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“DAI DIRITTI DELLA NEVE  
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**“PRESUMPTION OF SHARED LIABILITY IN THE EVENT OF  
COLLISION BETWEEN SKIERS”  
CLAUSE 19 OF LAW No.363 DATED 24/12/2003**

Laws governing skiing in Italy took an historical turn with the approval of Law no. 363/2003, the first National legislation concerning these matters.

In order to deal with the topic we have chosen it will be necessary to give a short introduction on the technical evolution that skiing has undergone since the end of the Eighties to date.

There was the advent of the snow board and the development of the different types of carving (easy-carving, race-carving e fun-carving).

There is also the speed with which everyone who approaches the sport of skiing learns skiing techniques to consider, as this is facilitated by the evolution of the materials involved and by a general shortening of the length of skis.

Nowadays a beginner who is in reasonable physical shape can learn how to carry out a sequence of parallel curves in a very short space of time and feel he/she is “apparently” able to tackle piste of a certain level of difficulty. It is actually this apparent mastering of the equipment which has encouraged many skiers to tackle piste that are more difficult than their real technical abilities would allow, and to increase their average speed of descent as well.

This behaviour must be taken in the context of modern ski resorts with their perfectly smooth piste, free of the slightest roughness, which certainly encourage speed.

The average capacity of the ski lifts has increased considerably, meaning that skiers no longer have to wait in long, tiring queues to be taken back up to the top of the piste.

Consequently this means that the number of skiers descending the piste at the same time has also increased, meaning that is, that the density of skiers on the piste has increased.

The skiers' trajectories are radically changed due to all the above factors which overall have led to a potential increase in the risk of collisions on the piste.

Statistically – as found by a study published in October 2002 by Pool Sci Italia in collaboration with the University of Venice – this potential increase in incidents has not been proved.

It is certain however that the percentage of incidents involving collisions and the seriousness of the consequent injuries remains a significant component of skiing accidents which certainly cannot be ignored.

In this situation, with the introduction of Law no. 363/2003, the type of incident involving a collision between skiers was made the subject of specific legislation which independently governs the methods of investigation and of attributing liability.

Clause 19 in fact introduces the presumption of shared liability in the case of collision between skiers.

This means that unless proved otherwise, the law presumes that each of the skiers has equal liability for causing the collision.

This clause was borrowed from article 2054 of the Italian Civil Code which envisages a similar presumption of liability in road traffic circulation.

The passing of this legal provision signals a radical change in the method of carrying out investigations and attributing liability.

The previous interpretation in fact – both the legal and the doctrinal interpretation – has always maintained that the principle of presumption of liability pursuant to art. 2054 of the Italian Civil Code does not apply to skiing, because the “equipment” is not considered a “vehicle” and movement on skis is not the same as traffic on the roads.

It is impossible to forget the huge differences between road traffic movement and skiing.

All road traffic requires obligatory third party insurance. Once a presumption of liability has been established by legislation the insurance companies take on “ex lege” the financial costs of that liability.

Insurance companies are able to sustain these costs by adjusting the annual premium to suit the overall risk and indemnifying and holding harmless the insured party from all costs.

If an incident occurs when skiing the parties are not indemnified from the compensation costs.

Consequently therefore the opposite effect occurs: the injured party finds him/herself attributed with 50% liability for the incident and will paradoxically be obliged to compensate the injured party for 50% of the injuries sustained.

Only if the skier is able to prove that he/she has taken all the necessary precautions to avoid the incident, will he/she be exonerated from the obligation to pay compensation.

Another very important aspect of the distinction between road traffic circulation and skiing concerns cogent proof, because in the context of road traffic it is easier to prove how the incident occurred after the event and therefore free oneself of this presumption.

When a road accident occurs, the vehicles remain stationary in the same position until the Police arrive; all the necessary checks are made and if required, witnesses who have been held up by the accident are asked to give evidence. Any tyre marks made while braking and the damage to the vehicles involved in the incident are all checked in order to reconstruct the dynamics of the incident.

The above are all elements which can reliably reconstruct what happened during the incident and the consequent liability connected with it, after the actual event.

When a skiing incident occurs this is much more difficult if not impossible.

When an incident occurs, it is difficult for any skiers who have witnessed the accident to realise the seriousness of the fall.

They do not stop and continue their descent.

In most cases, it is the skiers who see the injured person when he/she has already fallen – therefore when the incident has already occurred – who actually stop to call the rescue services and try to give immediate help to the faller themselves.

There are no tangible signs of the incident on the snow, no traces of the trajectories remain, nor any other elements which would permit the reconstruction of the actual dynamics of the collision, after the event, except for statements from eye-witnesses to the incident who then waited for the authorities or rescue parties to arrive.

The presumption ratified by clause 19 can therefore unjustly turn against the injured party who was not negligent in any way but has no way of proving it.

In order to understand the significance of the introduction of the presumption of shared liability in the case of collision between two skiers, we shall formulate one of the many possible examples of the concrete application of this provision.

A skier is skiing down a piste which is within his/her capacities, observing all the rules of caution.

From above, another skier, who has lost control of his skis, crashes into the first skier at high speed.

In this situation, the injured party from the substantive point of view is clearly the skier who was lower down the mountain skiing carefully and correctly.

However, from the point of view of the courts, since the introduction of clause 19 of Law no. 363/2003, this is not the case.

Let us imagine that following the accident the skier who was lower down the mountain did not sustain any consequences, whereas the other skier, who had actually caused the accident, suffered serious personal injuries which were quantifiable at around 100 thousand Euros.

In accordance with the principle of shared liability, if the skier who was hit cannot prove – with the difficulties described above – that responsibility for the incident rests solely with the skier who came from higher up the mountain and crashed into him, he will be obliged to pay 50% of the injuries sustained by the person who hit him.

If there were no witnesses on the piste, if the dynamics of the incident cannot be reconstructed, the skier who was hit must pay the “damager” i.e. the skier who crashed into him, half of the compensation for injuries to

the person who was to blame, as there is no insurance to cover direct disbursement.

To date this provision, currently fully applicable, has already led to completely anomalous situations where the subjects responsible for the incident claim 50% of the damages suffered, taking advantage of the fact that the skier who suffered the collision might not be able to demonstrate that he is in fact not liable.

That a skier who is not to blame is exposed to the concrete risk of compensating “ex lege” for injuries the person who has hit him seems to us to be such an unjust and paradoxical situation that it requires a speedy review of the legislation.

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