

THE BRAZILIAN ENVIRONMENTAL LEGISLATION AS A RISK FACTOR FOR ACCIDENT *IN ITINERE* – THE CASE OF LARGE TREES AT ROADSIDE

Dayane Thomazi Maia; Barbara Stolte Bezerra; Clodoveu Silva

UNESP – Univ. Estadual Paulista
Departamento de Engenharia Civil e Ambiental
Departamento de Engenharia de Produção

ABSTRACT

This study aimed to discuss the so-called "commuting accident" or "accident *in itinere*" related to journey that drivers makes from home to work and vice-versa. According to Brazilian law the employer is indirectly responsible for this kind of accident. There are numerous risk factors for accidents on urban and rural roads and one of these factors are compounded by the presence of large trees at roadside, compromising the safety of drivers and as a result, making the employer liable for such accidents. Through a literature review and technical visits in road and environmental agencies, the work concluded that the environmental regulations are responsible for the impossibility of removing trees that may affect the safety of commuting travels.

Keywords: accident *in itinere*; removal of vegetation; road safety; environmental laws.

1. INTRODUCTION

The so-called "commuting accident" or "accident *in itinere*" is treated by the law nº 8.213/1991 which equates to occupational accidents, the accident in route from home to the workplace for this or that, whatever the mode of transportation, including vehicle owned by the employee. Under Brazilian law the employer is vicariously liable for this type of accident. The law ensures equivalence of commuting accident to occupational (labor) accident, no matter the circumstances. Also in periods intended for meal or rest, whether conducted inside or outside the workplace, the employee is considered in the exercise of their profession.

Marques (2013) reports that the commuting accident must be equivalent to occupational accidents for the period in which the employees perform their commuting route from their home to the place of employment or vice versa, because the employee is considered to be already available for the employer. Thus, the employer has an obligation to communicate the NWA (Notice of Work Accidents) to Social Security in the case of absence from work due to a commuting accident, in order to the employee had the social security benefit. Also the employee has the right to have a stable employment for twelve months, regardless of perceived accident aid accordingly to article 118 of Law nº. 8213/91.

The research on the subject was initially developed using bibliographic review and technical visits to competent institutions.

The present work discuss the presence of vegetation at roadside and the environmental legislation that have impact on the risk of "accident *in itinere*" related to the commuting route that the employee does during their period of work. It is well known the fact that prevention is the best course of action in this situation and the removal of trees at roadside, with present a risk for safety, is necessary without environmental compensation.

2. FACTOR ROAD / ENVIRONMENT IN ACCIDENTS *IN ITINERE*

There are numerous risk factors for accident occurrence during a travel in an road, despite the human factor is the most common, the factor road/environment has grown gradually reaching almost 38% of the urban and road accidents, as illustrated in figure 1.

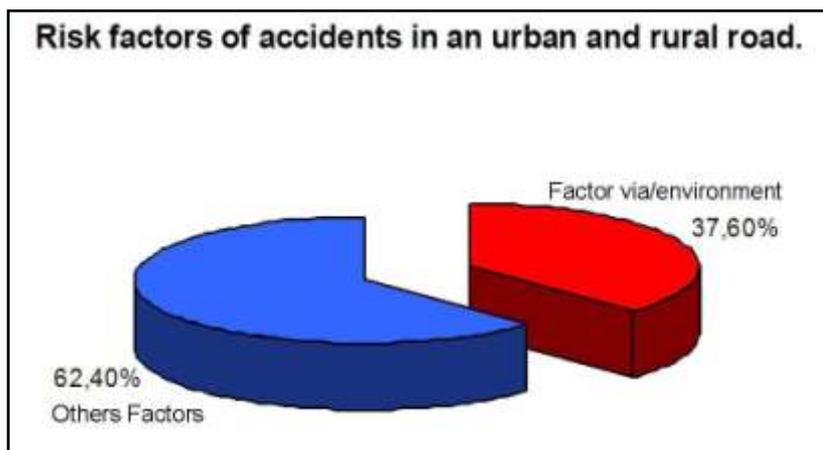


Figure 1: Risk factors of accidents in an urban and rural road

Source: Ferraz et al (2012).

The lane departure accident, which the driver moves (intentionally or not intentionally) to the roadside of the roadway, is one of the main risk factors related to the road/environment.

This factor road/environment is compounded by the presence of large trees at the roadside, which are usually unprotected, compromising the safety of the drivers and hence turning the employer responsible for these accidents. Thus, if an employee bump into a tree on his commuting route to work, the employer is liable for damages caused to the employee.

The presence of vegetation at roadside, especially in rural roads with high speed, compromises the safety of employees who need to do the same route every day and in case of accident with lane departure could use the roadside as a safety area.

The Federal Constitution guarantees the right of workers for insurance against accidents at work, at employer expenses, without excluding the forfeit to which the last is bound. Furthermore in jurisprudence research it is argued that the commuting accidents arising from the collision with trees at roadside, it was assigned the responsibility to the employer for compensation and reparation for damage caused to the employee.

It is a fact that the presence of large trees near the roadside and which are generally unprotected reveals that this segment of road compromises the safety of drivers traveling in this route.

The employer will be responsible for the commuting accidents with lane departure and collision with trees, accordingly to the jurisprudence. The legislation defends that the employer could indirectly contribute for the accident since the short and rigid schedules established by the firms could make the drivers exceed the speed limit, or by thorough strenuous work that will compromise the concentration of the driver.

3. FOR A MORE EFFICIENT ENVIRONMENTAL LAW

It is notorious, the need for effective regulation for vegetation at roadside, especially in the safety zone, in order to prioritize the protection of human life. Occurs that the existing Environmental Laws in Brazil, that protect the suppression of native vegetation is flawed, lacking for a specific regulation for large vegetations present at roadside safety zone.

The biggest paradox is the internal conflict in several regulatory standards. Some standards of road administration such as the DER (Department of Roads of State of Sao Paulo) and the Transport Regulatory Agency of São Paulo (ARTESP) determine the prompt suppression of this vegetation, since the presence of this vegetation is related to be a problem for road safety. On the other hand, the relevant environmental laws do not allow the suppression without first an extremely bureaucratic, expensive and time consuming assessment of the vegetation in analysis, besides its subsequent environmental compensation in case of native vegetation. The complexity of the procedures described in the environmental legislation set drivers at risk, putting the environment above of human life, contracting the Brazilian constitution.

4. CONCLUSION

Prevention is always the best approach, so employers and agencies responsible for road safety should act in order to promote a safety commuting travel of employees. Drivers who have to move their vehicles to the roadside should be able to do this safely. Thus, employers and the competent authorities should take care of this situation, through the suppression of vegetation in those roads.

The work concluded that the environmental legislation is responsible for the impossibility of effective removal of those trees that compromise a safe travel. The environment legislations make it difficult, and in some cases prevent proper action by road authorities and employers in order to minimize the risk of traffic accidents.

In this way, we advocate the removal of trees present at roadside safety zone without environmental compensation, thus, constitutionally safeguarded the fundamental right of human life over the environmental legislation.

REFERENCES

- AASHTO. Strategic highway safety plan: *Percent of Fatal Crashes Involve Leaving the Roadway*, 2004. Available in: <<http://safety.transportation.org/guides.aspx?cid=27>>. Accessed on: March 20, 2013.
- ARTESP. Edital de Licitação n° 016/CIC/97 – Centrovias. São Paulo, 1997.
- BRASIL. Código de Trânsito Brasileiro. *Lei n° 9.503/97*. Available in: <<http://www6.senado.gov.br/mate-pdf/105275.pdf>>. Accessed on: January 18, 2012.
- BRASIL. *Lei n° 8.213 de 24 de julho de 1991*. Available in: <http://www.planalto.gov.br/ccivil_03/leis/18213cons.htm>. Accessed on: May 15, 2013.
- MARQUES, P. A. A. *O acidente de trajeto e a responsabilidade do empregador*. Available in: <<http://ultimainstancia.uol.com.br/conteudo/colunas/61227/o+acidente+de+trajeto+e+a+responsabilid+ade+do+empregador.shtml>>. Accessed on: June 10, 2013.
- TRINDADE, A. A. C. Direitos Humanos, desenvolvimento sustentável e meio ambiente. *Instituto Interamericano de direitos humanos*. Brasília, 1992.