



Wu Zhongze, et al. v. Shanghai Institute of Biological

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No. 127

Country: China

Region: Asia

Year: 2004

Court: Shanghai First Intermediate Peoplesâ€™ Court

Health Topics: Child and adolescent health, Chronic and noncommunicable diseases, HIV/AIDS, Infectious diseases, Medical malpractice

Facts

This case was an appeal to the Shanghai First Intermediate Peopleâ€™s Court by the parents of Wu Pengtao, a young boy who died in 2000 from AIDS. Wu Pengtao had contracted HIV/AIDS and Hepatitis C sometime prior to 1998 from allegedly tainted human coagulation factor VIII concentrates, which were used to treat his haemophilia A.

In July of 1995, the Chinese Ministry of Health issued a notice to stop producing and clinically using blood-clotting factors without first treating for potential viruses.

Shanghai Institute of Biological Products supplied Wu Pengtao with untreated factor VIII concentrates until September 1995. Two other suppliers, the Shanghai RAAS Blood Products Company Limited and Shanghai Blood Center, had taken measures to inactivate potential viruses in the products used by Wu Pengtao, and received product approval on June 6, 1995.

Wu Pengtaoâ€™s parents sought compensation alleging that their son died from infected blood products supplied by the three entities.

The court of first instance held that, absent sufficient evidence to prove Wu Pengtao contracted the disease from blood products being sold after the Ministry of Health issued its notice. Given AIDSâ€™ long incubation period, the plaintiffsâ€™ claims were not supported. However, it ordered that the three entities compensate his parents RMB 100,000 and bear joint responsibility, since Wu Pengtao was infected with HIV and the plaintiffs were heavily burdened with his medical treatment.

The parents appealed, requesting compensation for more than RMB 300,000. They alleged that the appellants were required to test all products for HIV under the related 1987 laws and regulations, which they failed to do, and that Shanghai Blood Center did not verify blood it collected outside Shanghai.

Shanghai RAAS Blood Products Company Limited and Shanghai Blood Center, two of the three blood suppliers, also cross-appealed, claiming that there are no legal grounds for them to take joint responsibility.

Decision and Reasoning

The Court dismissed the appeal and affirmed the decision at first instance. It determined that there were still inadequate grounds for full compensation. It affirmed the limited compensation of RMB 100,000 to cover financial losses and mental injury.

The Court reasoned that fault should be based on a breach of obligations, and that Shanghai Institute of Biological Products did not breach their statutory obligations by producing regulation-approved factors VIII until July 1995. Shanghai Institute of Biological Products was only at fault once it continued supplying factors VIII after the Ministry of Health notice was issued.

However, because it was not possible to identify one blood supplier as having exclusively provided the infected blood, and given that the appellants were heavily burdened with medical treatment costs for their son, the Court affirmed that the three blood suppliers should bear joint responsibility to each other. The

decision of the court of first instance was consistent with what the court termed the “objective” situation of the case: there was no evidence that any single blood supplier was responsible for the virus infection.

The appellants later requested a retrial, alleging similar claims. The Court denied their request, citing a lack of factual and legal grounds.

Decision Excerpts

“After hearing the evidence, the court of first instance concluded that the evidence was not adequate enough to prove that Pengtao had contracted the disease from the factor VIII used in September of 1995, because AIDS had a long incubation period” (page 3).

“Shanghai First Intermediate People’s Court holds that the determination of fault should be based on breach obligations. That Shanghai Institute of Biological Products Ministry of Health produced Factors VIII in accordance with national regulation before July 14, 1995, does not breach their statutory obligations. Therefore, it is impossible to decide that it has fault legally” (page 4-5).

“although there is no evidence to reflect that Shanghai RAAS Blood Products Company Limited and Shanghai Blood Center have fault for the virus infection of Wu Pengtao, consideration in the court of first instance of the actual difficulties of the appellant (plaintiffs in the first instance) and decision that Shanghai RAAS Blood Products Company Limited and Shanghai Blood Center bear joint responsibility are proper” (page 5).