

# Interpretation of the Convention on the Rights of Persons with Disabilities: refusal to qualify a person travelling in an electric wheelchair as the driver of a motorised land vehicle according to the meaning of the law of 5 July 1985

28/10/2021



Ruling no 382 of 6 May 2021 (20-14.551) - *Cour de cassation* (Court of Cassation) - Second Civil Chamber

- ECLI:FR:CCAS:2021:C200382

**Partial quashing**

Only the french version is authentic

*Appellant(s): Ms A... X...*

*Respondent(s): Areas dommages, a mutual insurance company*

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## **Facts and procedure**

1. According to the ruling under appeal (Aix-en-Provence, 30 January 2020) Ms X..., who has cerebral palsy and suffers from right hemiplegia, uses an electric wheelchair to get around outside.
2. On 11 February 2015, while travelling in her wheelchair, she was involved in a traffic accident that also involved a vehicle insured by the company Areas dommages.
3. She sued the insurer, which refused to compensate her for the injuries she sustained in the accident, on the grounds that she had committed a fault that excluded her right to compensation for her injuries.
4. When she appealed against the ruling that limited her right to compensation, Ms X... requested the referral to the Conseil constitutionnel (Constitutional Council) of a Priority Constitutional Question. 5. In its ruling of 1 October 2020 (Second Civil Chamber, 1 October 2020, appeal no 20-14.551), the Court dismissed this request.

## **Reviewing pleas**

### **On the first plea, the sixth part of the second plea, and the second part of the third plea appended hereafter**

6. Pursuant to Article 1014, paragraph 2 of the Civil Procedure Code, there is no need to rule by a specially reasoned decision on these pleas, which are clearly not of a nature to lead to the quashing.

### **However, on the first two parts of the second plea**

Statement of plea

7. Ms X... objects to the ruling for stating that she was the driver of a motorised land vehicle and that she had committed a fault such that her right to compensation was reduced by half, whereas:

"1°/ The right to compensation for victims who are drivers of land motor vehicles is limited or excluded when they have committed a fault. However, victims who are not drivers of land motor vehicles are compensated for damage resulting from the injury to their person that they have suffered, without any claim being made against their own

fault with the exception of a voluntary fault or inexcusable fault if it was the exclusive cause of the accident. A disabled person who uses an electric wheelchair is not a driver of a motorised land vehicle is not. In this case, in order to conclude that Ms X... was the driver of a land motor vehicle according to the meaning of the law of 5 July 1985, the cour d'appel (Court of Appeal) held that Ms X..., who was disabled, was driving an electric wheelchair which was equipped with a motorised propulsion system, a steering system, a seat and acceleration and braking mechanisms, and therefore designed to move around independently. By classifying a disabled person using an electric wheelchair as the driver of a land motor vehicle, the cour d'appel (Court of Appeal) infringed Articles 3 and 4 of Law No. 85-677 of 5 July 1985;

2°/ The concept of a motorised land vehicle according to the meaning of the Law of 5 July 1985 is independent from the concept of a land vehicle according to the meaning of Article L. 211-1 of the Insurance Code. In this case, in order to conclude that Ms X... was the driver of a motorised land vehicle according to the meaning of the Law of 5 July 1985, the cour d'appel (Court of Appeal) held that Ms X...'s wheelchair was designed to move around independently and therefore met the definition of a motorised land vehicle as set out in Article L. 211-1 of the Insurance Code. By referring to Article L. 211-1 of the Insurance Code to assess whether an electric wheelchair was a motorised land vehicle, the cour d'appel (Court of Appeal) infringed Articles 3 and 4 of Law No. 85-677 of 5 July 1985."

## Court's response

In view of the Articles 1, 3 and 4 of Law No. 85-677 of 5 July 1985, as interpreted in the light of the objectives assigned to States by Articles 1, 3 and 4 of the International Convention on the Rights of Persons with Disabilities of 30 March 2007:

8. According to these provisions, the Law of 5 July 1985 applies, even when they are transported under contract, to the victims of a traffic accident involving a motorised land vehicle and its trailers or semi-trailers, with the exception of railways and tramways running on their own tracks.

9. Victims, with the exception of drivers of motorised land vehicles, shall be compensated for damage resulting from injury to their person which they have suffered, without any claim being made against their own fault, with the exception of their inexcusable fault if it was the sole cause of the accident.

10. Finally, the fault of the driver of the motorised land vehicle has the effect of limiting or excluding compensation for the damage they have suffered.

11. By introducing this no-fault compensation system, the legislator, taking into consideration the risks associated with motor vehicle traffic, intended to provide special protection for certain categories of road users, namely pedestrians, transported passengers, children, the elderly and the disabled.

12. It follows that an electric wheelchair, a medical device intended to move a person with a disability, is not a motorised land vehicle within the meaning of the Law of 5 July 1985.

13. In order to say that Ms X... had the status of a driver of a motorised land vehicle, the ruling noted that, Ms X...'s wheelchair was equipped with a motorised propulsion system, a steering system, a seat and acceleration and braking mechanisms. It was designed to move independently and therefore met the definition of a motorised land vehicle as given by Article L. 211-1 of the Insurance Code. As such, Ms X...'s wheelchair falls within the scope of application of the Law of 5 July 1985.

14. Lastly, it notes that, although Article R. 412-34 of the Highway Code classifies a disabled person in a wheelchair

as a pedestrian, this text does not refer to motorised wheelchairs, but to wheelchairs that are "self-propelled", i.e. without motorisation.

15. In so ruling, the cour d'appel (Court of Appeal) infringed the first three above-mentioned texts.

## **ON THESE GROUNDS, and without having to rule on the other objections of the appeal, the Court:**

QUASHES AND SETS ASIDE the ruling of the cour d'appel (Court of Appeal) of Aix-en-Provence of 30 January 2020, but only insofar as it partially reverses the judgement of 19 November 2018 stating that Ms X... has a right to full compensation for her loss and determining the amount of the advance awarded to Ms X.... It stated that Ms X... is the driver of a motorised land vehicle, that Ms X... committed a fault likely to reduce her right to compensation, and that Ms X...'s right to compensation is reduced by half;

Returns, on these points, the case and the parties to the status existing prior to the said ruling and refers them to the cour d'appel (Court of Appeal) of Aix-en-Provence otherwise composed;

**President: Mr Pireyre**

**Reporting Judge: Mr Besson**

**Advocate-General: Mr Gaillardot, First Advocate-General**

**Lawyer(s): SCP Rocheteau et Uzan-Sarano - Mr Le Prado**

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Translated rulings