General Docket Number 10237/2023
Division Number 208/2025
General File Number 13844/2025
Publication Date 05/23/2025

[emblem]

THE ITALIAN REPUBLIC

THE SUPREME COURT OF CASSATION

THIRD CIVIL DIVISION

Composed of the Honorable Magistrates:

LUIGI ALESSANDRO SCARANO	President Judge
CHIARA GRAZIOSI	Councilor
IRENE AMBROSI	Councilor
ANTONELLA PELLECCHIA	Councilor
MARILENA GORGONI	Rapporteur

Subject:

Compensation for damages from active smoking - Dangerous activity - Negligent act of the injured party

Hearing 01/17/2025
Civil Court of Cassation

Issued the following

ORDER

On the appeal registered under General Docket No. [redacted] lodged by:

[redacted]

[redacted] in their own right and as heirs of [redacted], all represented and defended by Attorney, [redacted], jointly with Attorney, [redacted], digital domicile pursuant to law;

-Appellants-

versus

[redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] represented by Special Attorney, [redacted] [redacted] with address for service in [redacted] [redacted] [redacted] at the law firm of Attorney, [redacted], [redacted] who represents and defends the above-stated party

General Docket Number 10237/2023
Division Number 208/2025
General File Number 13844/2025
Publication Date 05/23/2025

jointly with Attorney, [redacted] [redacted] [redacted]

-Respondent-

against the RULING of the COURT OF APPEALS of POTENZA No. [redacted], filed on 10/26/2022.

Having heard the report delivered in Judges Chamber on 01/17/2025 by Councilor MARILENA GORGONI.

FACTS OF THE CASE

Messrs. [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] summoned before the Court of Potenza the company [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] so that: a) its liability be established for the death of Ms. [redacted] [redacted] from lung cancer (developed as a result of extensive smoking of about twenty cigarettes a day, from 1965 to 1995), because the company never informed consumers of the highly harmful nature of MS cigarettes, despite the fact that the scientific literature linked lung cancer to active smoking since 1950; b) it be ordered to pay compensation for pain and suffering due to them for the loss of their wife and mother, respectively.

The [redacted] [redacted] [redacted] [redacted] [redacted] objected based on the lack of legal grounds and merit of the proceeding, requested the dismissal of the claim due to the absence of tort, and therefore liability, since both the manufacturing and sale of tobacco were lawful activities and carried out in compliance with the regulations in force.

The Court of Potenza, granted the appellants' claim, by ruling No. [redacted] declared the liability of the company [redacted], ordering it to pay compensation for the damages incurred by the plaintiffs.

In particular, the Court deemed that: a) the production and sale of tobacco is a dangerous activity pursuant to Art. 2050 of the Italian Civil Code, with consequent burden on the respondent to prove that she has taken all appropriate measures to avoid the damage, regardless of the existence of a legal obligation to disclose the harmful nature of smoking; b) the existence of a causal link between the production and sale of cigarettes without information on the risks to the health of consumers and the specific harmful event to which they are exposed, since lung cancer is a common and ordinary consequence of smoking, falling within the scope of development of the causal link, according to the criterion of scientific probability; c) the existence of a contributory negligence to the extent of 50% of the deceased consumer given her extensive use of cigarettes, the damage from smoking not being entirely unknown and yet there being a widespread but "only general" awareness of the harmful effects of smoking, as the specific awareness having been, in this case, acquired by the victim when her health became irreparably compromised.

At the outcome of the burden imposed by [redacted] [redacted] [redacted], the trial court subsequently denied the original claim for damages, holding that the relevant immediate cause, consisting in the case herein of the victim's free choice to smoke despite her awareness of the harm that could have resulted, excluded the applicability of the causal link between the conduct of [redacted] [redacted] (which had been succeeded by [redacted]) and the damage to the deceased derived from smoking.

Against the aforementioned ruling of the trial court the [redacted], in their own right and as heirs of [redacted], deceased pending the outcome of the proceedings at first instance, now file an appeal with the Court of Cassation, on a single ground, set forth in the defense brief.

The [redacted] lodges a counterclaim.

The hearing of the appeal was set pursuant to Art. 380-*bis* 1 of the Italian Code of Civil Procedure.

REASONS FOR THE DECISION

1) By a single ground, the appellants file a claim for "violation and misapplication" of Articles 2050 and 2043 of the Italian Civil Code, with reference to Article 360, 1st paragraph, No. 3, of the Italian Code of Civil Procedure.

They claim that the Court of Appeals failed to consider the following: i) that the injured party spent her life in the Municipality of [redacted], and that she was not used to reading magazines and newspapers, but rather she watched the most popular television programs and was an unfaltering guest at the parish movie house; ii) that the existence of the causal link between the activity of producing and marketing manufactured tobacco and the damage for which it was sued is intrinsic to the act of smoking, constituting "the realization of the typical purpose for which the tobacco industry exists," so that the cost of the damage is to be attributed to the party who was better equipped to avoid it before its occurrence, since this cannot be demanded of the smoker, who has become addicted to nicotine consumption; iii) that in the present case, the victim acquired the necessary *specific* awareness of the damage from smoking, as established in the findings by the Court Appointed Consultant, solely when her health was already irreversibly compromised; iv) that the application of the principle of "proximate cause of importance" postulates that proof is required, which is lacking in this case, of the full awareness of the injured party of her ability to stop, by her actions, the etiologic causal link between cigarette smoking and the harmful event.

They claim that the trial court erroneously ruled out the existence of a causal link between the conduct of the appellant manufacturer herein and the conduct maintained by the victim for thirty years, considering the latter as solely responsible by reason of her perceived freedom to self-determine

General Docket Number 10237/2023
Division Number 208/2025
General File Number 13844/2025
Publication Date 05/23/2025

and expose herself to the dangerous practice, given that the deceased party had only a general and not specific awareness of the harmful effects of smoking, in the absence of suitable specific information in this regard that would certainly have deterred her.

They claim that the manufacturer has placed on the market a product that is "physiologically" harmful to the health, indeed without caring about the health risks to smokers.

2) For these reasons, the single ground is well-founded and should be upheld by the terms indicated below.

2.1) As this Court has already had the opportunity to state several times, the causal link is a constituent element of the offence (including contractual), and it is incumbent on the judge to identify, among the possible contributing causes, the preceding events concretely relevant to the occurrence of the damage, through the adoption of a selection criterion whose choice may be objected in the Supreme Court if made in violation of Articles 40 and 41 of the Italian Criminal Code and 1127, 1st paragraph, of the Italian Civil Code.

On the other hand, the assessment of the consequences arising from the adopted selection criterion is resolved with a mere factual ascertainment, as such exempt from the review of the Supreme Court in the presence of consistent reasons (see Cassation no. 26997 of 12/07/2025; Cassation no. 13096 of 05/24/2017; Cassation no. 7760 of 04/08/2020).

3) Well then, in the present case, the trial court recognized the existence of a "free, conscious and autonomous act of volition" by the victim, a "subject endowed with the legal capacity," indeed disregarding any consideration as to the ascertainment of a possible liability under Articles 2043 and 2050 of the Italian Civil Code of [redacted].

3.1) The court of appeals implicitly applied the principle that if the victim's conduct is part of a series of causal links initiated by other parties, contributing to the production of the harmful event, its contribution is not valid to interrupt that series of causal links

as it not possible to distinguish between mediated or immediate causes, whether direct or indirect, preceding or succeeding, and the same efficacy must be recognized to all of them; interruption occurs instead if the victim's conduct, while falling within the series of causal links already initiated, gives rise to another series of causal links with respect to the first, capable on its own of producing the harmful event, which from a legal standpoint renders moot any different series of causal links and reduces it to merely incidental (see Cassation No. 8096 of 04/06/2006; Cassation No. 23915 of 10/22/2013; Cassation No. 4662 of 02/22/2021).

4) Contrary to the previous opinion, this Court has in other respects affirmed that the identification of the fact interrupting the causal link is not exclusively "that of the atypical quality and exceptional nature of the above-mentioned causal series," subscribing to the idea that the conduct of the injured party can be causally relevant even when it is objectively culpable. This is because in causal relation with the injurious event (in light of the principle governed by Art. 41 of the Italian Criminal Code) gives rise not only to an unforeseeable event (which must be of exceptional and unpredictable nature), but also said injured party de facto.

It was pointed out in this regard that the concepts are, at least from a structural point of view, ontologically distinct.

The unforeseeable event belongs to the category of legal facts, without intermediation of any subjective element.

The conduct of the injured party is recognized as a legal act, characterized by negligence (Art. 1227 of the Italian Civil Code) (see Cassation No. 11152 of 04/27/2023).

Regarding the conduct of the injured party, as far as it is relevant herein, it is not required that it be "autonomous, exceptional, unforeseeable and inevitable," indeed it simply needs to be "objectively culpable," negligence being understood as "objective failure to exercise normal caution related

to the situation of perceptible risk with ordinary diligence" (see Cassation No. 2483 of 02/01/2018).

Said failure to comply is concretely shaped "not only in an instance of violation by the creditor-damaged party of a legal obligation, but also in an instance of violation of the rule of diligent conduct, under the profile of general negligence, which may be substantiated in a conduct, concurrent or subsequent to the wrongful act or antecedent thereto, as long as it is linked by an etiological nexus the event itself and is expressed with reference to the damage-consequence of the non-compliant conduct, or the conduct creating the wrongful event and also directly with respect to the conduct constituting the offense. That is, if it plays a part and is assessed as a contributing cause of the non-compliant conduct itself, or the conduct determining the unjust event, *id est* as a contributing cause of the related negligent conducts" (Cassation No. 258 of 01/07/2025; Cassation No. 5677 of 03/15/2006; Cassation Unified Section No. 24406 of 11/21/2011).

Nor can the general duty of reasonable care be overlooked attributable to the principle of solidarity expressed in Art. 2 of the Constitution, as a basis of a claim in social life relations to the adoption of a conduct aimed at safeguarding public interest within the limits of appreciable effort (*ex multis*, see Cassation No. 2376 of 01/24/2024).

5) Furthermore, in general terms, it should be reiterated that the traceability of the damaging event to one of the causal series abstractly capable of causing it, is not naturally excluded by the human condition (in the absence of the aforementioned causal series, the damage would not have occurred), rather it is legally linked to the principle of Art. 41 of the Italian Criminal code, given that the victim's conduct is placed in terms of a supervening cause that excludes the causal relationship when it was solely sufficient to determine the event (Art. 41, 2nd paragraph of the Italian Criminal Code), thus degrading the role of pre-existing causes to merely incidental damage, and constitutes a causal relation

General Docket Number 10237/2023
Division Number 208/2025
General File Number 13844/2025
Publication Date 05/23/2025

with the harmful event not interrupting it, but rather more correctly degrading the pre-existing causes to the rank of merely incidental and depriving them of their effectiveness in terms of material cause, but without erasing their natural effectiveness.

6) Well then, from a natural point of view, the activity of producing and marketing tobacco derivatives certainly is the cause of the damage, but it may not be so where the objectively negligent conduct of the victim assumes the role of a supervening cause endowed with exclusive causal effectiveness, thus neutralizing the etiologic contribution of the operator's activity, which has been degraded to play a merely incidental role in the damaging event.

7) Indeed, the conduct of the injured party may in abstract terms assume merely *concurrent* or *exclusive* causal significance.

In both instances, the specification of the negligence of the injured party is relevant as "specification of the degree of objective preventability and foreseeability, which must normally be expected from those who expose themselves to the risk" (Cassation No. 1902 of 01/27/2025).

8) This Court has long outlined the principles that must govern causal assessment, pointing out that "a harmful event is to be considered caused in material terms by another if, subject to other conditions, the former would not have occurred in the absence of the latter (so-called "*conditio sine qua non*" theory): but at the same time, such a causal link is not sufficient to determine a legally relevant causality, since it is necessary, within the causal series thus determined, to give prominence to only those which, at the time when the causal event occurs, do not appear to be completely implausible (so-called theory of adequate causality or causal regularity, which in reality, in addition to being a causal theory, is also a theory of attribution of the damage)" and on which it is necessary to recognize "relevance, within the causal series, only for those events that

do not appear - upon an assessment "ex ante" - completely implausible, according to the general covering laws proper to exact sciences applied to natural phenomena, in this sense justifying the relational cause-consequence nexus according to an opinion of scientific probability, or, in the absence of such laws, on the basis of the assessment of the data of experience and the detection of the intensity of the statistical frequencies of the events, which allow to infer, inductively, the existence of the etiological nexus…" (Cassation No. 5962 of 05/10/2000; Cassation No. 12617 of 10/16/200[cut-off]; Cassation No. 15789 of 10/22/2003; Cassation No. 15183 of 07/19/2005; Cassation No. 23915 of 10/22/2013; Cassation No. 29229 of 11/12/2024), net of the lack of correlation of the criteria for ascertaining the etiological link in civil (preponderant evidence) and in criminal court (beyond a reasonable doubt).

9) Now then, in the appealed ruling the local court of jurisdiction did not correctly apply these principles of law to the case at hand, having merely extrapolated the choice to smoke from the causal series that produced the harmful event, without stating the reasons why it held that the activity of tobacco production and marketing has in the present case no causal effectiveness in determining the event, implicitly relegating said action to a merely incidental antecedent, thus unable to trigger the causal sequence that resulted in the harmful event (Art. 40 of the Italian Criminal Code) (see Cassation No. 13096 of 05/24/2017).

In particular, taking into account that [redacted] [redacted] [redacted] was charged without having adequately informed the injured party of the harmfulness of smoking, in order to verify the victim's negligence in causing the damage and ascertain its exclusive or concurrent causal effectiveness, the lower trial court should indeed have first assessed whether the harmful event would have likely occurred if one of the two parties involved had maintained the alternative correct conduct,

General Docket Number 10237/2023
Division Number 208/2025
General File Number 13844/2025
Publication Date 05/23/2025

to then repeat the operation with the parties' roles reversed (see Cassation No. 23804 of 09/04/2024; Cassation No. 12676 of 05/09/2024), having the obligation to evaluate each relevant causal factor in order to establish its contributing cause in the determination of the injurious event (Cassation No. 22801 of 09/29/2017).

10) Even more so in this case, given that tobacco production activity is considered dangerous of as stated by this Court so that, in order to sever the etiological link between the event and the dangerous activity, the conduct of the injured party must be appropriate to the nature and dangerousness of the latter (see Cassation No. 28299 of 12/22/2011), and must be evaluated in a necessarily relational manner.

11) This Court on the other hand, has already had occasion to point out that "as the activity considered is that of production aimed at marketing and then for use by the consumer, it is obvious that, if the activity substantially poses a significant danger to the public, that activity must by its very nature be defined as dangerous, all the more so if the danger invoked is that resulting from typical and normal use of said product and not from abnormal use"; moreover, specifying that where the activity has as its object the production of a product intended for marketing and then consumption, the characteristic of "dangerousness" may also concern that product, regardless of the point that it is highly likely to produce the damage not at the stage of production or marketing, but at the stage of consumption" (see Cassation No. 26516 of 12/17/2009).

The fact that the hazardous classification can be transferred from the activity to the product - in reference to the embodiment of dangerousness - has indeed already been stated with reference to other activities (as an example, but not limited to, that of gas cylinder distribution) by Cassation No. 17369 of 08/30/2004 (and has been, indirectly reiterated more recently by Cassation No. 28626 of 11/07/2019) which recognized that

General Docket Number 10237/2023
Division Number 208/2025
General File Number 13844/2025
Publication Date 05/23/2025

Art. 2050 of the Italian Civil Code "may well disregard all the activity in and of itself, which occurs when the danger has materialized and transfused into the objects of said activity (…). While it is true that, as a rule, the damage is contextual to the activity, the damage itself, moreover, may occur at a later stage, provided that it results in a sufficiently mediated manner (…) once it has been established that the produced good constitutes a dangerous instrument, even if the object leaves the producer's scope of control and has passed into the scope of availability of the injured party, by virtue of the assumptions according to which, once the dynamic phase is over, the danger is transfused from the activity to the objects that are its product."

15) Nor can the thesis according to which the discipline of Article 2050 of the Italian Civil Code should be reserved for exclusively unilateral prevention activities (i.e., those in which it is only the agent who is able to influence the probability and severity of harmful events) constitute an obstacle to this conclusion, since "the rule in Art. 1227, paragraph 1, of the Italian Civil Code, operates for any type of liability, therefore also for the instance of liability of undisputed objective nature, such as those provided for in Articles 2051 and 2052 of the Italian Civil Code. The duty of diligent conduct of the injured party (therefore, even the failure to comply therewith) is an element external to the single regulatory paradigm of liability, therefore, the duty to prevent the incident, which is further always incumbent on the injured party, does not constitute and element for the perfection of the legal case (see Cassation No. 26516 of 12/17/2009).

16) The lower court of jurisdiction, in essence, precisely because of the qualification of the activity of tobacco production and marketing as dangerous, should not have limited itself to deeming the consumer's choice a proximate cause of importance, since the conduct of the injured party not only has to be evaluated differently depending on the dangerousness of the activity, but also because the regulation of dangerous activities

General Docket Number 10237/2023
Division Number 208/2025
General File Number 13844/2025
Publication Date 05/23/2025

requires specific and especially strict exonerating circumstances, that do not properly coincide with evidence of the unforeseeable event (including the victim's culpable act), it being undeniable that in practice "the difference with the limit of the unforeseeable event is significantly attenuated" (Cassation No. 7298 of 05/13/2003).

17) Even the argument set forth by the trial court on the basis of the victim's recognized awareness of the damage caused by smoking indeed appears not to have been acknowledged at the outcome of a specific assessment of the victim's actual awareness of the carcinogenicity of smoking.

On the other hand, an assessment that was essential to find that the victim was negligent, given that she might have been expected to behave differently (not smoking, smoking less, not inhaling the smoke, adopting other precautions), only if, once having been informed of the *specific* risk to which she was exposed from cigarette consumption, she had nevertheless consciously and willingly continued to smoke.

18) In fact, the appellants argument, also made by the court of first instance, was that in 1965, when the victim had started smoking, she was unaware of the correlation between cigarette smoking and cancer, whereas the trial court merely stated that the harmfulness of smoking was a socially known fact in the 1970s.

The contentious issue, however, is not whether there was a *general* social and personal awareness by said victim regarding the harmfulness of smoking, but whether the latter was specifically informed and aware that smoking is carcinogenic.

19) Even without considering that it was not until 1975 (by Law No. 584/1975) that a ban on smoking in certain premises and on public transportation was introduced in Italy, and that this ban was only extended much later (by the directive of the President of the Council of Ministers of December 14, 1995) to certain premises of the public administration or

General Docket Number 10237/2023
Division Number 208/2025
General File Number 13844/2025
Publication Date 05/23/2025

operators of public services; and that the ban on advertising directly or indirectly any smoking product dates back to Law no. 52/1983, while the ban on television advertising - even indirectly - of cigarettes was placed by Ministerial Decree 425/1991, it should be noted that the first concrete direct deterrence measure, the result of the certainty reached by the scientific community that smoking is at the root of numerous forms of cancer and an indefinite number of other serious diseases, was introduced by Law No. 428/1990, later extended and made more rigorous by Italian Legislative Decree No. 184/2003, which was followed by more incisive and concrete intervention measures in the fight against smoking.

19) In this respect, the harmfulness of smoking having been a socially known fact since the 1970s, indeed at the time to which the facts of the case date back, the *specific correlation* between smoking and cancer (and other serious diseases) was far from being publicly known.

20) It must certainly be ruled out that in 1965, when the victim began smoking, the correlation between smoking and cancer was publicly known, and that she was informed and aware of the specific risk of getting cancer and nevertheless chose to smoke up to 20 cigarettes a day based on a conscious hedonistic choice.

The information imbalance in Italy has been, as stated, legislatively remedied only with the enactment of Law No. 428 of 1990, persisting the obligation, however, for those exercising an activity considered dangerous in order to be exempted from liability, to demonstrate that they have taken every measure to avoid injuries (e.g., the adoption of filters aimed at containing the release of carcinogenic substances caused by combustion; the production of cigarettes with a lower percentage of tar and other carcinogenic substances; information on the risks of smoking).

In this regard, it should be noted that indeed even before the enactment of the aforementioned law, indeed there was already a duty to carry out qualified diligence and good faith or fairness (see Cassation No. 13342 of 04/28/2022; Cassation No. 8494 of 05/06/2020; Cassation No. 13362 of 05/29/2018; Cassation No. 16990 of 08/20/2015) to which it should have imprinted its conduct in the relationships of the common life of relations (see Cassation No. 9200 of 04/02/2021; Cassation No. 3462 of 02/15/2007).

In fact, only in the face of knowledge or actual awareness of the specific risks inherent to smoking can there be a contributory negligence on the part of the smoking consumer.

21) It constitutes *ius receptum* that the operator of the dangerous activity is obliged to adopt, in relation to the context of reference, precautionary measures even beyond those strictly imposed by law (Cassation No. 13579 of 05/21/2019), also and above all in reference to information, in order to avoid the business risk resulting from placing on the market of an ontologically harmful product without specific information regarding the type of damage to health (leading, as in the present case, even to death) to which the consumer is exposed, and the related unaware consumption by the smoker.

Consumers unaware of the specific risks to which they are exposed by reason of the marketing of cigarettes in fact laying down the exclusion that the conduct of the consumer can be considered marked by effective freedom of determination in this regard and as such can therefore rise to a proximate cause of relevance in the determination of the harmful event in the terms that the trial court erroneously recognized in the appealed ruling.

22) In reference to said ruling, given the merits in the aforementioned terms for the reason, with the encompassing of any other issue and different profile, the Court of Cassation therefore repeals the previous ruling, and remands the case to the Court of Appeals of Potenza, which

with a different composition shall proceed to re-examine the case, applying the aforementioned disregarded principles.

The appellate judge shall also rule on the costs of the Cassation ruling.

For These Reasons

The Court grants the appeal in the terms stated in the grounds. Repeals the disputed ruling and remands, also for the costs of the Cassation ruling, to the Court of Appeals of Potenza, in a different composition.

Thus decided in the Judges Chamber on January 17, 2025, by the Third Civil Division of the Supreme Court of Cassation.

The Presiding Judge
Luigi Alessandro Scarano