

Following your numerous requests and comments, please find below the complete reproduction of the decision of the Court of Appeal of PARIS of 27 May 2019:

CA Paris, 6, 12, 17-05-2019, n° 16/08787, Confirmation

Article, L411-1, CSS/professional travel / Gendarmerie / sexual Relations / act of everyday life/professional Obligations

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FRENCH REPUBLIC ON BEHALF OF THE FRENCH PEOPLE

COUR d'APPEL de PARIS Pôle 6-Chamber 12 judgment of 17 May 2019 (No., 3 pages) registration number in the répertoire général S N ° RG 16/08787-N ° Portalis 35L7-V-B7A-BZDPL

Decision referred to the court: judgment delivered on 13 June 2016 by the Tribunal des Affaires de Sécurité Sociale de MEAUX RG no 13/00774

CALL

TSO

CHELLES

represented by Katia BEKAS-PONET, barrister at the bar of PARIS

Respondent

CPAM of HAINAUT

VALENCIENNES

represented by Florence KATO, barrister at the Paris bar, toque D1901

Gentleman. ... Social Security Officer

14, avenue Duquesne

Paris CEDEX 07 notified - no comparison

COMPOSITION OF THE COURT

Pursuant to the provisions of Article 945-1 of the code of Civil Procedure, the case was debated on 22 February 2019, in public hearing, with the parties not having objected, before Ms. Claire CHAUX, President of the chamber, in charge of the report.

The judge reported on the pleadings in the deliberations of the court, composed of :

Ms. Claire CHAUX, president of the chamber

Mrs Chantal IHUELLOU-LEVASSORT, counsellor

Mr Lionel LAFON, counsellor

who have deliberated

Registrar: Mrs Venusia DAMPIERRE, during the debates

STOP :

- CONTRADICTORY

- pronounced

by making the judgment available to the registry of the court, the parties having been notified in advance in accordance with the conditions laid down in the second paragraph of article 450 of the code of Civil Procedure.

- signed by Madame Claire CHAUX, president of the chamber, and by Mme Venusia DAMPIERRE, clerk of the court at which the minute of the decision was handed over by the signatory magistrate.

The court rules on the appeal duly lodged by the company TSO of a judgment rendered on 13 June 2016 by the tribunal des affaires de sécurité sociale de MEAUX in a dispute between it and the primary Sickness Insurance Fund of Hainaut .

FACTS, PROCEDURE, CLAIMS OF THE PARTIES

The facts of the case were precisely set out in the decision referred to, to which specific reference is made in that regard .

It is enough to recall that on February 22, 2013, the TSO company was informed by the gendarmerie of Meung sur Loire of the death of its employee Mr. Xavier... security tech.

On February 26, 2013, the employer completed a statement of work accident in these terms : on February 21, 2013 at 10 p.m., Our employee Xavier ... in a situation of professional displacement was found unconscious in his room.

By decision of 4 July 2013, this death was covered by the primary Sickness Insurance Fund of Hainaut under occupational legislation.

TSO challenged this decision before the amicable Appeal Board which, by decision of 28 November 2013, dismissed its appeal.

It therefore brought an action before the tribunal des affaires de sécurité sociale de Meaux for a declaration that the decision to assume responsibility for the death was unenforceable .

By judgment of 13 June 2016, this court confirmed the implied decision of the amicable appeal commission of the primary Sickness Insurance Fund of Hainaut, which rejected all of its claims, held that there was no need to apply article 700 of the code of Civil Procedure, and held that there was no need to pay the costs.

TSO shall cause its counsel to file and support oral submissions calling on the court to:

- find out that Xavier died ... occurred when he had knowingly interrupted his mission for a reason dictated solely by his personal interest, independent of his employment, after he had an adulterous relationship with a total stranger,

- to find that he was no longer on mission for his employer at the time when he suffered a heart attack which led to his death,
- note in any case that the heart attack as well as the death of Xavier ... are not attributable to his work but to the sexual act he had with a complete stranger, as a result,
- say that the decision to support the occupational accident and death occurred on February 21, 2013 should be declared unenforceable,
- order the CPAM of Hainaut to pay the sum of EUR 2000 under article 700 of the code of Civil Procedure and to pay the full costs.

The Caisse primaire d'assurance maladie du Hainaut (primary Sickness Insurance Fund for Hainaut) has its counsel present and orally support conclusions in which it asks the court to confirm the judgment undertaken in all its provisions.

It argues that sexual intercourse is an act of everyday life, such as taking a shower or a meal, that the victim was presumed to be responsible, and that the employer does not provide evidence that the employee interrupted his mission in order to perform an act which is wholly foreign to the object of the mission.

Reference is made to the pleadings thus filed on both sides for a fuller explanation of the pleas put forward by the parties in support of their claims .

ON THIS, THE COURT,

It is not disputed that Xavier ... was in a business travel situation.

After investigation by the gendarmerie, it turns out that he died of a heart attack on 21 February 2013 around 10 p.m. at the home of a woman he had met, after having had sexual relations with her.

It is common ground that an employee carrying out a mission is entitled to the protection provided for in article l 411 -1 of the Social Security code for the duration of the mission which he carries out for his employer, regardless of whether the accident occurs in the course of a professional Act or an act of everyday life, except for the possibility for the employer to prove that the employee interrupted his mission for personal reasons.

It is common ground that sexual intercourse is an act of everyday life.

The first judges rightly point out that the employer does not justify a schedule which would have been held by his employee or that at the time when the illness occurred Xavier ... was subject to specific professional obligations.

They rightly concluded that the employer did not provide evidence that the employee had interrupted his assignment in order to perform an act wholly unrelated to it and that the fact that the accident occurred as a result of sexual intercourse in a place other than the hotel room reserved for him by TSO did not in itself allow him to consider that the employee had placed himself outside the sphere of the employer's authority.

The judgement must therefore be confirmed in all its provisions.

The unsuccessful TSO will be dismissed under article 700 of the code of Civil Procedure and will bear the costs of the appeal.

FOR THESE REASONS,

COURT,

Confirms the judgment delivered,

ADDING,

Dismisses TSO's application under Article 700 of the code of Civil Procedure,

Orders TSO to pay the costs of these proceedings. The clerk the president