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Court of Cassation, sez. Work, Case 3 to 12 October 2012, n. 17438

The Third President - Speaker Bandini

Conduct of the trial

By judgment of 10 - 22.12.2009 The Court of Appeal of Brescia, in the delivery of primary care reform, condemned the Inail to pay to M. I. the pension for occupational disease scheduled for disability 80%.

The M. it commenced proceedings claiming that, in consequence of protracted labor, for twelve years and for 5-6 hours a day, cordless phones and cell phones left ear had contracted a serious cancer disease, the evidence collected and surveys doctor lawyers had led to the discovery, during the proceedings, the existence of the factual assumptions relied on, in order to use it within the time specified phones it! the course of employment, to the actual occurrence of a "neuroma of the ganglion of Gasser" (cancer that affects the cranial nerves, especially the acoustic nerve and, more rarely, as in the present case, the trigeminal cranial nerve) with results very severe despite treatment, including surgical nature, practice, on the recurrence of such facts, as shown in the judgment under appeal, had not been carried out disputes on appeal, focusing the question referred to the Court for the appeal on the causal link between phone use and the onset of the disease.

The Territorial Court, renewed consulting forensic pathologist considered day having to follow the conclusions reached by the expert witness appointed on appeal, noting in particular the following:

- Mobile phones (cordless) telephones and mobile phones operate through electromagnetic waves and, according to the CTU, "In literature studies on brain tumors with regard to tumor localization neuroma consider the auditory nerve, which is the most frequent. Given the same histology is logical assimilate the data to the trigeminal neurinoma ", in particular, it was observed that the two neurinomas belong to the same body part, as both the affected nerves are in the cerebellopontine angle, which is a well-defined portion and restricted space intracranial certainly included in the magnetic field that is generated from the use of mobile and cordless phones;

CTU were summarized in a table with some studies carried out from 2005 to 2009 and in three, made dall'Hardell group, had been shown a significant increase in de! relative risk of acoustic neuroma (meaning the relative risk measure of association between exposure to a particular risk factor and the occurrence of a defined disease, calculated as the ratio between the incidence rates in the exposed [numerator] and unexposed [denominator]);

- A work of 2009 of the same group had also considered other factors such as age of the exposure, the ipsilateralità and the exposure time, indicating, as regards the acoustic neuroma, a Odd ratio for the use of cordless of 1 , 5 and for the phone to 1.7, considering the use of more than 10 years, Odd ratios were respectively 1.3 and 1.9, meaning Odd ratio the ratio of the frequency with which an event occurs in a group of patients and the frequency with which the same event occurs in a group of control patients, waves if the value dell'Odd ratio is greater than 1 means that the probability of occurrence of the event considered ( for example a disease) in a group (for example

among the exposed) is higher than that of another group (for example between the non-exposed), while opposite meaning has a value less than 1;

- A recent review of The International Commission on Non-Ionizing Radiation Protection had shown the limits of epidemiological studies hitherto carried out and concluded that, at present, there was no convincing evidence of the role of radio in tumorigenesis, but adding that the studies did not have excluded the association;

- Additional authoritative review (Kundi in 2009) had confirmed the doubts that epidemiological studies lead regarding the exposure time and concluded for an individual risk low, but present; exposure could affect the natural history of cancer in various ways: by interacting at the initial stage of induction, by intervening on the time of development of slow-growing tumors, such as neurinomas, accelerating it and avoiding the possible natural involution;

- Analysis of the literature did not lead to a judgment so exhaustive, but, with all the limitations inherent in the type of studies, an additional risk for brain tumors, and in particular for the neuroma was documented after exposure for more than radio frequency of 10 years from mobile phones and mobile phones;

- The exposure time was an evaluation very important, because, in the 2006 study, the exposure for more than 10 years resulted in a relative risk of 2.9 calculated surely significant;

- So it was a situation of "individual" that led back to the experts "inductive-probabilistic model" and the "weak causality", having still value during retirement;

- Should therefore be recognized, according to the CTU, a role at least concausale Radio in the genesis of cancer suffered by the insured, qualified configuring probability:

- **Censorship dell'Inail for studies not used by the CTU was on target, as the 2000 study of the WHO, which ruled out any adverse effects on health, it was based on data dating back more, not taking into account the then ' Use newer, much more massive and widespread of these devices and the fact that it is a slow onset tumors, which makes them more reliable than studies carried out in 2009;**

- Furthermore, as observed by CT Part M., studies of 2009 had not been conducted on a small number of cases, but, on the contrary, the total number of cases (679) that had occurred in a year in Italy; Moreover, unlike the IARC study, co-funded by the manufacturers of mobile phones, the studies cited by the CTU were independent;

- Again, as measured by CT of the M., comparing the data of individual risk calculated by the CTU (2.9) with the experience of the risk factor universally recognized, exposure to ionizing radiation, should be considered as Japanese survivors of the atomic explosions at Hiroshima and Nagasaki was found a relative risk of type cancer of 1.39 for "all cancers" with a minimum of 1.22 for tumors of "uterus and cervix" and a maximum of 4 , 92 for the "leukemia", which meant that the risk oncogenic average of ionizing radiation was less than what you had for exposure to radio frequencies in reference to neurinomas intracranial, what made even more evident the real extent of the findings of the CTU;

- According to the teaching of the law of legitimacy, in the case of occupational disease has not tabellata, as well as in the multifactorial etiology of disease, evidence of the cause of labor, burden on the worker must be assessed in terms of reasonable certainty in the sense that, excluding the relevance of the mere possibility of occupational origin, it can be rather RECOGNIZING in the presence of a significant degree of probability,

and, in this regard, the court must not only enable the insured to bring the evidence admissible and ritually deducted, but must also consider the conclusions of probabilistic expert on the subject of causation, whereas the professional nature of the disease can be inferred with a high degree of probability on the type of work performed, the nature of the machinery present in the work, duration of work performance and the absence of other factors outside work, alternative or competitors that may constitute cause of the disease;

- Was therefore considered that the existence of a high probability that integrates the causal link required by law. Against the above judgment of the Territorial Court reborn brought an action founded on two grounds and illustrated with memory M. The ordered I. has resisted defense, illustrated with memory.

#### Reasons for Decision

1. By its first plea the applicant alleges infringement of Article Institute. 3 Presidential Decree n. 1124/65, noting that, according to the principles of law developed by the case law of legitimacy, the correct application of that provision requires, in particular, the assessment on the basis of epidemiological data and literature deemed reliable by the scientific community, that the 'agent in dispute is equipped with pathogenic efficiency, the less likely for the specific disease diagnosed and attached, the above causal relationship could not therefore be supported "by the staff assessment to the GIP, based on the preference for certain epidemiological data than to others, but must be supported by an assessment of reliability of the data expressed by the scientific community ", in this case, the CTU had dwelt solely on the results of the Hardell group, in contrast with those of the scientific community, in addition the CTU had the quite arbitrarily used the accounts between exposure to radio frequency and acoustic neuroma, suggested by the group Hardeil to affirm the causal relationship, even with a judgment of probability qualified, including such radio frequencies and trigeminal neurinoma, was about to be noted that the Scientific Committee for the development and periodic review of the diseases which is mandatory reporting pursuant to art. Presidential Decree No. 139. 1124/65, when updating the list approved by Ministerial Decree 11.12.2009, had not seen fit to include tumors of the cranial nerves, induced by RF exposure, including diseases of possible occupational origin. 1.2Secondo the jurisprudence of this Court, in the case of occupational disease has not tabellata, as well as in the multifactorial etiology of disease, evidence of the cause of labor, burden on the worker must be assessed in terms of reasonable certainty, in the sense that included the importance of the mere possibility of occupational origin, it can be rather RECOGNIZING in the presence of a significant degree of probability, in this regard, the court must not only enable the insured to bring the evidence admissible and ritually deducted but must also consider the conclusions of probabilistic expert on the subject of causation, by having recourse to any action ex officio directed to acquire further information in relation to the entity and the worker's exposure to risk factors and also considering that the professional nature the disease can be inferred with a high degree of probability on the type of work performed, dahlia nature of the equipment present in the work, duration of work performance and the absence of other factors outside work, alternative or competitors that may be due to the disease (see, ex plurimis, Cass., nn. 6434/1994, 5352/2002, 11128/2004, 15080/2009).

The judgment under appeal that the application of these principles, recognizing, based

on the considerations set out at length in the center of the dispute, the existence of the requirement of a high probability that integrates the causal link.

It is therefore apparent denounced the habit of violating the law, which is in fact based on an alleged erroneous assessment (by the CTU and the Territorial Court) the reliability of the data taken into account in order to substantiate this requirement and, therefore, substantially on a lack of reasoning (in fact deducted the second ground of appeal).

The reason for the examination must be dismissed.

2. By its second plea the applicant alleges precisely Institute flaw in the reasoning, assuming that:

- CTU second degree, after having pointed out that the review of The International Commission on Non-Ionizing Radiation Protection concluded that, at present, there was no convincing evidence of the role of radio in tumorigenesis, although not the escludendosene 'association, without logical consequentiality and without motivation had come to the conclusion of the probability of a qualified least concausale role of radio in the genesis of cancer for which it is due;

- Was considered day without any scientific basis for the withholding assimilation, on the etiopathogenesis of neurinoma of the acoustic nerve and the trigeminal, being "common knowledge" of medical science that tumors of the same histological type, but with different location, although in ' scope of the same anatomical district, recognize different causes and that any potential carcinogen that comes in contact with the human body modifies its action depending on the tissues which crosses or with which it comes into contact, and, in fact, the acoustic nerve and the trigeminal nerve, particularly the ganglion of Gasser, have a different position in the skull and there are various anatomical structures that separate them from the outside and from each other; the Territorial Court had not responded to comments made by the Institute, also with reference to the fact that it was "in progress" an epidemiological study international "interphone", coordinated by IARC and WHO, based on the precautionary principle, had suggested "a policy of risk management that is applied in a situation of" scientific uncertainty "":

- Was considered irrelevant from a scientific affirmation of the Territorial Court regarding the reliability, because independent study of Hardell group, compared with co-financing of research "interphone" by mobile phone manufacturers, forgetting that this research is funded by the European Union and directed and coordinated by the IARC (International Agency for research on Cancer);

- Even the Territorial Court had decided to call CTU to remember clarification in the face of criticism. The 2.1 jurisprudence of legitimacy has repeatedly said that in the judgments that have been put CTU medical-legal, in the case where the trial judge is based on the conclusions dell'ausiliario the judiciary, so that alleged errors and deficiencies lead technical advice a flaw in the reasoning of the judgment in cassation reportable, it is necessary that the related vices formal logic will materialize in a clear deviation from the notions of medical science or sostanzino in illogical statements or scientifically incorrect, with the relative burden borne by the party to indicate their sources, without being able to limit the same to mere considerations made by the opposing standpoints, resulting in an unacceptable criticism of conviction of the trial court that is based, precisely, on technical advice (see, former plurimis, Cass., nos.

16392/2004, 17324/2005, 7049/2007, 18906/2007).

In the case before the Institute applicant to contest the withholding assimilation, on the etiopathogenesis of neurinoma of the acoustic nerve and the trigeminal, not specific - taking refuge in the concept of "common knowledge" - the scientific sources, having been duly deducted and acquired the judgment, according to which they should be considered scientifically incorrect statements made about them by the CTU and follow the judgment under appeal, only to take the matter to the Court for an assessment of merit inadmissible when legitimacy.

Nor is given detect and denounced the alleged failure to lack of consequential logic and reasoning in the conclusions of the probability of a qualified role at least concausale Radio in the genesis of cancer for which it is due, provided that such judgment, as expounded in the historic of a dispute, it does not follow from the mere statement of conclusions (obviously dissimilar) who had received the recalled review of The International Commission on Non-Ionizing Radiation Protection, but rather by the findings of other studies in epidemiological undertaken on this subject.

In addition, and significantly, the judgment under appeal, following the observations of the CTU, has seen fit to consider of particular importance for studies that had taken into account other factors such as age of exposure, the exposure time and ipsilateralità since, in this case, had assessed the existence of a causal link in relation to a particular factual situation of all, characterized by exposure to radio frequency for a continuous period of time very long (about 12 years), for a daily average of 5 - 6 hours and concentrated mainly on the left of the insured (which, as the plain evidence, realizes a situation quite different from a normal non-professional use of the phone).

The further relevance to the greater its reliability of such studies, given their position of independence, ie for not being co-financed, unlike others, also by the manufacturers of mobile phones, and is further not illogical basis of the arguments accepted.

Neither has been deducted - and much less proved - that the epidemiological If conclusions were taken into particular consideration come from working groups lacking seriousness and authority and, as such, essentially unrelated to the scientific community.

The alleged prevalence, according to the applicant, should be given to the findings of other research groups (whose investigations, however, according to the arguments, at least at the time of the main proceedings were still "in progress"), resolve ALSO 'them in the request for a review of the merits, not allowed in the legitimacy. Having the Territorial Court also found in the earlier consideration of the CTU and the CT part of M. elements considered sufficient to refute the criticisms of the Institute, there was the need to invest further CTU a request for clarification.

The second ground of appeal must therefore be rejected.

3. Ultimately, the appeal must be dismissed

The outcome of each dissimilar judgments of merit and novelty, in terms of factual peculiarities of each obligation in the case, recommend the payment of expenses.

P.Q.M.

Dismisses the action; expenses compensated.

Undo edits

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