The concept of “gross negligence” in court judgements on farming accidents

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Abstract

This paper’s focus is on “gross negligence” under Article 10 (2)(1) of the Agricultural Social Insurance Act. It shows how Polish judges view “gross negligence” with respect to farming accidents. The perception is problematic as there is no definition of “gross negligence” in Polish legislation. Most of the time, judges rely on earlier judgements that pertain to the concept.

Key terms: gross negligence, agricultural social insurance, farming accident.

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Introduction

Pursuant to Article 45 (4) of the Agricultural Social Insurance Act[1], the Agricultural Social Insurance Fund (KRUS) establishes the circumstances and causes of a farming accident. The post-accident procedure aims to find all the circumstances and causes of the accident, including whether there have or have not been negative prerequisites[2]. Among the circumstances KRUS personnel probe under such post-accident procedure are the grounds for exclusion of the right to agricultural social insurance benefit under Article 10 (2)(1). It holds that an insured person who causes an accident, deliberately or as a result of gross negligence, is ineligible for a one-off payment. In order to ascertain all the accident details, a prevention employee authorised by the KRUS president is entitled to inspect the location and all matters pertaining to the accident and take evidence from the injured party and witnesses to the accident. The injured party and other persons reporting the accident should provide information and comprehensive assistance to the KRUS employee in charge of taking evidence on the circumstances and the causes of the accident (secure the location and matters pertaining to the accident until the inspection, and, as far as practicable, make them available, identify the witnesses and provide the medical documentation at hand). On having taken the evidence, a post-accident report is drafted, which is passed on to the injured party or an authorised family member seeking a one-off payment. The report includes information on the prerequisites for a denial of the payment.

In practise, it is difficult to prove gross negligence of an employee, let alone intentionality. Among the reasons for this is that there is no definition of the concepts of "intentionality" or "gross negligence". Hence, in interpreting the said concepts, court judgements should be relied on, including judgements from penal law from which the concepts of intentionality and gross negligence derive[3].

With respect to the intentionality of an act, it occurs when the injured party may be clearly attributed with an intention to violate the laws on protection of life and health so as to cause an accident (most of the time, to receive social security benefit, for instance). Intentional fault always implies an intention to commit an act, which is: the perpetrator's awareness, as well as their will to commit the act ("wants

1. Ustawa z 20 grudnia 1990 roku o ubezpieczeniu społecznym rolników, t. j. Dz. U. 2023 poz. 208.
2. W. Jaskuła, *Używki a prawo do jednorazowego odszkodowania*, "Ubezpieczenia w Rolnictwie. Materiały i Studia" 2011, nr 41, pp. 89–105.
3. K. Rodak, *Jednorazowe odszkodowanie jako typowe świadczenie przysługujące z tytułu wypadku przy pracy rolniczej*, "Wieś i Rolnictwo" 2013, nr 1(158), pp. 120–139.

to commit the act") or, while being aware the act may be committed, accepting it[4]. In other words, intentionality occurs whenever the accident's perpetrator intends to cause an accident and accepts the consequences. There is a widespread opinion in the case law that intentionality borders on gross negligence, i.e., such negligence which provides grounds for a "particularly negative assessment of the conduct" of the employee. In practise, intentionality-induced acts are very scarce and no such case has been identified since 2021[5].

The case is somewhat different for farming accidents which the pension authority found to have been attributable to gross negligence. In 2021, a total of 117 decisions denying one-off payment were made on account of gross negligence of the injured party, versus 101 in 2022[6].

As some petitioners exercise their right to appeal to the employment and social insurance court following a negative decision, there is a body of case law which illustrates gross negligence. As there is no definition for gross negligence, KRUS personnel involved in post-accident procedure and in one-off payment decision-making must rely on the judgements in taking a stance on an accident.

Gross negligence in the court's view

It is understood that the Social Security Court initiates clarifying the concept of gross negligence. In its judgement of 20 September 1973, the court included the provision that if an employee's negligence is the sole cause of an accident at work, the work establishment will be exempted of liability only if the negligence was gross, thus bordering on intentionality[7].

J. Pasternak shares a similar view, which he expressed in 1976. In his opinion, gross negligence involves violating occupational health and safety laws and thus causing damage, which the perpetrator does not foresee for "failing to exercise due diligence and attention", which borders on intentionality"[8].

4. Wyrok Sądu Najwyższego z 15 maja 2001 roku, sygn. akt II UKN 392/00, OSNP2003 nr 2 poz. 46.
5. Data on negative decisions for intentional accidents: KRUS, *Wypadki przy pracy i choroby zawodowe rolników oraz działania prewencyjne KRUS w 2021 r.*, Warszawa 2022; KRUS, *Wypadki przy pracy i choroby zawodowe rolników oraz działania prewencyjne KRUS w 2022 r.*, Warszawa 2023.
6. Ibidem.
7. Wyrok Trybunału Ubezpieczeń Społecznych z 20 września 1973 roku, sygn. akt III TO 84/73, "Praca i Zabezpieczenie Społeczne" 1975, nr 1, p. 74.
8. J. Pasternak, *Przydatność dawnego orzecznictwa w ocenie wypadku jako wypadku przy pracy*, "Praca i Zabezpieczenie Społeczne" 1976, nr 10, pp. 45–47.

In its judgement of 6 August 1976, the Supreme Court expressed an opinion that acting with gross negligence should be understood as, inter alia, situations in which the injured employee is aware of the imminent danger (as it is typical for certain factual circumstances, so that any person with average foresight would judge it as obvious), and yet, in breach of health and safety regulations, exposes themselves to that danger, ignoring the consequences of their own behaviour[9].

On the other hand, in accordance with the Supreme Court's judgement of 1983, gross negligence occurs whenever an employee acts in breach of health and safety laws as far as they could and should have foreseen the imminent danger typical for certain factual circumstances. As such, any person with average foresight would judge it as obvious[10].

The pertinent judgements concerned workers at manufacturing plants from 40–50 years ago. However, courts continue to invoke the judgements even today in cases which concern farmers. The resort to still applicable case law in employment matters is to be welcomed. However, the peculiarity of a farmer's work and the diverse character of farming accidents require that the KRUS and the courts examine certain additional elements[11]. Any ruling that negligence is gross is always at the court's discretion, and as such the Supreme Court aptly made this point in its judgement of 18 May 2010. In assessing the degree of negligence in the farmer's failure to exercise caution at work on his own farm, a work that involves pressure to complete on time during harvesting (including of root crops), the farmer's particular helplessness in the face of machinery failure should be taken into account[12].

This paper goes back to several examples of judgements made after 2016 in order to illustrate the present opinions and views of the courts. At the same time, judgements which have changed the decisions of lower courts are cited among the rulings to show that judges have different views of gross negligence when given the same evidence. Extensive excerpts from the pertinent judgements are necessary to explain how certain nuances affect the assessment of an event by Polish courts.

9. Wyrok Sądu Najwyższego z 6 sierpnia 1976 roku, sygn. akt III PRN 19/76 OSNCP 1977 z. 3 poz. 55.
10. Wyrok Sądu Najwyższego z 23 października 1981 roku, sygn. akt III URN 40/80, „Praca i Zabezpieczenie Społeczne" 1982, nr 7.
11. D. Puślecki, *Rażące niedbalstwo w wypadku przy pracy rolniczej*, "Przegląd Prawa Rolnego" 2007, nr 2, pp. 289–309.
12. Wyrok Sądu Najwyższego z 18 maja 2010 roku, sygn. akt I UK 335/09.

Example 1

In March 2013, a farmer carried out farming work which involved agricultural tractor-based sowing of oats on the agricultural property of the petitioner. He was assisted in this work by his son, who drove the aforementioned machine. The agricultural tractor had a grain seeder. There was a wooden platform at the rear of the seeder. During the work, the petitioner was standing on the platform of the seeder and controlled the seeding. When a small amount of oats was left in the seeder basket, the petitioner wanted to rake the oats by hand. While doing so, the arm of the charging hopper caught the ring on the fourth finger of his right hand. Immediately after the incident, the petitioner's son called the ambulance. As a result of the accident, the petitioner sustained multiple lacerated wounds to the right metacarpal on the palm side, amputation of finger IV at the level of the proximal phalanx and lacerated wounds to the dorsum of the right wrist.

By a decision of May 2016, the pension authority denied the petitioner the right to one-off payment for farming work accident. The reasoning given was that the petitioner had been grossly negligent in his behaviour and had caused the accident by his conduct.

The injured party appealed this decision to the Circuit Court. In its judgement of 23 November 2016, the Circuit Court in Łódź decided the appeal was well-founded[13].

In the opinion of the court of first instance, all positive prerequisites, i.e., the occurrence of which determines the right to the one-off payment referred to in Article 10(1), were met, while there were no negative prerequisites, i.e., the occurrence of which precludes granting the above-mentioned benefit. The evidence in the case showed that on the day of the incident, the petitioner had started routine everyday chores on the farm, which he had been doing regularly for several decades. On the day of the incident, the petitioner's son was assisting with the farm work. An agricultural tractor with a seeder which the petitioner had owned for around seven years was used in the work. As the seeder, or more precisely the hitch to the agricultural tractor, had been converted from a horse-drawn seeder (so that it could be hooked up to the agricultural tractor), there was no operating manual for it. The petitioner was unable to read it and only relied on his life and professional experience. In the court's view, the petitioner as an uneducated person who had not undergone any health and safety training nor agricultural machinery operating course, was unaware of the imminent danger inherent in putting his

13. Wyrok Sądu Rejonowego w Łodzi z 23 listopada 2016 roku, sygn. akt XU 172/16.

hand (with a ring on one of the fingers) into the seeder basket nor of the consequences. The court found it obvious that any person with a reasonable judgement of the situation must admit that the use of any device or machinery does involve potential danger and that it requires full mental and physical fitness and full concentration. However, it is difficult to expect, even from an intellectually average person or one holding only a secondary school diploma, that a wedding ring that he had been wearing continuously for several decades could be a "tool" provoking an accident and irreversible consequences. Therefore, in the opinion of the court of first instance, the prerequisite of gross negligence on the part of the petitioner was not met. He was unaware and only an unfortunate movement led to the unfortunate accident.

The defendant (KRUS) disagreed with the above decision and appealed it in its entirety. In its judgement of 30 May 2017, the District Court in Łódź decided the appeal should be granted[14].

In the opinion of the District Court, the evaluation by the Circuit Court of the evidence collected in the procedure was erroneous. The petitioner's allegations revealed a fragmentary and selective assessment of the case evidence. In particular, as aptly argued by the petitioner, in the case at hand, it could not be assumed that the petitioner's conduct did not meet the criteria of gross negligence. In the opinion of the District Court, the petitioner must be held to have breached the laws on the protection of life and health through gross negligence. First of all, it should be noted that the petitioner, as found by the court of first instance, had been a farmer for several decades and during that time he had also used a tractor in his farming work. Furthermore, he had owned the said tractor with a seeder for at least seven years and had used it for farming work, so he was very well familiar with the machine. It is indisputable that the tractor hitch had been converted from a horse-drawn seeder. In the opinion of the District Court, no favourable effects for the petitioner could be deduced from the mere absence of instructions for such a self-converted tractor with a seeder. After all, the petitioner had been using agricultural machinery for many years and it is difficult to conclude that he was not aware that putting his hand into a working machine violates basic health and safety rules. Such a prohibition applies to all equipment and the petitioner should have gained such knowledge both from his experience and his previous employment as a labourer on a horticultural farm, during which he received health and safety training. In addition, it should be emphasised that it is a general and universally applicable health and safety rule that limbs must not operate in the danger zone when the machine is working. Before such an activity, be it in agriculture, industry or services, it is necessary to switch off the equipment beforehand.

14. Wyrok Sadu Okręgowego w Łodzi z 30 maja 2017 roku, sygn. akt VIII Ua 35/17.

In the opinion of the District Court, the evidence at hand provided sufficient grounds for the classification of the conduct of the insured as gross negligence bordering on intentionality. Such negligence occurs when the injured party behaves in a manner glaringly deviating from the norms of safe conduct, which shows disregard for the laws on protection of life and health. Concomitantly, the court took into account that the insured was an experienced farmer who had independently farmed the land and used agricultural machinery for many years. Working in agriculture with mechanical equipment and agricultural machinery requires observing elementary safety rules. In this case, it was particularly glaring as the petitioner had already experienced a farming accident, in which a machine also caused a hand injury, so he should be perfectly aware of the imminent danger. It is noteworthy that operating manuals for such machinery normally target regular users and contain clear instructions and warnings as regards their proper use. Such an experienced farmer as the insured was should therefore have known that any activities performed at the seeder in operation, and notably putting one's hand inside, would contravene the fundamental rule of safety and accident prevention. In such circumstances, the court accented that the injured party should be attributed with recklessness, which approximates indirect intent. That is because, having no intention to act unlawfully, he had made his decision on his future conduct being fully aware that it may go against the prevalent norms. Still, he mistakenly assumed he would avoid the event that occured.

In the view of the District Court, the insured, in contravening the farming health and safety rules, was aware of the imminent danger which an unbiased observer would have considered obvious. Further, the conduct of the insured was indisputably grossly – and clearly – deviating from the norms of safe conduct, showing that life and health protection laws had been utterly neglected. Putting one's hands into a device in motion is forbidden as it carries a risk of an accident. In the opinion of the court of second instance, the petitioner ignored this risk and his conduct was marked by a clear disregard for the applicable health and safety rules. The rules were fundamental and necessary for his safety. This had an effect of qualifying the petitioner's conduct as grossly negligent.

The Circuit Court accentuated the machine catching the hand of the insured, snagging his wedding ring, which, in the opinion of the court of first instance, became the "tool" giving rise to the accident and its irreversible consequences. The District Court held that the occurence had had no effect on the assessment of the facts in the case. This was because the accident had not been triggered by the insured having a ring on his hand, rather that he had neglected the fundamental rules of safety by putting a hand into a machine in operation. It is this grossly negligent act that produced such tragic effects.

Consequently, in the light of all the facts and in the opinion of the second instance court, the petitioner's behaviour could not have possibly been considered a conscious and unfortunate move, as the Circuit Court had viewed it. The assessment was also not consistent with the established facts of the case. Following, for instance, the petitioner's testimony, it was found that when a small amount of oats had been left in the seeder basket, he had wanted to rake it out with his hand.

In the reasons for its judgement, the court of appeal ruled that the first instance court had misevaluated the evidence of the case in that it failed to see the merits and examined the case too broadly, without specific reference to the petitioner, which was of pivotal importance in the case at hand. In the court of appeal judgement, the judge stated that perhaps in the case of a young, inexperienced person with no previous exposure to farming and agricultural machinery, a kind of ordinary negligence could be at fault, although this would not be obvious either. However, the petitioner had been involved in farming work for several decades, at least seven years with this tractor seeder, and undeniably had experience. Putting one's hand into a working machine is not consistent with the elementary principles of caution with which every human being is familiar. The judge emphasised that it should additionally be noted that the petitioner's breach had not been due to unexpected circumstances which require a quick decision or any additional aspects that would allow his behaviour to have been qualifiable as simple negligence. The petitioner failed to comply with the fundamental safety rules for operating machinery in motion in the ordinary course of his farming work. This was all despite the fact that he should not only have known these rules, but should have strictly adhered to them being a farmer with several decades of experience operating such equipment, having completed safety training during his previous employment and having had previous accident experience.

Example 2

In April 2016, an insured farmer set to work constructing a wooden trough for pigs. He used boards to build the trough and they needed to be cut to size. To cut the boards, he used an angle grinder with a toothed disc attached. The grinder was new as he had only recently bought it in a shop and it came with an operating manual attached, which the injured party had not read before setting to work. While cutting one of the boards attached to the table with a carpenter's clamp, the cutting disc became jammed in the plank and the grinder was pulled out of the hands of the insured. The rotating disc injured the fingers of his left hand. As a result of the accident, the insured suffered lacerations to his left hand.

By a decision of July 2016, the president of the KRUS denied the injured party the right to a one-off payment for a farming accident as the insured had been grossly negligent in using an angle grinder with a toothed disc at the farm to cut boards, which was contrary to the grinder's operating manual prohibiting the use of this type of disc.

This decision was appealed by the insured as he disagreed with the position of the pension authority that he had been grossly negligent. In his view, fitting a disc other than the one specified in the grinder operating manual did not represent gross negligence or intentionality on his part. He therefore requested that the contested decision be amended and that he be granted the right to a one-off payment for a farming accident.

In a judgement of October 2017, the Circuit Court in Siedlce dismissed the appeal of the insured against the decision of the president of the KRUS[15]. The court found that the angle grinder the insured was using at the time of the accident was a new piece of equipment, bought only a few weeks before the incident. It came with an operating manual enclosed by the manufacturer. The insured had not used this grinder before. In the court's view, in such a situation, any reasonable person would read the operating manual's rules for the proper and safe use of a tool that was new to them. However, the insured deliberately disregarded the rules of occupational safety by ignoring the instructions for use of the angle grinder. Had he become familiar with them, he would undeniably have learned that the tool manufacturer prohibits the fitting of a wood disc or toothed disc to the grinder and the use of such a set to cut wood such as this can cause the tool to kick back or lose control, which is precisely what happened in this case. The grinder purchased by the insured did not come with the toothed disc which the insured fitted to it. It came from his other tool stock. The Circuit Court further found that the insured was not exempted from an obligation to use common sense even though the disc had been attached to the grinder by the father of the insured. That the insured had previously misused the angle grinder with a toothed disc attached to it for cutting wood did not excuse his conduct either. This is because cultural considerations and the reality of farming cannot excuse all of the farmer's mistakes that led to the accident. In the light of the said circumstances, the Circuit Court concluded that the insured had breached occupational health and safety rules and, as far as the case was concerned, elements of gross negligence were involved, and such a breach precludes acquiring the right to one-off payment for a farming accident.

15. Wyroku Sądu Rejonowego w Siedlcach z 31 października 2017 roku, sygn. akt IV U 367/16.

The insured represented by an attorney appealed against the above judgement in its entirety. In the opinion of the District Court in Siedlce, the Circuit Court had made correct findings of fact, but unreasonably concluded that, in the circumstances of the case, there was a statutory prerequisite excluding the right of the insured to a one-off payment for a farming accident[16]. The District Court held that the Circuit Court had duly found that the insured had breached the principles of safe work in agriculture. First, because he had not read the operating manual for the angle grinder he was using at the time of the accident. Second, and as if as a consequence of the first argument, he used a toothed disc to work with the angle grinder, although the operating manual notes that such discs should not be fitted as tools of this type as they often cause kickback or loss of control of the power tool. It should be noted, however, that the mere finding of a violation of occupational safety rules is not sufficient to establish that the insured will lose their right to a one-off payment for a farming accident. The above-mentioned statutory regulation holds that the farmer’s right to compensation is excluded only if the farmer caused the accident intentionally or through gross negligence, whereby it is not sufficient to establish that such gross negligence (or intentionality) occurred. It is necessary to illustrate what, in the circumstances at hand, represented such gross negligence. As the court found, on the day of the accident, the insured set to work. The task involved cutting boards with an angle grinder equipped with a toothed disc that had been fitted to the machine not by the insured, but by his father on the occasion of an earlier board cutting job. Testimony of the persons interviewed showed that the father of the insured had previously used this type of disc to cut through wooden parts on more than one occasion. Accordingly, both farmers assumed on the basis of previous accident-free practice that such a procedure was correct. Both also declared that the angle grinder was not only used for grinding and polishing, but also for cutting, including wood. This was, moreover, confirmed by an expert’s opinion according to which it was possible to use an angle grinder for the activity the insured performed on the day of the accident, i.e. cutting the boards. Therefore, if the function of an angle grinder includes cutting wood, that the insured used a wrong – although still designed for wood cutting – toothed wheel, cannot be considered gross negligence (all the more so given that the insured was drawing on the experience of his father, also a farmer, in this respect).

16. Wyrok Sądu Okręgowego w Siedlcach z 8 marca 2018 roku, sygn. akt IV Ua 1/18.

Example 3

In June 2017, a farmer baling hay with a tractor borrowed from a neighbour, with a rolling machine attached to it, twice repaired a malfunction related to a jammed twine. The first time he repaired the malfunction, he stopped the tractor and switched off the engine. The second time, however, he did so with the tractor engine running and the rolling machine in motion. While repairing the malfunction, the petitioner wobbled, lost his balance, fell with both hands onto the rotating parts of the baler which dragged his right hand, crushed it and severed it at elbow level.

In invoking Article 10 (2) of the Agricultural Social Insurance Act of 20 December 1990, the president of the KRUS denied the petitioner the right to a one-off payment for a farming accident. In its reasoning, the pension authority stated that the benefit claimed by the insured was not due, as the farming accident he had suffered in June 2017 had been caused by gross negligence.

After the injured party filed an appeal, the case was dealt with by the Circuit Court in Krosno. In a judgement of 28 August 2018, the court amended the decision appealed by the insured and found that the occurence in which the injured party had been involved was a farming accident, which implied the right to a one-off payment provided that permanent or long-term damage to health was ascertained[17].

The first instance court found, as did the occupational health and safety expert, that the petitioner had breached health and safety rules, but that this breach was simple negligence. Such a Circuit Court's classification was determined by the petitioner's incomplete knowledge of the operated equipment and, notably, of how to repair the malfunction.

An appeal against this judgement was lodged by the pension authority.

The District Court in Krosno shared the opinion of the first instance court that a farming accident as construed by Article 11 of the Act had occurred in the case[18]. However, the court had a different view on the conduct of the insured, which gave rise to the accident in terms of Article 10(2)(1) of the Act. In the opinion of the District Court, the conduct of the injured party was not intentional, but the accident was caused by his gross negligence. The court noted that the petitioner was an experienced farmer who had run a large mechanised farm and had both an agricultural tractor and associated agricultural machinery. He was an agricultural technician by education and had been taught farm

17. Wyrok Sądu Rejonowego w Krośnie z 28 sierpnia 2018 roku, sygn. akt IV U 23/18.
18. Wyrok Sądu Okręgowego w Krośnie z 30 listopada 2018 roku, sygn. akt IV Ua 39/18.

health and safety as early as at school. He had also been taught to operate agricultural machinery and equipment. The insured had already suffered a farming accident in the past, as a result of which he suffered a permanent injury when his thumb was partially amputated. Following this accident, the pension authority provided additional preventive training. Despite this, having both theoretical and practical knowledge, on 28 June 2017, the petitioner, when repairing a malfunction in the binding apparatus of the hay baler he was operating, failed to switch off the engine and secure it against any spontaneous change of position. He then got out of the cockpit and walked up to the platform of the baler, tried to push the wheel of the binding apparatus with his right hand to unlock it and force the twine to be fed properly. This was the second time he had repaired such a malfunction that day, except that previously he had done so with the engine switched off and the baler immobilised. During the repair, the tractor moved forward, the petitioner lost his balance and his hands got to the working area of the baler rollers. His right hand was pulled in by the working components of the baler and was severed at elbow level. With respect to the conduct of the insured, the second instance court pointed to a gross violation of health and safety regulations by failing to comply with the applicable regulations in this regard. The findings showed that the petitioner had failed to check the condition of the tractor and the baler before setting off to work. In an attempt to repair a malfunction in the twine feeding apparatus, he failed to switch off the tractor engine, so that the baler continued to run and all its components were in motion. At the same time, the farmer failed to protect the tractor (and the baler that was working with it) from spontaneous changes in position, and he was working on uneven and sloping terrain. According to the District Court, the conscious and intentional violation by the insured of the rules of safe conduct he was aware of (he had previously immobilised the tractor and the baler when removing the malfunction) was not sufficient to conclude that the accident had been caused intentionally, as it did not include an intention to cause such an effect. However, such behaviour does affect the estimated degree of culpability in causing the accident. It was reasonable to qualify the petitioner's conduct as grossly negligent as construed by Article 10 (2)(1) of the Act as he intentionally (knowingly, deliberately) and without a legitimate need violated the fundamental rules of safe conduct, and ignored the consequences of his conduct. He failed to anticipate that an accident would ensue, although it is easy to foresee such an outcome under such circumstances, even for a person with low foresight and no special knowledge. The petitioner was aware of the danger of "fixing" the bale while in motion since he had switched off its engine the first time and worked while it was immobilised. The second instance court found no justification for the petitioner's conduct, including that it had been due to an impending storm (the proof of which was absent). The rush to carry out farming work cannot justify breaching basic health and safety rules and provisions.

The petitioner filed a last resort appeal with respect to the above-mentioned judgement of the District Court.

In its judgement of 17 February 2021, the Supreme Court found that deviation from the principle that a farmer who regularly pays accident insurance premiums will receive compensation in the event of an accident at work on their farm should be limited to exceptional situations. Such events include intentional causing of an accident, an act which approximates intentional causing of an accident and a situation which involves a very negative social perception, i.e., causing an accident while intoxicated[19].

While intentionality implies an intention to cause a certain effect or at least an acceptance of it in anticipating it may occur, gross negligence is an aggravated form of negligence. The latter becomes evident in the perpetrator breaching the principle of prudence if they do not intend to cause a given effect nor authorise it, causes such an effect due to a failure to exercise the due care required under certain circumstances, as much as they either deemed such an option probable (but they unreasonably believed it would be avoided) or they failed to foresee a particular effect their conduct would produce (although they could have and should have foreseen it). An evaluation of due diligence (prudence) requires reference to the average degree of prudence people manifest in similar situations. On the other hand, the likelihood of the effect ensuing and a duty to foresee it should be approached individually, with respect to the knowledge, experience and intellectual capacity of the individual perpetrator. Gross negligence is presumed to be an aggravated form of failing to exercise due care in foreseeing the consequences of one's own behaviour and it involves violating basic, elementary principles of prudence, i.e., behaviour below minimum elementary knowledge, skills and intellectual capacity. Attributing such fault to a particular person is therefore determined by their behaviour in a particular situation that deviates from the measure of minimum diligence. Whether there has been a breach of such principles must be ascertained in the circumstances of the specific case[20]. Summing up, in the opinion of the Supreme Court, not every violation of life and health protection laws by a farmer can deprive them of benefits under the accident act. It is only possible if their conduct is found particularly reprehensible. It follows that if there are additional circumstances as well as the farmer's conduct that had caused the accident, the farmer must not be deprived of the benefits the agricultural accident social insurance provides for.

19. Wyroku Sądu Najwyższego z 17 lutego 2021 roku, sygn. akt III USKP 25/21.
20. Wyrok Sądu Najwyższego z 3 sierpnia 2016 roku, sygn. akt I UK 439/15.

Summary

The Agricultural Social Insurance Act of 20 December 1990 does not provide for a legal definition of gross negligence, which stirs up some controversy in Polish case law.

Analysis of court rulings shows that it is possible to see the complexity of factors affecting the definition of gross negligence in the case of farming accidents. Interpretation of gross negligence under Article 10(2)(1) of the Agricultural Social Insurance Act requires establishing the course of the farming accident in detail, analysing the farmer's intentions and their awareness of the health risks and considering other circumstances that contributed to the accident, e.g. the efficiency of the agricultural machinery, work fatigue or the farmer's stress caused by haste due to changing weather conditions.

Notwithstanding, the case law has developed certain criteria for the assessment of an accident situation. It is reasonable to qualify the petitioner's conduct as grossly negligent as construed by Article 10 (2)(1) if all of the following prerequisites coincide:

- conscious (deliberate and implying no legitimate need) breach of the fundamental rules of safe conduct;
- neglect for the consequences of one's actions;
- a failure to anticipate that an accident would ensue, although it is easy to foresee such an outcome under such circumstances, even for a person with low foresight and no special knowledge.

In addition, attributing gross negligence to a particular person is therefore determined by their behaviour in a particular situation that deviates from the measure of minimum diligence. However, the ultimate assessment of whether all of the abovementioned prerequisites have been met in the conduct of the injured party must be case-by-case based.

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