SPC Guiding Case No. 227: Hu [X] and Wang [X] v. De [X] Restaurant, Jiang [X], et al. (Right to Life Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil / right to life / minors / multiple causes and one result / tort liability / several liability by share

Holding

1. Where a business operator sells alcohol to a minor in violation of the law and provides it for the minor to drink, and the operator's fault increases the risk that the minor will suffer personal injury after drinking and causes the injurious consequences, it shall be found that there is a causal relationship between the unlawful sale of alcohol and the personal injury occurring after the minor drank, and the operator shall bear the corresponding tort liability in accordance with the law.

2. Where a business operator sells alcohol to a minor in violation of the law and provides it for the minor to drink, and co-drinkers or persons jointly engaged in dangerous activities fail to fulfill their corresponding reminder and care obligations, causing the same injurious consequence to the minor, each shall bear the corresponding compensation liability by share based on factors such as the degree of fault and the magnitude of causal force. Where the minor who suffered personal injury and his or her guardian were at fault for the occurrence of the same injury, the liability of the tortfeasors may be mitigated in accordance with Article 1173 of the Civil Code.

Basic Facts

Hu [X]jia (who died at the age of 15) was the son of the plaintiffs Hu [X] and Wang [X]. He and Jiang [X] (then 14 years old) and Chen [X] (then 14 years old) were second-year junior high school students at a certain middle school in Chongqing. On May 19, 2018, Hu [X]jia and others went to the De [X] Restaurant in a certain county of Chongqing to celebrate Jiang [X]'s birthday. Hu [X]jia proposed drinking alcohol to celebrate, and Jiang [X] agreed; they then purchased beer at the De [X] Restaurant and drank it there. After Hu [X]jia and Jiang [X] each drank two bottles of beer, Chen [X] arrived at the restaurant. Subsequently, the three drank another four bottles of beer at the restaurant. After the meal, Hu [X]jia proposed going out to play, and they later met Chen [X], Deng [X], Zhang [X] and Wang [X], and the seven of them arranged to play by a lake. While soaking their feet and playing in the water by the lake, Hu [X]jia accidentally fell backward and drowned. The others attempted rescue but were unsuccessful.

Hu [X] and Wang [X] sued the De [X] Restaurant, the six other minors and their guardians, and a certain middle school of Chongqing in the court, requesting joint compensation for Hu [X]jia's death compensation, funeral expenses and other losses. It was further ascertained that all of the minors who dined and played together in this case were second-year junior high school students at a certain middle school in Chongqing; in its daily teaching management, the middle school had fulfilled its duties as an educational institution, had carried out routine safety education for students, and had completed work such as safety logs and teaching notes.

Judgment

On March 19, 2019, the Dianjiang County People's Court of Chongqing rendered a civil judgment: (1) the defendant De [X] Restaurant shall compensate the plaintiffs Hu [X] and Wang [X] RMB 21,183.36; (2) the guardian of the defendant Jiang [X] shall compensate the plaintiffs RMB 3,530.56; (3) the guardian of the

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defendant Chen [X] shall compensate the plaintiffs RMB 2,824.45; (4) the guardian of the defendant Wang [X] shall compensate the plaintiffs RMB 1,412.24; (5) the guardian of the defendant Deng [X] shall compensate the plaintiffs RMB 2,118.34; (6) the guardian of the defendant Chen [X] shall compensate the plaintiffs RMB 2,118.34; (7) the guardian of the defendant Zhang [X] shall compensate the plaintiffs RMB 2,118.34; and (8) the defendant certain middle school of Chongqing and others shall not bear liability. After the judgment was pronounced, Hu [X], Wang [X] and the De [X] Restaurant were dissatisfied and appealed. On August 8, 2019, the Third Intermediate People's Court of Chongqing rendered a civil judgment, dismissing the appeal and affirming the original judgment.

Reasoning

The key to determining whether each defendant in this case should bear compensation liability for the death of Hu [X]jia lay in whether each defendant, based on its status as a restaurant operator, co-drinker, co-participant or the like, was at fault within the scope of its respective obligations, and whether there was a causal relationship between such fault and Hu [X]jia's drowning.

I. Determination of the liability of the plaintiff side. When he drowned, Hu [X]jia was a second-year junior high school student who already had a certain degree of cognition and judgment regarding his own conduct, and had received routine safety education at school. In this case, Hu [X]jia took the initiative to propose drinking at the gathering, and after drinking he carried out dangerous conduct such as entering the lake to play in the water, and the water-play in the lake was likewise proposed by Hu [X]jia. Hu [X]jia was grossly at fault for his own death. The two plaintiffs, as his guardians, had on a daily basis indulged Hu [X]jia's drinking, and the accident occurred during the weekend holiday; they were negligent in the management and education of Hu [X]jia and failed to fulfill their guardian duties, and should bear 90% of the losses from Hu [X]jia's drowning themselves.

II. Determination of the liability of the De [X] Restaurant. 1. On whether the De [X] Restaurant should bear tort liability for the consequence of Hu [X]jia's drowning. Article 37 of the Law on the Protection of Minors (2012 Amendment) provides: "The sale of tobacco and alcohol to minors is prohibited, and business operators shall set up conspicuous signs indicating that tobacco and alcohol are not sold to minors; where it is difficult to determine whether a person has reached adulthood, the person shall be required to present identity documents…" As a restaurant operator, the De [X] Restaurant sold alcohol to minors in violation of the relevant provisions of the Law on the Protection of Minors, which was manifestly unlawful; the De [X] Restaurant neither prudently determined the purchasers' minor status by requiring the purchasers of alcohol to present identity documents, nor set up signs indicating that tobacco and alcohol were not to be sold to minors, and further allowed the minors to drink alcohol in the restaurant, which was manifestly at fault. The De [X] Restaurant unlawfully sold alcohol to Hu [X]jia and provided it for him to drink, objectively increasing the risk of the occurrence of injury, and there was a certain causal relationship between the sale of alcohol and the consequence of Hu [X]jia's drowning. Therefore, the De [X] Restaurant should bear tort liability. 2. On the determination of the form in which the De [X] Restaurant bears liability. In this case, before the injurious consequence of Hu [X]jia's drowning occurred, there was no common intent among the De [X] Restaurant and the other actors, and no joint tort was constituted, so no joint and several liability arose. The sale of alcohol was not the direct cause of the drowning, but rather the injurious consequence was brought about only after it was combined with conduct such as playing in the water of the lake; the sale of alcohol alone could not have caused the whole injurious consequence, so the De [X] Restaurant should not bear liability for the whole injury. The De [X] Restaurant sold alcohol to minors and provided it for them to drink, increasing the risk of personal injury from the minors entering the lake to play after drinking, and was an indirect cause of the drowning. Considering its degree of fault and the magnitude of causal force, the court determined that the De [X] Restaurant should bear 6% of the liability for Hu [X]jia's drowning.

III. Determination of the liability of the six minor defendants including Jiang [X] and their guardians. Jiang [X] and Chen [X] drank alcohol together with Hu [X]jia, and after drinking, Jiang [X], Chen [X], Deng [X], Chen [X]

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and Zhang [X] went to the lake with Hu [X]jia to play and participated in dangerous conduct such as soaking their feet and playing in the water. All of the above defendants knew or should have known that Hu [X]jia's entering the lake was dangerous. Jiang [X] and Chen [X] drank with him, and Jiang [X], Chen [X], Wang [X], Deng [X], Chen [X] and Zhang [X] failed to stop Hu [X]jia's dangerous conduct of entering the lake. The above defendants failed to fulfill the obligations of mutual care and reminder, and therefore all should bear liability for Hu [X]jia's drowning. Comprehensively considering that Jiang [X] was the organizer of the birthday party and participated in drinking, that Chen [X] participated in drinking, that Wang [X] entered the lake to rescue and that the others participated in the rescue in different forms, and that the six defendants were all persons with limited capacity for civil conduct, the court determined that Jiang [X] should bear 1% of the liability for Hu [X]jia's drowning, Chen [X] 0.8%, Wang [X] 0.4%, and Deng [X], Chen [X] and Zhang [X] 0.6% each. Because the six defendants were all persons with limited capacity for civil conduct, the tort liability shall be borne by their respective guardians in accordance with the law.

In addition, a business operator that sells alcohol to minors in violation of the relevant provisions of the Law on the Protection of Minors shall also bear the corresponding administrative liability in accordance with the law. After this case was pronounced, the people's court reminded the relevant departments by way of a judicial recommendation.

Relevant Legal Provisions

Articles 1165, 1172 and 1173 of the Civil Code of the People's Republic of China (this case applied Articles 6, 12 and 26 of the Tort Liability Law of the People's Republic of China, effective July 1, 2010).

Article 59 of the Law of the People's Republic of China on the Protection of Minors (this case applied Article 37 of the Law of the People's Republic of China on the Protection of Minors, amended October 26, 2012).

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