc/db/25/id/A19H0020.EHM/ts/20190709/ 2022. 01. 22.
[39] Sipka, *A munkáltatói kárfelelősség elmélete és gyakorlata*, 55.

expected to make in the time available to him. The employer is therefore not obliged to make an effort that exceeds the average."[40]

According to József Cséffán, the foreseeability-based compensation and the limitation of the amount of compensation creates a balance in terms of risk sharing between the employer and the employee. In his view, the correct understanding in this respect is that the employer's activity is a necessary assumption of risk, and therefore it is not necessary to assess the employer's circumstances or conduct that caused the damage, but to assess the risks inherent in the activity.[41]

According to Péter Sipka, foreseeability in employment law should be interpreted in the context of the employer's duty of care, which must take into account the employee's individual situation, abilities, etc. Foreseeability must be examined primarily in the context of the legal basis, because if the employer successfully excuses itself, it is exempt from liability.[42]

Foreseeability also plays a role in determining the amount of damages, but only if the employer cannot excuse itself and thus its liability for damages has been established.

Foreseeability is the employer's state of mind, within which he or she establishes the place, rules and environment of work, and assesses the potential risks that could realistically occur. Consequently, different levels of responsibility may arise in workplaces with different degrees of risk. In a high-risk work process, where there is a higher probability of an accident occurring, the employer will find it more difficult to save himself, whereas it is conceivable that in a medium-risk work process, the employer, acting in accordance with general life experience, will find it easier to save himself.[43]

In its judgment Mfv. 10.720/2015/1, the Curia ruled that "when examining whether the employer had to take the harmful circumstance into account, the specificity of the work in question, namely that it was not carried out on work equipment owned by the employer, cannot be disregarded." According to the facts, the employee was employed by the employer as a telecommunications network installer in the capacity of a skilled worker. His tasks included the installation and repair of computer, radio, telephone and television transmission cables. The employer has a framework contract with a third party for construction and operation. On the basis of this contract, the employer is also required to carry out network maintenance and fault repair work on the poles belonging to the third party and forming part of the telecommunications network. Under the framework contract, the foreman and his employee were to carry out work on a double concrete-skinned, so-called 'salt pine' pole, which had been installed on the basis of a building permit issued long before. The pole was inspected by visual inspection and tapping and no damage or cracks were found. It did not bear a plaque indicating its age or the time of its decommissioning. Two wires were cut at the height of the work, but after the third was cut, the concrete pillar began to lean towards the roadway and broke directly over the two concrete pillars. The worker suffered fractures of the heel bone on both sides and in his claim he sought compensation for material damage on the grounds that the accident was caused by his employer's failure to provide him with safe working conditions. In an interlocutory judgment, the Court of First Instance held that the employer was fully liable. The Court of Appeal upheld the interim judgment of the Court of First Instance by way of an interlocutory judgment. According to the judgment, "the courts in the case correctly concluded that the defendant must have taken into account the

[40] Opinion 1/2018 (25.VI.) of the Committee of the Regions II. points 3-4 and explanatory memorandum.
[41] Dr. József Cséffán, *A munka törvénykönyve és magyarázata* (Szeged: Szegedi Rendezvényszervező Kft, 2016) 485.
[42] Sipka, *A munkáltatói kárfelelősség elmélete és gyakorlata* 64.
[43] Sipka, *A munkáltatói kárfelelősség elmélete és gyakorlata*, 67.

circumstances which caused the accident in the present case, because it did not comply with the requirement of reasonable information in the circumstances by administratively taking over the work area, and its measure of entrusting its employees with an external visual inspection and knocking to assess the condition of the poles did not comply with this requirement. The employer should at least have been expected to have ascertained the age of the columns, because this would have enabled conclusions to be drawn as to their condition, or to have obtained from the owner of the columns, and also from the client, a list of measures taken to preserve the condition of the columns and to assess them. "The Court of First Instance also ruled, in principle, that "in order to successfully avoid liability for damage, the employer may rely on the presumption that the person handing over the work has complied with all his legal obligations only if it can be objectively established that he has based this presumption on reasonable information or measures."[44]

2.5. The sole irresponsible conduct of the injured party

According to point 5 of the KMK opinion, "the sole and irresponsible conduct of the employee can be established irrespective of fault. The employee's conduct leads to the employer's exemption from liability if the damage was caused solely by the employee himself and was beyond the employer's control. If the damage is not solely attributable to the employee's conduct, the employer cannot be exempted from liability. "The opinion states that "the employee's exclusive and also irresponsible conduct may exist in the absence of an express provision of law, irrespective of his fault. However, the circumstances of the case must be examined in their entirety, since this condition of exemption can be met if the employer can prove that no other cause contributed to the damage. If the evidence shows that the employee's conduct caused the damage and that the employer is liable, i.e. that the employee's conduct is not proved to be solely and exclusively attributable to the employer, the case-law on apportionment of damages should be upheld."[45]

In this connection, the Curia ruled in its decision published under EBH2009.M.13. that the sole and inevitable conduct of the employee at the time of the accident cannot be established if the employer has failed to comply with the legal requirements to ensure healthy and safe work. If the exact cause of the accident cannot be established on the basis of the available evidence, it cannot be concluded that the accident was caused solely by the negligence of the injured party. The facts are that the worker was employed by the employer as a machine operator. During the night shift, he suffered an accident while working on a printing machine. His fingers were bleeding profusely and he received first aid and was treated in the outpatient department of a hospital's accident and emergency department. During the night, the applicant underwent surgery on his ring finger in the traumatology department. The employee claimed damages from the employer. The courts of first and second instance rejected the claim. However, according to the Curia, "the sole and unavoidable conduct of the employee cannot be established as the cause of the accident if the employer has failed to comply with the legal requirements to ensure healthy and safe working conditions. Since according the Labour Code, Article 166(2)(b), the conduct of the injured party need not be at fault, it follows that, in the light of all the circumstances of the case, the case-law is consistent in holding that, if the cause of the accident cannot be established (i.e. the employer's evidence of exculpation is ineffective), it cannot be established that the accident was caused solely by the injured party's unavoidable conduct."[46]

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[44] Judgment of the Curia Mfv. 10.720/2015/1 https://uj.jogtar.hu/#doc/db/25/id/A1644155.KUR/ts/20160721/ 2022. 01. 22.

[45] 1/2018 (25.VI.) KMK Opinion II.5. and Explanatory Memorandum.

[46] EBH2019. M.13. https://uj.jogtar.hu/#doc/db/1/id/A19H0013.EHM/ts/20210708/ 2022. 01. 22.

According to the Curia's ad hoc decision published under BH2020. 339. According to Article 166 (2) (b) on the exemption from liability for damages, two conditions are required for the exemption from liability for damages: that the accident has no cause at all which is beyond the control of the employee and that the cause of the accident is objectively unforeseeable by the employer. If the damage was not caused solely by the employee's inevitable conduct, or if the cause of the damage cannot otherwise be proved, it is not possible to establish that the employer, who is required to prove the cause, is liable to pay compensation." The facts of the case show that the employee was performing delivery duties for the employer. On one occasion he was driving his motorcycle to a farmhouse address to carry out a delivery task, during which he had an accident on a dirt road, which was wet and muddy from the rain. In his action, the employee sought an order that the employer pay compensation. He claimed that the employer was fully liable for the accident. The Administrative and Labor Court dismissed the claimant's action. It held that the accident was caused by the applicant's driving errors. The Court of Appeal overturned the judgment of the court of first instance and held that the employer was liable to pay compensation for all the damage suffered by the employee as a result of the accident.
The Curia emphasised that the employee correctly pointed out in his counter-application for review that, according to the opinion of the expert on safety at work, the lack of use of off-road tyres could have played a role in the accident, which in itself precludes the sole and inexcusable conduct of the employee from being established. According to Article 166(2)(b) of New Labor Code, in order to be exempt from liability for damages, there must be no cause whatsoever which is beyond the control of the employee and which cannot be objectively avoided by the employer. If the damage was not caused solely by the employee's inevitable conduct or if the cause of the damage cannot be proved in any other way, it is not possible to establish that the employer, who is required to prove the excusable cause, has failed to establish a excusable cause. In the facts of the case, there are several circumstances which rule out the possibility that the employee's conduct was the sole cause of the accident. For example, the fact that the worker had to travel on a dirt road which was muddy and slippery due to the rain in November. The engine driven by the worker lost stability on the "extremely poor road" at low speed. On the basis of photographic evidence of the road conditions at the time of the accident, the expert in the case concluded that the tyres on the vehicle could not be driven safely and comfortably on the road in those conditions. There was no expectation on the part of the employer that in such circumstances the employee could only travel on foot or in another vehicle, nor was there any claim that delivery duties to the farm could have been suspended due to weather or road conditions. It stressed that "the tribunal correctly included in its final interlocutory judgment the applicant's decades of experience as a motorcycle driver, on the basis of which it considered that the destination could be reached without an accident, despite the road conditions. Although the driving technique he had chosen to avoid the accident when the vehicle skidded was not successful and he was unable to avoid the accident, it was not his fault that he did not choose the most advantageous of the possible courses of action in an unforeseeable and unexpected situation, according to the case-law."

3. Summary

As can be seen from the foregoing, the New Labor Code has introduced significant changes compared to the old Labor Code, both in terms of the basis for the employer's liability for damages and the determination of the amount of compensation. The employer continues to be liable on an objective basis, irrespective of its fault, but may be excused if it proves that the

damage was caused by a circumstance beyond its control which it could not have foreseen and could not reasonably have been expected to avoid or prevent, or that the damage was caused solely by the uncontrollable conduct of the injured party. The existence of an employment relationship between the parties is still a prerequisite for establishing liability under employment law, but the existence of a written and signed employment contract is not necessarily required. However, the damage must in any event arise in the context of the employment relationship and must be within the employer's control and objectively foreseeable. However, it remains for judicial practice to clarify who exactly must foresee (or not foresee) the harmful circumstance and when.

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[3] Commentary to Act XXII of 1992 on the Labor Code

[4] Péter Sipka, *The Theory and Practice of Employer Liability* (Budapest: Hvg-Orac, 2021)

[5] Explanatory memorandum of Act XXII of 1992 on the Labor Code

[6] Act I of 2012 (Mt.)

[7] Commentary to Act I of 2012 on the Labor Code

[8] Tamás Gyulavári (ed.), *Labour Law* (Budapest: Elte Eötvös Kiadó, 2019)

[9] Dr. István Horváth and Krisztina Szladovnyik, *Labor Code 2014 - The Employment Relationship Rules of the Labor Code and the Civil Code* (Budapest: Vezinfó, 2014)

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