

ITALY



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1. Case-law:	
Topic:	<i>Are Tobacco Companies liable for damages to smokers' health? - The leading case in Italy</i>
Who	<i>Italian Supreme (i.e. last instance) Court – Corte di Cassazione</i>
When:	<i>3<sup>rd</sup> Civil Chamber, judgment no. 22884 of October 30<sup>th</sup>, 2007</i>
Where:	ITALY
What Happened?	<p>1. Mr. X, an Italian smoker for almost 40 years (at an average of 20 cigarettes per day), stopped smoking on medical indication, but died 3 years later of lung cancer. His heirs, assuming that there hadn't been cancer precedents in the family's medical history, filed a civil law suit against the local State Monopoly (then competent) for damage compensation, assuming that their relative had been working as a teacher for his whole life in a small town in a rural district, a context that excluded any other factor different from smoking as the cause of his dead.</p> <p>2. The State Monopoly argued in its defense that at the time there was no legal obligation as to providing warnings or proper information about the health risks linked to smoking and that on the other hand those risks were notorious and therefore perfectly known to the general public.</p> <p>3. The First Instance Court in Rome dismissed the claim assuming that there wasn't sufficient evidence as to State Monopoly's liability and as to nexus of causality between smoking and Mr. X's dead; therefore the original plaintiffs approached a Court of Appeals affirming that:</p>

- Individual health benefited from Constitutional protection (ex Section 32 of the Italian Constitution),
- A general legal obligation as to informing consumers about risks of smoking had to be fulfilled,
- In the specific case sufficient evidence had been provided as to liability.

State Monopoly was joined in its defense in front of the Court of Appeals by Ente Italiano Tabacchi - ETI (later on Tobacco Conglomerate Y), while plaintiffs were backed by one of the major local consumer protection associations.

4. The Court of Appeals accepted the claim and – based on the opinion of medical experts – stated that Mr. X died because of his smoking habits and found the Tobacco Conglomerate Y (succeeded during the law suit in all relations previously referable to the State Monopoly and ETI) responsible for the event. It awarded the two heirs with damage compensation (established in Euro 150.000 and Euro 50.000, plus interest from the moment of notification of the initial claim and legal fees; unfortunately not at a level comparable to US standards).

5. The Tobacco Conglomerate Y proceeded to last instance (the Italian Supreme Court, competent only on strictly legal issues and not enabled to read facts differently) on six different grounds (five of them focusing on its standing position instead of that of the State Monopoly). Having been achieved an out-of-court agreement between the Tobacco Company and State Monopoly on those five initial points, the Supreme Court had only to deal with one residual issue, concerning the amount of the assigned extra-patrimonial damages.

6. On this specific point the Court found that:

- While all actually suffered damages entitle to compensation, any potential duplication of compensation had to be avoided.
- The loss of a close relative had to be referred to the context of the so-called “extra-patrimonial damages” (consisting in the loss of a personal relationship, but to be properly substantiated, if not by specific proof, at least through conclusive presumptions).
- In the particular case the lower court had awarded Euro 150.000 in damages to Mr. X's widow and Euro 50.000 to his son, but had failed to specify the exact and specific criteria assumed as the decision's basis as well as to indicate which aspects of the extra-patrimonial damages had been taken into consideration.

- Therefore the case was send back to a different Chamber of the Court of Appeals for reconsideration of this specific aspect.

7. To be continued ..... (to the desperation of the lawyers involved).