

An Analysis of Judicial Decision on Sports Injury Accidents in Schools and a Study on Risk Avoiding Measures

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Abstract

By using the research methods of judicial case analysis and mathematical statistics analysis, this study analyzes 20 typical cases of school sports injury accidents published by “China Judgements Online”. The findings show that injuries occurred most often to primary and middle school students, and the courts restored the facts of the cases clearly and accurately; in the process of liability attribution, the fault principle, the equity principle and the risk assumption principle were mainly adopted. For the same type of injury accidents, the court decisions were not the same, and in the vast majority of cases, the schools bore civil liabilities. In order to reduce student injury accidents in PE teaching and other sports activities in schools and reduce the liabilities of schools, this study proposes the measures of “one qualified, one insured and nine in place,” that is, “ensuring that equipment is qualified, buying special insurances, teacher training in place, inspections in place, anticipation in place, design in place, cautions in place, protection in place, handling in place, reporting in place and care in place.”

Keywords: Sports in Schools; Injury Accidents; Decisions; Risk Avoiding.

I. Introduction

With the rapid development of China's economy and the realization of the goal of building a well-off society, sports have become more and more common and necessary in people's life, and the work of sports in schools has also been raised to an unprecedented height. The education concept of “health first” has been deeply rooted in people's hearts. “Exercising one hour a day, working healthily for 50 years and living a happy life” has become a familiar sentence for many people. The National Fitness Plan (2016-2020) and the Outline of Healthy China 2030 Plan have also drawn a blueprint for the development of sports in the 13th Five-Year Plan period and beyond. In August 2019, The State

Council issued the Outline for Building a Strong Sports Country, which once again elevated youth sports to a new height. The youth sports development project became one of the nine major projects. In August 2020, the General Administration of Sport and the Ministry of Education jointly issued the Notice of the General Administration of Sport and the Ministry of Education on Issuing Opinions on Deepening the Integration of Sports and Education and Promoting the healthy Development of Youth; in October 2020, the General Offices of the CPC Central Committee and The State Council jointly issued the Opinions on Comprehensively Strengthening and Improving School Physical Education in the New Era. These documents clearly called for strengthening the sports work in schools, offering enough physical education classes for all students, organizing diversified extracurricular and training activities, and constantly expanding the coverage and participation of various sports competitions.

Due to the competitive and confrontational characteristics of sports, sports injury accidents are inevitable among students. There is no clear and authoritative explanation in China defining what constitutes student sports injury accidents in schools. However, in December 2010, the Ministry of Education revised the Measures for Handling Student Injury Accidents, which contained such a restriction: These Measures shall apply to the handling of accidents that occur in the educational and teaching activities conducted by schools or off-campus activities organized by schools, as well as in the school buildings, sites, other educational and teaching facilities and living facilities where schools shoulder administrative responsibilities, and cause personal injuries to students in schools. Therefore, by adding the qualifier “sports” on this basis, we can define sports injury accidents in schools as: accidents that occur in sports activities conducted by schools or off-campus sports activities organized by schools, as well as in sports venues and equipment facilities where schools shoulder administrative responsibilities, and cause personal injuries to students in schools. According to relevant studies, accidental injuries have become the number one cause of death for primary and middle school students in China, among which, sports activities in schools account for about 60%, with an increasing trend year by year [1]. In the article Characteristics and Prevention and Control Measures of Sports Injury Accidents in Schools, Hu (2019) pointed out that: In recent 10 years, China has seen 181 deaths due to sports injury accidents in schools [2]. In such accidents, regardless of whether the schools are at fault, when the courts decide on the sports injury accident in schools, they mostly regard the schools as a subject of accident liabilities [3]. There are many reasons for the increase in the incidence of sports injury accidents in schools, one of which is the mandatory requirements of relevant documents, such as the increase in physical education, extracurricular sports activities, sports competitions and other sports content. On the

other hand, the equipment in the sports field has gradually increased and become perfect, improving their capacity. Moreover, as students themselves are in an active period of growth and development, sports are not only their cultural and entertainment needs, but also their growth and physiological needs. The increase in sports content is bound to lead to more injury accidents. Due to the positive effect of the rule of law, people's awareness of the rule of law has increased rapidly in recent years. In order to protect their rights and interests, more parents or students themselves who have suffered sports injury accidents choose legal approaches. Schools are very sensitive places, and student is a very sensitive word. Especially due to the ultra-strong and ultra-extensive communication ability of current mobile media, once an accident is exposed on the Internet, students are often considered the weak party, and powerful public opinions will become overwhelming. In addition, when judges divide responsibility, although they mainly adopt the fault principle, they also give full consideration to the no-fault principle and the fairness principle. So, in many cases, even though schools have done their fair share of the responsibility and obligation in an accident, they still end up being held responsible. The harsh legal rulings and the huge financial compensations have terrified leaders and teachers in schools, and even led decision makers of schools to cancel or reduce sports activities. This will inevitably seriously affect normal sports activities in schools. In this context, analyzing the typical cases of sports injury accidents in schools, and proposing feasible measures can help improve the ability of schools to run schools according to law and PE teachers to teach according to law, which is another form of protecting the students.

II. Research Methodology

1. Literature research: Through the Internet, the database of qikanChina.com and the library of Gannan Normal University, the researcher looked at nearly 80 law books, journal papers and policy documents related to “sports” and “sports injury accidents”, so as to fully understand and grasp the occurrence of sports injury accidents, policy requirements, scientific insights and other background information.

2. Case analysis: Through the platform of “China Judgements Online”, by using the advanced retrieval function, the researcher searched on February 10, 2021 with the following conditions: (1) The researcher searched full texts for the keyword “sports,” (2) as for the “case type”, “civil cases” were chosen, (3) as for the “type of documents”, “written judgements” were chosen, and the “adjudication time” was set to “January 16, 2018 - January 16, 2020.” After screening, the researcher obtained 1,249 judgements. Through the model of “hierarchy of courts”,

in the 60 cases in the first 12 pages, the researcher screened out 20 typical cases, and studied and analyzed the 20 corresponding judgments.

3. Mathematical statistics: The researcher carried out mathematical statistics on the sites of the 20 typical cases, the main victim groups, the basis of judgment, and the types of responsibility division, thus trying to find out their characteristics and rules.

III. Findings and Analysis

(I) Basic information of the chosen cases (as shown in Table 1):

1. Basic characteristics and analysis of victims

Through the analysis of the 20 cases, it can be found that 11 cases occurred in middle or vocational secondary schools, accounting for 55%, and 9 cases occurred in primary schools, accounting for 45%. There was no significant difference in the incidence of cases between the two stages. There are relatively few cases of sports injury accidents among college students. However, as a matter of fact, this can not completely prove that college students have a low incidence of sports injury accidents, or that the proportion of sports accidents among them is low. According to the statistics of the national education authorities in 2015, among the injury accidents happening to college students, the proportion of sports injury accidents was more than 60% [4]. The vast majority of college students are over 18 years old and have full capacity. In sports activities, they have a stronger sense of safety and self-protection. In general, college students study in schools far away from their parents, and they choose to deal with minor injury accidents by themselves. Minors, on the other hand, tend to be under constant parental supervision. Parents can quickly find out about an injury accident after its occurrence, in addition, minors themselves do not have disposing capacity or fully capacity, so their parents' feelings of "protecting the children" tend to be stronger, which is more likely to lead to parents' dissatisfaction with the school's education management, thus resorting to law. By counting the sex of the victims, the study found that all 20 cases happened to boys. This fully shows that boys account for more proportion in sports accidents in primary and secondary schools, which is closely related to their naturally active, naughty character and their nature to play. In reality, we can also find that PE and sports activities and various phenomena including extra-curricular intense games, playing, and chasing occur among boys, while girls tend to choose more quiet activities.

2. Places where the cases occurred

According to the statistics, 20 cases randomly selected occurred in relatively random places. The 20 cases occurred in 12 provinces (municipalities directly under the central government): Guizhou, Anhui,

Hebei, Henan, Heilongjiang, Jiangsu, Liaoning, Shandong, Shenzhen, Tianjin, Yunnan, and Zhejiang. They are widely distributed in the central and eastern parts of China, and the schools where the cases occurred are located in urban areas, with few rural schools. This first shows that sports activities in middle and primary schools are relatively good in eastern provinces, and urban areas are relatively better than rural areas. The economy and education in the central and eastern parts of China are more developed, sports equipment and facilities are relatively complete, and physical education and sports activities are more abundant. The absolute increase in sports content will inevitably lead to more sports injury accidents. In the western areas with less developed economy and education, PE classes cannot be guaranteed due to economic reasons and other reasons. The equipment and facilities are simple or lacking seriously, and sports are relatively few and simple. Thus, the number of potential accident points that require attention will be relatively reduced, which will reduce the incidence of accidents. Secondly, in terms of legal awareness, central and eastern China is more advanced than western China and urban areas are more advanced than rural areas. As a result of the differences of parents in terms of education and occupation, there are big differences in their legal awareness. Parents with better economic conditions and higher education levels have more time, energy and ability to “ask for an explanation” for their children who have suffered injuries. In less developed areas and rural areas, students' parents are more likely to be farmers. Their level of knowledge is limited, and they work outside the home, so they have neither the time nor the energy to “stir up troubles”. As long as the injuries to their children are not very serious, they tend to simply deal with them on their own. In some cases, even if there was a serious injury, the involved parties choose to get some compensation through the mediation of a middleman, and fewer would choose to go to the court.

Table 1. Statistics of the basic facts of the selected cases (n=20)

No.	Document No.	Place	Overview of the case	Form of conclusion	The plaintiff in the first trial	The defendant in the first trial	The plaintiff in the second trial	Judgement	Basis of judgement	of
1	(2019) Zhe 02 Min Zhong No. 5309	Ningbo, Zhejiang	On April 24, 2019, during a PE class at Century City Elementary School, the teacher changed the location of the class without getting the ranks in good order. On the way to the new location, the teacher walked in front and the students walked behind him. Student Ding was chased by Qiu and Ye, and Ding was hit by Qiu	Second trial (original judgement upheld)	Ding	Century City Elementary School	Ding	Century City Elementary School was responsible for 65% of the damages.	Articles 6, 6 and 39 of the Tort Liability Law.	6

			on the teeth, and was thus injured.						
2	(2019) Lu 05 Min Zhong No.1470	Dongying, Shandong	Students were organized to run back and forth during a PE class at Shengli No. 6 Middle School of Dongying City on March 27, 2017. In the process, student Zhang pushed Sun from behind. Sun thus hit Cui 1 and crushed his head, causing Cui 1 to fall unconscious and injured.	Second trial (original judgment upheld)	Cui	Zhang; Shengli No. 6 Middle School of Dongying City; Sun	Shengli No. 6 Middle School of Dongying City	1. Zhang assumed 60% of the responsibility; 2. Shengli No. 6 Middle School of Dongying City assumed 30% of the responsibility; 3. Sun assumed 10% of the responsibility.	Articles 6, 16 and 39 of the <i>Tort Liability Law</i> .
3	(2019) Ji 01 Min Zhong No.13913	Shijiazhuang, Hebei	Cao fell while students were running during a PE class at Lingtu Primary School of Shijiazhuang on October 22, 2018. Fang 1, who had passed Cao, suddenly turned around and stepped on the plaintiff's foot, causing injury to the plaintiff. The teacher immediately came forward to view the plaintiff's injury, and took active measures.	Second trial (original judgment upheld)	Cao	Fang 1; Lingtu Primary School of Shijiazhuang		1. Fang 1 assumed the responsibility; 2. Lingtu Primary School of Shijiazhuang did not assume any responsibility.	Article 40 of the <i>Tort Liability Law</i> .
4	(2019) Su 03 Min Zhong No.5074	Xuzhou, Jiangsu	In a PE class of at the High School of Xuzhou Economic and Technological Development Zone on October 10, 2018, when He, Yan Yang and other students were playing basketball, He and Yan Yang collided with each other, resulting in He being injured.	Second trial (original judgment upheld)	He	1. Yan Yang; 2. High School of Xuzhou Economic and Technological Development Zone	He; Yan Yang	1. Yan Yang assumed 35% of He's losses; 2. High School of Xuzhou Economic and Technological Development Zone assumed 30%; 3. He assumed the rest of the losses.	Article 106 (3) of the <i>General Principles of the Civil Law of the People's Republic of China</i> ; Articles 16, 24 and 32 of the <i>Tort Liability Law</i> .
5	(2019) Hei 08 Min Zhong No.1242	Jiamusi, Heilongjiang	On December 11, 2017, Junior High School of Jiamusi was having an outdoor PE class, the PE teacher arranged the students to have free activities in groups. When plaintiff Wang was playing with	Second trial (original judgment upheld)	Wang	Yang, Junior High School of Jiamusi	Yang, Junior High School of Jiamusi	1. Yang assumed 70% of the responsibility; 2. Jiamusi School assumed	Article 133 of the <i>General Principles of the Civil Law</i> ; Articles 32 and 39 of the <i>Tort Liability Law</i> . Articles 7, 17,

			other students, defendant Yang ran to pick up the plaintiff, and then the plaintiff fell down, lied on his back on the ground and was injured. The PE teacher did not notice this situation.				30% of the responsibility.	19, 21, 22, 23, and 24 of the <i>Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Law to the Trial of Personal Injury Compensation Cases</i> .	
6	(2019) Yu 02 Min Zhong No.1551	Kaifeng, Henan	Shen and Zhang were students in Kaifeng Railway Middle School. On April 10, 2018, Shen's class was assigned a PE class by teacher Sun, and a "three-on-three" basketball game was organized in class. Zhang and Shen fought normally for the ball outside the three-point line, resulting in Shen's right eye injury. After Shen was injured, teachers and students rushed him to the hospital for treatment.	Second trial (original judgment upheld)	Shen	Zhang; Railway Middle School	Railway Middle School: Insurance Company	1. Zhang did not assume responsibility, but gave compensations according to the principle of fairness; Railway Middle School is not at fault, but is liable for compensation, and the insurance company was responsible for compensation.	Articles 106(3) and 132 of the <i>General Principles of the Civil Law</i> ; Article 65 of <i>Insurance Law of the People's Republic of China</i> .
7	(2019) Lu 10 Min Zhong No.2550	Weihai, Shandong	Li and Ding are students of Mishan Middle School, Wendeng District, Weihai City. In September 2014, Li and Ding were in grade one of junior high school. On September 23 of that year, before the end of a physical education class, for some reason, the teacher asked them to run along the track in the playground. Li and Ding 1 once again had body contact in the process of walking to the playground, Li fell on his face, his forehead was bruised, and was later diagnosed of hysteria.	Second trial (original judgment amended)	Li	Ding; Mishan Middle School, Wendeng District, Weihai City	Li	Li, Ding and Mishan Middle School, Wendeng District, Weihai City, each assumed one third of the damage consequences.	Articles 7, 19, 21, and 23 of the <i>Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Law to the Trial of Personal Injury Compensation Cases</i> . Article 39 of the <i>Tort Liability Law</i> .
8	(2018) Yu Min Zai	Fangcheng	Li Mou and Liang Mou are students of Class 1,	Second trial	Li	Liang; No. 5	Li	1. Liang assumed	Articles 32 and 39 of the <i>Tort</i>

	No.927	County, Henan	Grade 3, Fangcheng No.5 Primary School. On the morning of October 15, 2013, before the end of the third PE class, the PE teacher of the school, Liu, was putting the sports equipment back in the equipment room when Liang tripped Li, causing Li's teeth to touch the basketball pole and hurt.	(original judgement amended)		Primary School of Fangcheng	60% of the responsibility; 2, No. 5 Primary School of Fangcheng assumed 40% of the responsibility.	<i>Liability Law.</i>	
9	(2019) Ji 02 Min Zhong No.9294	Luanzhou, Hebei	Xie and Xu were students at Luanzhou No. 3 Experimental Primary School. On April 9, 2019, during a PE class, Xu took off his coat and put it on the podium. Then he jumped down from the podium and hit Xie 1, who was injured when his head hit a step.	Second trial (original judgement upheld)	Xie 1	Xu ; No.3 Experimental Primary School	No.3 Experimental Primary School of Luanzhou City	1. The defendant school was at fault, and assumed 30% of the responsibility; 2. Defendant Xu Jianxiong was the direct infringer and assumed 50% of the responsibility; 3. The victim assumed 20% responsibility for his own loss.	Article 133 of the <i>General Principles of the Civil Law</i> ; Articles 32 and 39 of the <i>Tort Liability Law</i> .
10	(2019) Lu 08 Min Zhong No.5677	Shanxi County, Shandong	In the spring of 2018, Meng took part in the fourth "Mayor's Cup" youth campus football League in Jining City as a player of the Football Team of the Senior Vocational and Technical School of Wenshang County. He was seriously injured in the course of the game.	Second trial (original judgement upheld)	Meng	Senior Vocational and Technical School of Wenshang County	Meng; Senior Vocational and Technical School of Wenshang County	The school was liable for compensation as the beneficiary despite the fact that it was not at fault.	Principle of fairness and reasonability, principle of benefits in Article 132 of the <i>General Principles of the Civil Law</i> ; Article 32 the principle of benefit, and Article 39 of the <i>Tort Liability Law</i> .
11	(2019) Lu 06 Min Zhong No.6760	Penglai City, Shandong	Mou and Shen 1 were students in class 1, grade 4 of Liujiagou Primary School in Penglai City. No teacher was present when	Second trial (original judgement upheld)	Mou	Shen ; Liujiagou Primary School	Shen	1. Shen 1 was liable for 70% of the compensation; 2.	Articles 6, 16, 32 and 39 of the <i>Tort Liability Law</i> .

			students queued up in a PE class on Oct 21, 2016. Shen 1 pushed Mou down without reason, causing the plaintiff to fall down and then suffer head injury. After the injury, no teacher asked about the plaintiff.					Liujiagou Primary School was liable for 30% of the compensation.	
12	(2018) Yue 03 Min Zhong No.2453 6	Futian District, Shenzhen	Li and Shi were students of Class 2, Grade 5, Jinglian Primary School. A teacher surnamed Qiu organized students to prepare for a PE class on March 28, 2017. During the course of running, Li deviated from the prescribed direction and collided with Si 1, who was running early. Li fell down. Qiu immediately organized students to help Li to the infirmary, and reported the situation to the school. The school informed Li's parents to send the plaintiff to the hospital for treatment. Jinglian Primary School paid 10,000 yuan in advance for the medical expenses	Second trial (original judgment upheld)	Li	Shi 1 ; Jinglian Primary School		1. Defendant Shi 1 assumed no liability, but according to the principle of fairness, the court ruled him to bear the compensation of 30,000 yuan at the judge's discretion. 2. Jinglian Primary School was not liable.	Article 6 of the General Provisions of the Civil Law; Articles 6 and 40 of the <i>Tort Liability Law</i> . Article 9 of the <i>Measures for Handling Student Injury Accidents</i> promulgated through Order No.12 of the Ministry of Education was adopted.
13	(2019) Jin 03 Min Zhong No.1970	Ninghe District, Tianjin	Shi was a student in the Secondary Vocational School of Ninghe District, Tianjin. On March 29, 2019, Shi, who was playing basketball with his classmate Gu and others during a PE class, fell down and injured himself, and was sent to the hospital.	Second trial (original judgment upheld)	Shi	Gu; Secondary Vocational School of Ninghe District	Shi	Gu, Secondary Vocational School of Ninghe District were not liable.	Article 39 of the <i>Tort Liability Law</i> .
14	(2019) Hei 05 Min Zhong No.614	Yilan County, Heilongjiang	Sun was a student at Yuren Primary School in Baoshan District. On Dec 15, 2017, Sun slipped and fell while skating on a rink built by the school.	Second trial (original judgment upheld)	Sun	Yuren Primary School, Baoshan District, Shuangyashan City	Sun	The defendant was liable for 60 % of the civil liability and the plaintiff for 40 %.	Articles 16, 26 and 39 of the <i>Tort Liability Law</i> .
15	(2019) Yun 01 Min Zhong No.1560	Kunming, Yunnan	Yang 1, Wang studied in the defendant, Daguan Primary School. Yang and Wang chased and played in a PE class on April 25, 2017. Wang pushed Yang 1 down, causing Yang 1's left	Second trial (original judgment upheld)	Yang 1	Wang; Daguan Primary School	Wang; Daguan Primary School	1. The plaintiff assumed 10% of the liability; 2. Defendant Wang	Articles 26, 12 and 39 of the <i>Tort Liability Law</i> .

			upper front tooth to fall out.				assumed 50% compensation liability; 3. The defendant, Daguan Primary School, was liable for 40% of the compensation.	
16	(2019) Wan 02 Min Zhong No.2179	Wuwei County, Anhui	Shen 1 was an eighth grader at Yaogou Central School. On the morning of October 27, 2017, Shen 1 took part in a high jump competition of the sports meeting. The competition venue was not a special high jump venue, the protective mat in the falling area was made of several pieces of sponge mat splicing together. During the competition, Shen was injured and left the site without making any report.	Shen 1	Yaogou Central School	Yaogou Central School	Yaogou Central School was liable for 80% civil compensation for the damages suffered by Shen.	Articles 6, 16, 22, 26 and 39 of the <i>Tort Liability Law</i> .
17	(2019) Wan 01 Min Zhong No.10455	Baohe District, Hefei	On April 27, 2017, Wu, a student at Hefei No. 46 Middle School, suffered abdominal pain after falling down due to crowding while taking part in a back-and-forth running training in a PE class. After the teacher informed the parents, Wu was sent to Hefei Binhu Hospital for hospitalization by his family on the same day. Later, the hospital diagnosed Wu with "spleen rupture and abdominal fluid," and finally removed his spleen.	Wu	No. 46 Middle School of Hefei	Wu	Hefei No. 46 Middle School was liable for 70 % of the compensation.	Article 39 of the <i>Tort Liability Law</i> .
18	(2019) Liao 01 Min Zhong No.8981	Xinmin City, Liaoning	On October 12, 2018, Yang's class at Hutai School in Xinmin City replaced an art class with a PE class. The PE teacher arranged free activities for the students. Li, Guo and Yang are all students having free activities. In	Yang	Li; Guo; Hutai School of Xinmin City	Yang	1. Defendant Guo and Defendant Yang shall each assumed 30% of the responsibility	Article 133 of the <i>General Principles of the Civil Law</i> ; Articles 32 and 39 of the <i>Tort Liability Law</i> .

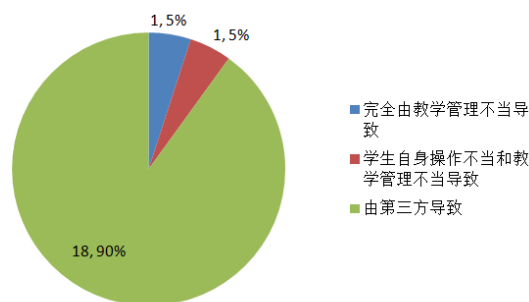
		the course of the activity, Li had been playing with Guo and Yang . Later, Li found that his left wrist bone had a pain, but Li did not tell the teacher about this pain. He was later diagnosed with a radioulnar fracture				Y. 2. Hutai School of Xinmin City assumed 20% secondary responsibility; 3. Guo himself assumed the 20% secondary responsibility.	
19	(2019) Qian 05 Min Zhong No.5541 Dafang County, Guizhou	Wang and Yang 1 were fifth graders at Jinhai Lake Primary School. During a PE class on November 19, 2018, Yang tripped another classmate and caused Wang to be injured. Wang was later diagnosed with a fracture of the middle part of his right clavicle.	Second trial (original judgement upheld)	Wang	Yang 1 ; The No.1 Primary School of Jinhai Lake New District, Bijie	Yang 1 ; Yang 1 assumed 20% of the responsibility; 2, No.1 Primary School of Jinhai Lake New District assumed 80% of the responsibility.	Articles 32 and 39 of the <i>Tort Liability Law</i> .
20	(2019) Yu 05 Min Zhong No.3606 Linzhou, Henan	No teacher is present during a PE class at Linzhou No. 1 Middle School on Aug. 16, 2017, so students had activities freely. Gao was injured in the left eye by a football kicked by Li, a senior in high school with whom he was playing football.	Second trial (original judgement upheld)	Gao	Linzhou Branch of People's Property Insurance Company of China Limited; Li; Linzhou No.1 Middle School	Gao; Linzhou Branch of People's Property Insurance Company of China Limited; 1. Linzhou No.1 Middle School assumed 80% of the civil compensation liability, which shall be paid by the insurance company; 2. Lee assumed 10 % of the responsibility.	Article 39 of the <i>Tort Liability Law</i> . Articles 132 and 133 of the <i>General Principles of the Civil Law</i> ; Article 161 of the <i>Opinions of the Supreme People's Court on Some Questions Concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China (for Trial Implementation)</i>

(II) An analysis of the causes of student injuries

The causes of sports injury accidents can be generally divided into three categories: 1. Injury accidents caused by improper teaching or management; 2. Injury accidents caused by improper operation or

negligence of students themselves; 3. Injury accidents caused by third parties. The first type of accidents are mainly caused by teachers' inadequate inspection of facilities and equipment in the sports field, unreasonable setting, failure to have scientific teaching organization, methods and means, and failure to conduct standardized management of students in PE teaching and organized sports activities, such as the cases in which students do not follow rules and the teacher fail to stop such behavior in time, resulting in injuries to students; the second type of accidents are injury accidents mainly caused by improper operation or negligence of students. They refer to injuries that occur in all kinds of organized and unorganized physical education and sports activities in schools, where students do not operate according to the norms, or even violate the rules. For example, in a PE class, students are not allowed to do back flips without the protection of a teacher, but the students do not obey the rules, resulting in injuries, etc. The third type of accidents are mainly caused by other direct human causes or irresistible factors. For example, some accidents are caused by the direct effect of other students or extracurricular personnel in PE classes or sports activities, or by unpredictable and irresistible events such as sudden changes in the weather.

Among the 20 cases, 1 case, accounting for 5%, was completely caused by improper teaching management. 1 case, accounting for 5%, was caused by students' own improper operation and improper teaching management. 18 accidents were caused by the human fault of third parties, accounting for 90%. Among them, 15 accidents were caused by negligence and 3 were caused by intentional behavior (as shown below). Of the 20 cases of sports accidents, schools were found to be at fault in 15 cases, but in the end, schools were held liable for civil damages in 17 cases, accounting for 85% of the total. In two cases where the schools had no fault, respectively Case (2019) Yu 02 Min Zhong No.1551 and (2019) Ji 02 Min Zhong No.9294, the schools were liable for varying amounts of civil damages.



The proportion of causes to injury accidents

(III) An analysis of the judgments and the main legal basis

1. The situation of the school assuming responsibility and the analysis of the main legal basis of the judgment

(1) Cases in which schools were at fault and liable for compensation

According to the collected cases, in the 20 cases, schools were judged to be liable and bear the liability of financial compensation in 15 cases, accounting for 75%. In the judgments of these 15 cases, Article 39 of the Tort Liability Law of the People's Republic of China (hereinafter referred to as the Tort Liability Law) was used as an important basis for punishment: "Where a person with limited capacity for civil conduct suffers personal injury while studying or living in a school or any other institution of education, and the school or any other institution of education fails to fulfill its duties of education or management, it shall bear the responsibility." By reviewing the finding of fact in the cases, we can find that: The causes to the school's fault are mainly reflected in the following aspects: First, before PE classes, sports activities or competitions, PE teachers or coaches fail to have scientific organization, leading to hidden dangers in the process; second, before PE classes, sports activities or sports competitions, PE teachers or coaches fail to explain the knowledge of safety protection in a timely manner, and in the process of activities did not make a timely safety reminder, in the occurrence of dangerous tendencies, they fail to stop and eliminate hidden dangers in a timely manner; third, the case of off-duty, that is, teachers "habitually" or temporarily leave the place of PE classes, competitions or other sports activities, as a result of which they are unable to take measures in case of student injury accidents; fourth, after the occurrence of an accident, the teacher fails to find out and take active rescue measures in time and inform the parents, etc.; fifth, the site, equipment and facilities of the school do not meet national standards, or fail to be maintained and overhauled on time, or no obvious safety warning signs have been put up, thus having certain safety risks. Article 7 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Law in the Trial of Personal Injury Compensation Cases (hereinafter referred to as the Interpretation) also clearly stipulates: Schools, kindergartens or other institutions of education shall, according to law, have the obligation to educate, manage and protect minors. Whether it's under Article 39 of the Tort Liability Law or Article 7 of the Interpretation, during the above PE classes, sports activities or sports competitions in schools, schools can be found to have failed in their educational and administrative duties, so it is inevitable that they will be held liable after the accidents.

(2) Cases in which schools were not at fault but were liable for compensation

In two of the 20 cases, that is, Case (2019) Yu 02 Min Zhong No.1551 and Case (2019) Lu 08 Min Zhong No.5677, the schools were found not to be at fault, but the courts made the schools liable for financial damages. In

Case (2019) Yu 02 Min Zhong No.1551, the school was made liable for financial damages. The legal basis for the judgement was paragraph 3 of Article 106 of the General Principles of the Civil Law of the People's Republic of China (hereinafter referred to as the General Principles of the Civil Law) , "...where a party is not at fault, but the law stipulates that it shall bear civil liability, it shall bear civil liability..." and Article 132, "... where a party is not at fault for the damage caused, it may share civil liability according to the actual situation..." Obviously, the judge considered the "fairness principle" according to his discretion on the basis of applying the fault principle. In Case (2019) Lu 08 Min Zhong No.5677, the school was found not to be at fault, but it was liable since it was the beneficiary. The legal basis of the judgment was the principle of fairness in Article 132 of the General Principles of Civil Law and the principle of benefiting in Article 23 of the Tort Liability Law.

(3) Cases in which schools were not at fault and were not liable for compensation

In the 20 cases, the school was found not to be at fault and not liable for compensation in 3 cases, accounting for 15%. They were: Case (2019) Ji 01 Min Zhong No.13913, Case (2018) Yue 03 Min Zhong No.24536 and Case (2019) Jin 03 Min Zhong No.1970. In these three cases, the schools were found to be not at fault and not liable for any damages. The legal basis was mainly Article 39 of Tort Liability Law, "... Schools or other institutions of education that fail to fulfill their responsibilities of education and management shall bear responsibilities", Article 40, "... Kindergartens, schools or other institutions of education that fail to fulfill their management duties shall bear corresponding supplementary responsibilities" and Article 9 of the Measures for Handling Student Injury Accidents promulgated through Order No. 12 of the Ministry of Education, "after investigation, the school did its duty of education and management without any fault, so it is not liable for compensation." In all three cases, the schools did their part in terms of equipment, facilities, management, organization, etc., so they were "spared".

2. Analysis of the situation of third parties assuming responsibilities and the main legal basis of the judgments

From the selected 20 cases, it can be found that 15 cases involved the third-party responsibility for compensation, accounting for 75%. These 15 cases can be divided into two types: the first type includes 12 cases, in which third parties were at fault, and were liable for compensation; the second type includes 2 cases, that is, Case (2019) Yu 02 Min Zhong No.1551 and Case (2018) Yue 03 Min Zhong No.24536, in which third parties were not at fault but were liable for compensation;

(1) The basis of judgment that third parties were at fault and liable for compensation

In the process of restoring the facts of the 12 cases, the researcher learned that these injury accidents were mainly caused by the victim's classmates or playmates playing, chasing, or have conflicts when the injury occurred, while the school had fulfilled the responsibility of management and education. They include both negligent injuries and intentional ones. The judgment of such cases mainly applies to Article 6 of the Tort Liability Law: "Where a doer infringes the civil rights and interests of others through their fault, they shall bear tort liability. Where the doer is presumed to be at fault according to the law, and cannot prove that they are not at fault, they shall bear tort liability." and Article 7 of the Interpretation, "... Where a third party causes personal damage to a minor through tort, it shall be liable for compensation..." and Article 133 of General Principles of Civil Law, "If a person without or with limited capacity for civil conduct causes damage to another person, his/her guardian shall bear civil liability", etc. It can be seen that in the judgment of injury accidents, judges applied the fault principle first, and then the principle of presumption of fault liability. Therefore, in the case of torts in sports injury accidents, whether intentional or negligent, the infringer will be held liable.

(2) The basis of judgment that third parties were not at fault but liable for compensation

The cases in which third parties were not at fault but were liable for compensation included Case (2018) Yue 03 Min Zhong No.24536 and Case (2019) Yu 02 Min Zhong No.1551. According to the facts of Case (2018) Yue 03 Min Zhong No.24536, in the course of running in PE class, Li, the plaintiff, did not follow the teacher's guidance, ran off the course and collided with Shi, the defendant, and was injured. The judgment also made it clear that Shi was not liable for tort. But the judge took into account the principle of fairness, that is, Article 6 of the General Provisions of the Civil Law of the People's Republic of China, "when civil subjects engage in civil activities, the principle of fairness shall be followed to reasonably determine the rights and obligations of each party" and judged that Shi, the defendant, should be liable for an economic compensation of 30,000 yuan. In Case (2019) Yu 02 Min Zhong No.1551, Gao, the plaintiff, was injured in the left eye by a football kicked normally by Li in a PE class. Li's action was inherent in a PE course and was a normal and reasonable action in sports without any fault. But considering the principle of fairness, and according to Article 106 (3) of the General Principles of the Civil Law, "... where a party is not at fault, but the law stipulates that it shall bear civil liability, it shall bear civil liability." and Article 132, "where none of the parties is at fault for causing the damage, they may share civil liability in light of the actual

circumstances”, the judge made the defendant liable for 10% of the damages.

(3) The basis of judgment that students bore full responsibility

This kind of sports injury accidents are generally caused by improper operation or negligence of students themselves under the circumstances that the school has fulfilled its responsibilities in management, education and handling. The facts of Case (2019) Jin 03 Min Zhong No.1970 are: Shi, the plaintiff, played basketball with his classmate Gu and others in a normal PE class. During the confrontation, Shi fell down and was injured, but Gu, the defendant, and other players, did not commit any foul action. Finally, the judge ruled that Gu was not liable for tort, and the school had fulfilled its responsibilities of management, education and warning, so neither Gu nor the school was liable.

IV. Risk Avoiding Measures

The risk avoidance mentioned here includes not only the meaning of avoiding the accident risks of students, but also avoiding the liability risks of the school, and it is by no means completely shirking the responsibility of the school. From the search of information and 20 cases analyzed here, we can find that, with the improvement of people's health awareness, more and more people are participating in sports activities, PE classes in schools have become more full and enriched, all kinds of sports activities and competitions have become more diversified, sports equipment and facilities have become more complete. In this context, the absolute number of sports accidents will rise accordingly. For a long time, sports injury accidents in schools have been occurring, and are still increasing year by year. In October 2014, the 18th CPC National Congress deliberated and adopted the Decision of the CPC Central Committee on Several Major Issues Concerning Comprehensively Advancing the Rule of Law, pointing out that the people must be made aware of the law as a powerful weapon in securing their own rights. The awareness of people using legal means to protect their rights will surely become stronger and stronger. However, once students resort to law after sports injury accidents in school, the judge will apply not only the principle of fault, but also the principle of fairness, the principle of benefits and the principle of presumption of fault. Students are often regarded as the vulnerable party. In addition, with the super communication power of mobile media nowadays, a strong pressure of public opinion can be easily formed, bringing huge negative impact on the reputation of schools. So, in general, whether or not the school has fulfilled its administrative, educational and other responsibilities, they tend to either privately seeking financial compensation agreements or resorting to legal judgment. But according to decisions by judges in existing cases, schools are generally liable for financial damages to a

certain extent. The judgements in the 20 cases studied here have amply illustrated this. Therefore, under the double pressure of responding to the call to vigorously develop sports in schools, and having to avoid sports injury accidents, “one qualification, one insurance and nine in place” will be very necessary measures.

(I) One qualification

“One qualification” means that schools are required to ensure that the quantity and quality of sports venues, equipment and facilities are qualified and up to standard. The construction of sports venues, equipment and facilities is a relatively big expense for schools, therefore, the number of venues constructed by some schools is insufficient, or the equipment and facilities purchased are unqualified. In sports activities, players are crowded, and some fake and shoddy sports equipment leads to safety risks in use. In Case (2019) Wan 02 Min Zhong No.2179, in the sport of high jump, the protective pad in the landing area was not up to standard, causing an injury to the student. In November 2020, Lei Peng, a junior high school student in No. 5 Middle School of Jiahe County, Hunan Province, was playing badminton in his school when an inferior badminton racket broke away from the handle and the rod was inserted into his head from the brow bone, resulting in Lei’s death [5]. On the basis that the quantity and quality of the sports venues, equipment and facilities are up to standard, schools should also carry out routine inspections and maintenance. Some sports equipment and facilities have a service life. Equipment that has reached the end of its service life should be eliminated in time, or be further repaired and reinforced by professionals sent by the manufacturers to ensure safety.

(II) One insurance

Buying special sports insurances is an effective means of risk transfer. In the process of physical education and sports activities, even if the school has done all kinds of work well, because of the large number of students and various forms of sports activities, sports injury accidents are still inevitable. In view of the fact that in all sports activities associated with schools, it is possible for schools to be liable for compensation, buying special sports insurances can be regarded as an effective means of risk transfer. In Case (2019) Yu 05 Min Zhong 3606, the school was ruled to be 80% liable for civil damages. As the school had purchased a relevant insurance, the financial compensation was borne by the insurance company, and the school successfully transferred the risk. In March 2016, Shanghai Municipal Education Commission and a life insurance company established the “Special Guarantee Fund for Sports Injuries in Schools” through negotiation. All sports organized by participating schools, whether PE classes, sports competitions, sports activities or sports training, will be effectively insured [6].

(III) Nine in place

“Nine in place” mainly refers to the nine things to be made in place by the direct organizers of sports activities, so as to avoid the occurrence or aggravation of injury accidents caused by subjective negligence.

1. Teacher training in place

Schools should strengthen training on the legal awareness and safety responsibility awareness of sports practitioners, and clearly make the requirement that in accidents, if sports organizers are at fault in their work, they should be required to assume joint responsibility. This can enhance the safety responsibility awareness of teachers from the institutional perspective. Legal training for sports practitioners should be held regularly, not only to make them aware that sports activities should be organized and carried out in accordance with laws and regulations, but also to improve their ability to avoid risks with legal means. The Civil Code of the People's Republic of China came into effect on January 1, 2021. The Code added a clause of particular relevance to sports practitioners, that is, the principle of “assumption of risk”. Article 1176 of the Code stipulates that “in the case of voluntary participation in a recreational and sports activity with certain risks, the victim who is injured by the conduct of another participant shall not claim liability for tort; except, however, where other participants intentionally or grossly are negligent in causing the damage.” The article clearly defines the division of risk liability in PE classes, sports activities, sports competitions, sports participation after class, etc. The sports workers and participants thus have a clear legal basis, which provides legal protection for sports teaching and activities according to law, which is of great significance to the development of sports activities.

2. Inspections in place

The inspections of the sports venues, equipment and facilities should be in place. Before PE classes or sports activities, the organizers of the activities should inspect the sports venues, equipment and facilities used in order to guard the last pass before use. Some sports equipment is qualified products, and regular inspections have been carried out, but because some sports equipment is public equipment, and is often used, or affected by the weather, there may be damages or new safety risks at any time. It is necessary for PE teachers and practitioners to double-check the equipment and facilities to be used before sports activities to ensure that students can use them normally and safely.

3. Anticipation in place

The hidden risks of injury accidents in PE classes and sports activities should be fully predicted and estimated, and preventive measures must be taken. For example, in the teaching of vault technique in gymnastics classes, students are prone to fall when stepping on the jumping pedal

because of inaccurate stomping action. Second, after they jump, students may land head first, or they may rush forward violently. A strong blow to the ribs or abdomen during a football match can cause a ruptured spleen and massive internal bleeding. In addition, some students have birth defects that make them unfit to participate in strenuous sports or a certain sport, and relevant personnel should screen and record this information in advance. Only when dangers are fully anticipated can adequate preparation and scientific emergency measures be taken so as not to be caught unprepared when accidents occur.

4. Design in place

In the PE class plans and other plans for sports activities, the text about safety precautions should be included. In the teaching links and activities with safety risks, remarks should be made. This can not only timely remind the organizers of the matters to be paid attention to during the activity, so as to better remind and protect the students, but also serve as an important written evidence to avoid liability risks after the occurrence of accidents.

5. Cautions in place

Teachers or coaches are in charge of the classes or other physical activities. In the whole process of classes and sports activities, they should make clear requirements for the students. They should not only move actively, but also actively remind students to comply with the rules and related requirements of the PE class. In cases of non-compliance, they should take immediate action to criticize and deter the students, and they should give special reminders of the estimated risk points. In addition, safety warning signs should be put up in prominent positions on outdoor public spaces, equipment and facilities.

6. Protection in place

In some links or actions with safety risks, timely and effective protective measures should be taken to avoid injury accidents caused by students' movement deformation caused by psychological fear or blind obedience. Teachers should seriously think about the best protection position and the best way for different sports and different technical movements, so that students can keep a calm mind and natural movements in activities. Taking swimming learning as an example, many students are afraid of water, once they enter the water, the fear will make them confused and have stiff limbs. If they are left alone, choking or drowning can occur, even with close attention. This is where students need help from their teachers. Teachers can stand near the students, or hold their hands, so that they can overcome psychological obstacles as soon as possible, while also preventing accidents from occurring.

7. Handling in place

During PE classes and other sports activities, organizers must stay at their posts. When an accident occurs, they must detect it in time and take proactive and effective first aid measures for students to minimize the risk and degree of injury. This can help prevent students from being unable to seek help if they are injured, or the situation where other students are at a loss, or making mistakes in the rush and thus causing secondary accidents. For some cases requiring prompt professional medical help, teachers should contact medical departments as soon as possible. In Case (2019) Yu 05 Min Zhong 3606, because the teacher was not at the scene at the time of the accident, the school was judged to have a major fault in the court's decision and was ultimately liable for 80% of the civil liability.

8. Reporting in place

After an accident occurs, teachers or other organizers of sports activities should timely report the accident to the organization and their leaders. Superior leaders and schools are a strong backstage force to protect the safety of teachers and students, and also a higher platform to deal with things. Teachers and sports organizers have a responsibility to report the situation and can get more resources quickly by reporting. This can also help the management take timely measures according to the situation and quickly mobilize various resources for the treatment of injured students, so as to reduce the possibility of further aggravation of the injury accidents.

9. Care in place

In all sports activities, no matter before, during or after an accident, organizers should give enough care to the students. This is not only conducive to the formation of a harmonious teacher-student relationship, improve the activity atmosphere, improve the teaching quality and activity benefits, but also avoid passive situations after the accident. By doing so, teachers will be more likely to obtain the understanding of victims and their families and thus reduce civil liability.

V. Conclusions

Sports injury accidents often occur. Accidents will not only cause direct physical harms to the students, but also have a significant negative impact on the running of schools. They can even make the students go to court against their schools, which is contrary to the original intention of education. Therefore, if schools can strengthen the construction of related fields, and if teachers can improve their awareness of responsibility in PE classes and sports activities, and ensure “one qualification, one insurance, and nine in place”, this will surely have a positive effect on preventing the occurrence of sports injury accidents.

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